
STATUTORY INSTRUMENTS

1998 No. 530

PENSIONS

**The Local Government Pension Scheme
(Amendment) Regulations 1998**

<i>Made</i>	- - - -	<i>4th March 1998</i>
<i>Laid before Parliament</i>		<i>10th March 1998</i>
<i>Coming into force</i>	- -	<i>31st March 1998</i>

The 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 and interpretation

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations 1998 and shall come into force on 31st March 1998, but—

- (a) regulations 2 and 5 shall have effect from 28th March 1997;
- (b) regulation 3 shall have effect from 9th April 1997; and
- (c) regulation 4 shall have effect from 6th April 1997.

(2) In these Regulations “the principal Regulations” means the Local Government Pension Scheme Regulations 1995(2).

(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 (1)(a)(3) of the principal Regulations is amended by inserting the year “1997” after the date “28th March”.

(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; relevant amending S.I.s 1997/329, 578, 598, 954.

(3) Regulation D7 was substituted by S.I. 1997/578; although the year “1997” is included in the copies of the statutory instrument on sale, it was not included in the original statutory instrument signed on behalf of the Secretary of State.

Mis-sold pensions

3.—(1) The definition of “fund authority” in regulation K1 of the principal Regulations is amended—

- (a) by deleting the word “and” at the end of paragraph (a);
- (b) by inserting in paragraph (b) after the reference “K19” the words “, except regulation K15A,”; and
- (c) by adding as a new paragraph after paragraph (b) the following—
 - “, and
 - (c) in the application of regulation K15A to a person, the body maintaining the pension fund to which the transfer payment referred to in that regulation is paid”.

(2) Regulation K8 (1) of the principal Regulations is amended by substituting “regulations K9 and K9A” for “regulation K9”.

(3) Part K of the principal Regulations is amended by inserting after regulation K9 the following new regulation—

“Modification in connection with persons to whom regulation K15A applies

K9A. Regulation K8 (1) does not apply where the transfer value is in respect of a person to whom regulation K15A applies and in respect of whom a transfer value had previously been accepted by his fund authority applying paragraphs (3) and (4) of that regulation.”.

(4) Regulation K13(1) of the principal Regulations is amended by inserting after the words “local government employer” the words “or, in the case of a person to whom regulation K15A applies, the fund authority”.

(5) Regulation K14(2) (b) of the principal Regulations is amended by inserting before the words “where the person is a woman” the words “subject to regulation K15A (7)”.

(6) Regulation K15A of the principal Regulations(4) is amended by substituting the following—

“**K15A.**—(1) This regulation applies to a person who, during any period—

- (a) was eligible to be a member of the Scheme;
- (b) opted out of, or chose not to become a member of, the Scheme and instead was a member of a personal pension scheme or made contributions to a personal pension arrangement; and
- (c) has suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986(5) (actions for damages in respect of contravention of rules etc. made under the Act).

(2) Where, at any time after 8th April 1997, a person to whom this regulation applies—

- (a) dies when still a member, or
- (b) becomes entitled to benefits under Part D of these regulations

before the transfer payment referred to in paragraph (3) has been paid to the appropriate pension fund in respect of him, paragraphs (3) and (4) shall continue to apply in the case of that person.

(3) Paragraph (4) shall apply where—

(4) Regulation K15A was inserted into the principal Regulations by S.I. 1997/954.

(5) 1986 c. 60.

- (a) a transfer value in relation to a person to whom this regulation applies has been calculated in a manner consistent with the methods adopted and assumptions made by the fund authority in determining a restitution payment; and
- (b) the fund authority is satisfied that—
 - (i) the transfer value is adequate to restore the position in relation to that person to what it would have been if the person had been a member of the Scheme throughout the relevant period, or
 - (ii) the transfer value represents an amount which will provide such period of service as the fund authority may approve in respect of the relevant period.
- (4) Where this paragraph applies in relation to a person—
 - (a) the period mentioned in regulation K14(1) (a) shall be equal to the period which the person would have been entitled to count as his period of membership if he had been a member of the Scheme throughout the relevant period or such shorter period as the fund authority may approve;
and
 - (b) the person shall be entitled to count the whole of the relevant period as a period to which Part II of Schedule B6 applies (total period of membership to include former and related membership for some purposes of entitlement etc.).
- (5) In relation to a person to whom this regulation applies, it shall be the fund authority and not the local government employer who may allow a longer period in which to give a written notice under regulation K13.
- (6) In the case of a member to whom this regulation applies who has been credited with an additional period of membership calculated as specified in regulation K15 (calculation of period of membership allowed under regulation K14 (1) (a): non club schemes), the fund authority may adjust the amount of the period of membership or period of total membership referred to in paragraph (4) (a) and (b) on account of the transfer value payment by reference to which that additional period of membership was credited.
- (7) Where a transfer payment has been accepted in relation to a woman to whom this regulation applies and in respect of whom a transfer value had been paid previously by a fund authority to a personal pension scheme or a personal pension arrangement any part of which transfer value was attributable to membership before 6th April 1988, then the period of membership which may be counted under regulation K14 (1) (a) shall be apportioned as membership before 6th April 1988 and after 5th April 1988 in the same proportions as it would have been had the woman become or remained a member of the Scheme throughout the relevant period.
- (8) In this regulation—
 - “opted out period” means any period throughout which the person was eligible to be a member of the Scheme but instead was a member of a personal pension scheme or made contributions to a personal pension arrangement,
 - “personal pension arrangement” means a contract or arrangement referred to in regulation K13 (1) (c) or (d),
 - “relevant period” means the total of the opted out period and, if applicable, any period of transferred out service,
 - “restitution payment” has the same meaning as in regulation K29 (5) (a), and
 - “transferred out service” means service which the person transferred out of the Scheme to a personal pension scheme by exercising a right to a cash equivalent under regulation K2.”

- (7) Schedule K2 to the principal Regulations is amended—
- (a) by substituting for paragraph 3 (a) the following—
- “(a) the amount that would be necessary to purchase service in the Scheme on the material date equal to the opted out period on the basis of a transfer in from a scheme which is not a club scheme, such amount—
- (i) to include the value of any rights under the Pensions (Increase) Act 1971⁽⁶⁾ and the Pensions (Increase) Act 1974⁽⁷⁾, and
- (ii) to be determined by the fund authority on such basis as shall be approved from time to time by the Government Actuary, and”;
- (b) in sub-paragraph (b) by deleting the words “on a daily basis”; and
- (c) by substituting for paragraph 5 the following—
- “5. In this Schedule—
- (a) “material date” means the date on which the administering authority receives a request to provide the calculation of the restitution payment;
- (b) “opted out period” and “transferred out service” have the same meaning as in regulation K15A(8).”.

Internal Dispute Resolution Procedure

4.—(1) Regulation M5(1) of the principal Regulations is amended by adding at the end after “a member” the words “or a prospective member” and regulation 4(a)(ii) of The Local Government Pension Scheme (Internal Dispute Resolution Procedure) Regulations 1997⁽⁸⁾ is revoked.

(2) Paragraphs 2(7) and 4(6) of Schedule M2 to the principal Regulations⁽⁹⁾ are amended by substituting for the words “regulation J9” the words “that regulation”.

National Health Service Pension Scheme

5. Schedule M2 to the principal Regulations is amended—
- (a) in paragraph 10(1)(a)⁽¹⁰⁾, by substituting for the date “1st October 1994” the date “1st August 1991”;
- (b) in paragraph 1 (1)(c), by inserting before the words “in respect of whom” the words “subject to sub-paragraph (1A)”;
- (c) in paragraph 10, by adding the following after sub-paragraph (1) —
- “(1A) subject to sub-paragraph (1C), where a person who satisfies the provisions of sub-paragraph (1)(a) and (b) has had a transfer value accepted by his fund authority before 28th March 1997, he may elect or, in the event of death, his appropriate administering authority may determine, that—
- (a) the transfer value in respect of him shall be treated as an interim payment, and
- (b) the provisions of this paragraph shall apply to him.
- (1B) An election shall be made by notice in writing to the appropriate administering authority given within the period of three months beginning with the day on which the

⁽⁶⁾ 1971 c. 56.

⁽⁷⁾ 1974 c. 9.

⁽⁸⁾ S.I. 1997/329.

⁽⁹⁾ Paragraphs 2(7) and 4(6) of Schedule M2 were substituted by S.I. 1997/329.

⁽¹⁰⁾ Paragraph 10 was added to Schedule M2 to the principal Regulations by S.I. 1997/598.

member or former member receives notice from his appropriate administering authority of his entitlement so to elect.

(1C) An election may be made by, or a determination made in respect of, a person who has ceased to hold a local government employment if he was entitled under regulations D5, D6, D7 or D9 to the immediate payment of benefits upon such cessation.”;

(d) by substituting for paragraph 10(3) the following—

“(3) A person who has entered into a contract under the National Health Service Regulations to purchase an additional period of membership under those regulations shall be entitled for so long as there is no disqualifying break of service to continue to make additional periodic payments as if they were made pursuant to an election made under regulation C9 and in respect of the same additional period of membership and in the same amount as required under the National Health Service Regulations and regulations C11 and D2(2) shall not apply.”;

(e) by substituting for sub-paragraphs (13) and (14) the following—

“(13) Where a transfer value is accepted in relation to a person to whom this paragraph applies, the period mentioned in regulation K14(1)(a) shall be equal to the period of pensionable service used to calculate benefits under the national Health Service Pension Scheme.

(14) Where sub-paragraph (13) applies—

(a) regulations K14(2), K18 and K19 shall not apply for the purposes of making any calculations under these regulations;

(b) Part II of Schedule D2 (reduction in standard retirement grant on account of contingent spouse’s pension) shall apply—

(i) to the extent that a reduction would have been made to the lump sum on retirement under the National Health Service Regulations, and

(ii) as if references to 1st April 1972 were references to 25th March 1972;

(c) Part F shall apply as if the period of membership which the person is entitled to count under regulation K14(1)(a) had accrued while a member of the Scheme rather than as a member of the National Health Service Pension Scheme; and

(d) any election for a widower’s pension in respect of service before 6th April 1988 made by a female member while a member of the National Health Service Scheme shall be treated for the purposes of Part F as if that election had been made under and in accordance with these regulations.”;

(f) in sub-paragraph (15), by deleting the words “but for no other purpose”, and

(g) by inserting after sub-paragraph (15) the following new sub-paragraph —

“(15A) The person is entitled to treat his relevant National Health Service Pension Scheme period of membership as if it had been a period of membership (as defined in regulation B14) for the purposes of calculating his pensionable remuneration.”.

Right to opt out

6.—(1) Where—

(a) apart from this regulation, the amendments made by regulation 3 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 the date on which these Regulations come into force,

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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) died while in such employment,

before the date on which these Regulations come into force.

Signed by authority of the Secretary of State

Nick Raynsford
Parliamentary Under Secretary of State,
Department of Environment, Transport and the
Regions

4th March 1998

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 LGPS”). Regulations 2 to 5 take effect on various dates earlier than the date on which these Regulations come into force. Section 12 of the Superannuation Act 1972 provides that regulations made under section 7 of that Act may have retrospective effect.

Regulation 3 makes amendments in connection with provisions relating to members who opted out of or chose previously not to join the LGPS and who have suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986 (mis-sold pensions).

Paragraphs (1), (2), (4) and (5) of Regulation 3 make minor, consequential amendments.

Regulation 3(3) disapplies paragraph (1) of regulation K8 of the principal Regulations (minimum transfer value paid out by a fund authority of the LGPS).

Regulation 3(6) substitutes a new regulation K15A (mis-sold pensions) of the principal Regulations. This clarifies the previous regulation K15A and makes the following changes—

- (i) an administering authority is no longer able to shorten the period which is to be treated as the member’s total period of membership; and
- (ii) where a female member is reinstated in the LGPS and the period credited to her is calculated in accordance with regulation K15A, the period of membership resulting from the incoming restitution payment must be apportioned between pre and post 6th April 1988 membership as it would have been had the member remained in the LGPS throughout the mis-sold pension period.

Regulation 3(7) amends the provisions of Schedule K2 to the principal Regulations which deal with the calculation of the restitution payment. The changes reflect current practice.

Regulation 4 makes two minor drafting amendments in connection with provisions relating to the internal dispute resolution procedure. Regulation 4(a)(ii) of the Local Government Pension Scheme (Internal Dispute Resolution Procedure) Regulations 1997 (which is superseded by these Regulations) is revoked.

Regulation 5 makes amendments to paragraph 10 of Schedule M2 to the principal Regulations which was added by the Local Government Pension Scheme (Transfers from the National Health Service Pension Scheme for England and Wales) Regulations 1997 (S.I.1997/598) and applies to certain members (“the eligible members”) who were previously members of the National Health Service Pension Scheme in England and Wales (“the NHS Scheme”). Apart from minor drafting amendments the changes are—

- (i) the alteration of the date in paragraph 10 from 1st October 1994 to 1st August 1991;
- (ii) to provide that a person who would be an eligible member but for the fact that a final transfer payment into the LGPS had been paid may elect that paragraph 10 should apply to him;
- (iii) to include regulation D2(2) of the principal Regulations (adjustments to the standard retirement pension and retirement grant) in those provisions mentioned in paragraph 10 which do not apply to eligible members;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (iv) to provide that where a transfer value is accepted in relation to an eligible member, certain special provisions apply in connection with the calculation of benefits under the principal Regulations; and
- (v) to provide that periods of membership in the NHS Scheme may count as periods of membership under the principal Regulations for the purpose of determining pensionable remuneration.

Regulation 6 allows certain persons 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.