

EXPLANATORY MEMORANDUM TO

Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2012

S.R. 2012 No. 183

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 9 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Statutory Rule amends the following Statutory Rules -
 - Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 ("the Benefits Regulations"); and
 - Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 ("the Administration Regulations").
- 2.2. Regulations 2 to 9, 13, 16, 17, 18 and 20 have retrospective effect.

3. Background

- 3.1. The Statutory Rule makes some amendments to the Benefits Regulations and Administration Regulations and is part of the ongoing programme of modernisation of the Local Government Pension Scheme (Northern Ireland) (LGPS (NI)).

Amendments to the Benefits Regulations

- 3.2. Regulation 3 amends regulation 3 (contributions by active members) at paragraph 9 the word "after" will be replaced by "on or after" to clarify that contributions cannot be made on the day before the member's 75th birthday.
- 3.3. Regulation 4 of the Statutory Rule amends regulation 4 (meaning of "pensionable pay") to clarify that any sum representing the arrears of pay for the purposes of achieving equal pay is included but any award of compensation is excluded from the definition of pensionable pay.
- 3.4. Regulation 5 amends regulation 6 (periods of membership) by inserting a cross reference to regulation 11 (periods of membership) of the Administration Regulations.

- 3.5. Regulation 6 substitutes the words “Except for the purposes of regulation 5(1)(a), membership” for the word “Membership” at the start of paragraph 3 in regulation 7 (calculation of periods of membership). This amendment clarifies that a different basis is used when calculating the minimum period of membership for a part-time member’s entitlement to benefits under regulation 5 (benefits). To be entitled to benefits the member must have been a member for at least three calendar months.
- 3.6. Regulation 7 amends regulation 10 (final pay: reductions) to allow a member whose pensionable pay has been reduced or restricted, to choose to have his or her final pay calculated by dividing by three any three consecutive years within a period of 10 years before the member’s last day as an active member. Paragraph (1) is amended to clarify that the member must give notice in writing to the Northern Ireland Local Government Officers’ Superannuation Committee (the Committee) at least a month before he or she ceases membership. A new paragraph (1A) is inserted which would give the Committee the discretion to give notice on behalf of a deceased member who meets the qualifying conditions, to have his or her final pay calculated in accordance with this regulation, whether or not the period of notice has expired. A further amendment to paragraph (2) clarifies that this regulation does not apply to a member who has opted to take flexible retirement under regulation 18 of the Benefit Regulations.
- 3.7. Regulation 8 amends regulation 17 (retirement after normal retirement age) to make it clear that a member who joins the pension scheme after age 65 is entitled to a pension.
- 3.8. Regulation 9 of the Statutory Rule inserts a new paragraph (3A) to regulation 18 (flexible retirement) to make it clear that, where a member decides to take flexible retirement after age 65, the benefits paid will be actuarially enhanced in accordance with guidance issued by the Government Actuary.
- 3.9. Regulation 10 replaces the word “obtaining” in regulation 20 (early leavers: ill-health) with the words “being capable of undertaking”. This amendment better reflects the original policy intention which is that the criterion for an ill-health retirement is whether the medical condition would prevent the member undertaking any gainful employment and this is what the independent registered medical practitioner would assess. A similar amendment is made in regulation 14 which amends regulation 31 (early payment of pension: ill-health). Regulation 10 also amends paragraph (7) of regulation 20 to clarify that the transitional protection for a person who was a member before 1 April 2009 and was aged 45 (or more) before that date only applies to members with continuous membership from before 1 April 2009.
- 3.10. Regulations 11 and 12 amend regulations 23 (death grants: active members) and 24 (survivor benefits: active members) respectively. These regulations are amended so that, where a member was in part-time employment as a result of a medical condition and that condition subsequently leads to the death of the member, the reduction in pay will not be taken into account in the calculation of each of these benefits.

- 3.11. Regulation 15 amends regulation 39 (commutation: small pensions) to include a flexibility permitted under section 164(1)(f) of the Finance Act 2004 which enables the commutation of benefits not in excess of £2,000 in one scheme. This will bring the Benefits Regulations into line with the Registered Pension Schemes (Authorised Payments) Regulations 2009.
- 3.12. Regulation 16 corrects a drafting error in paragraph 6 of the Schedule (councillor members), which sets out the ill-health arrangements for councillor members and is corrected by replacing the wording “the duties of that office” with “any gainful employment” in the version of regulation 20(2) which applies to councillor members.

Amendments to the Administration Regulations

- 3.13. Regulation 18 adds two new paragraphs, (6) and (7), to regulation 11 (periods of membership) to ensure the continued protection of the pension of classroom assistants covered by the collective agreement of the Joint Negotiating Council or the Department of Education’s subsequent decision to implement similar conditions of service for those employed in voluntary grammar and grant maintained integrated schools. The amendment applies where a member:-
- decides to aggregate a period or periods of protected membership with another period of membership; or
 - has concurrent employments, is a member of the pension scheme in both employments and one employment ends, and where the member then decides to join the period or periods of protected membership from the terminated employment with the period of membership in the current employment.
- 3.14. Regulation 19 amends regulation 13 (concurrent employments) to enable a member who was a concurrent member but who ceases to be an active member in one employment to aggregate that membership, provided that:
- the person had at least three months’ membership in the first employment; or
 - the membership otherwise entitled the person to benefits as set out in regulation 5 of Benefits Regulations.
- 3.15. Regulation 20 amends regulation 22 (use of accumulated value of additional voluntary contributions (AVCs) and shared cost additional voluntary contributions (SCAVCs)) to widen the permissible use of the accumulated value of AVCs or SCAVCs by a person who stops being an active member but who remains in employment. Two new paragraphs, (9) and (10) are also inserted. The first of these will give the Committee the discretion to pay the accumulated value to a member’s personal representatives in the event of his or her death. This discretion was included in the Local Government Pension Scheme Regulations (Northern Ireland) 2002 but was not carried forward to the Administration Regulations. The second new paragraph requires the Committee to make

the payment of the total accumulated value to his or her personal representatives within two years of the member's death.

- 3.16. Regulation 21 inserts a new regulation, regulation 47A, to cover instances where pensioners and other beneficiaries of the scheme are no longer capable of managing their own affairs. The new regulation enables the Committee to pay the benefits to suitable persons who would then be able to make expenditure on behalf of the beneficiary. The new regulation also gives the Committee the power to make the expenditure itself where necessary. The Committee will establish procedures to ensure that there is medical certification of the individual's incapacity and checks are carried out to verify that the person seeking to act on behalf of the beneficiary is an appropriate person.

4. Consultation

- 4.1. As required by Article 9 of the Superannuation (Northern Ireland) Order 1972, the Department has carried out a consultation with such associations of local authorities, individual local authorities and such representatives of persons affected by the draft Statutory Rule as appear to the Department to be appropriate. A total of 5 responses were received. No respondents opposed the proposed amendments in the draft Statutory Rule.

5. Equality Impact

- 5.1. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out a screening for equality impact and is satisfied that the Statutory Rule will not lead to a significant discriminatory or negative differential impact.

6. Regulatory Impact

- 6.1. A regulatory impact assessment has not been produced for this Statutory Rule as it has a negligible impact on the cost of businesses, charities, social economy enterprises or voluntary sector and it does not have a significant financial impact on public bodies.

7. Financial Implications

- 7.1. No Exchequer expenditure is required.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department is satisfied that the Statutory Rule complies with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The Local Government Pension Scheme (Northern Ireland) maintains the policy of broad parity with that in England and Wales. Changes applicable to the LGPS (NI) which were made by The Local Government Pension Scheme (Miscellaneous) Regulations 2009 (S.I. 2009/3150) and The Local

Government Pension Scheme (Miscellaneous) Regulations 2010 (S.I. 2010/2090) are included in this Statutory Rule.

11. Additional Information

11.1. Not applicable.