

SCHEDULES

SCHEDULE 3

Regulation 19

THE 85 YEAR RULE: TRANSITIONAL PROVISIONS AND SAVINGS

1.—(1) Paragraph 1(3) applies where a member of the description in paragraph 3(1) or 3(2) makes a request to receive immediate payment of retirement benefits under—

- (a) regulation 30(1) (choice of early payment of pension) of the Benefits Regulations [^{F1}if the member is aged 60 or over at the date of early retirement] ;
- [^{F2}(aa) regulation 30(1) (choice of early payment of pension) of the Benefits Regulations, if the member is aged 55 or over but aged under 60 at the date of early retirement and the ^{F3}... employing authority agrees that paragraph 1(3) should apply;]
- (b) regulation 31(5) (retirement benefits: early payment) of the 2014 Regulations if—
 - (i) the member is aged 60 or over at the date of early retirement; or
 - (ii) the member is aged 55 or over but aged under 60 at the date of early retirement and the member's employing authority agrees that paragraph 1(3) should apply; or
- (c) regulation 31(6) (retirement benefits: flexible retirement) of the 2014 Regulations ^{F4}[^{F5}...;]
- [^{F6}(d) regulation 33(1) (other early leavers: deferred retirement benefits and elections for early payment) of the 2002 Regulations if the member is aged 60 or over at the date of early retirement; or
- (e) regulation 33(1) (other early leavers: deferred retirement benefits and elections for early payment) of the 2002 Regulations if the member is aged 55 or over but aged under 60 at the date of early retirement and the member's employing authority agrees that paragraph 1(3) should apply.]

(2) Paragraph 1(4) applies, where paragraph [^{F7}1(1)(aa), 1(1)(b)(ii) or 1(1)(e)] would otherwise apply, but the member's employing authority does not agree that paragraph 1(3) should apply.

(3) Where this sub-paragraph applies—

- (a) if the member satisfies the 85 year rule, that part of the member's retirement benefits which is calculated by reference to any period of membership before the relevant date shall not be reduced in accordance with regulation 30(4) of the Benefits Regulations or regulation 31(5) (retirement benefits: early payment) or 31(6) (retirement benefits: flexible retirement) of the 2014 Regulations [^{F8}or regulation 33(4) (other early leavers: deferred retirement benefits and elections for early payment) of the 2002 Regulations]; and
- (b) if the member does not satisfy the 85 year rule, that part of the member's retirement benefits which is calculated by reference to any period of membership before the relevant date is reduced by reference to the period between the date of early retirement and the date the member would satisfy the 85 year rule, or age 65 if earlier.

(4) Where this sub-paragraph applies—

- (a) if a member satisfies the 85 year rule, that part of the member's benefits which is calculated by reference to any period of membership before the relevant date is reduced by reference to the period between the date of early retirement and age 60; and

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- (b) if the member does not satisfy the 85 year rule, that part of the member's benefits which is calculated by reference to any period of membership before the relevant date is reduced by reference to the period between the date of early retirement and the date the member would satisfy the 85 year rule, or age 65 if the member would not satisfy the 85 year rule before that time, or age 60 if later.

(5) ^{F9}In this Schedule, references] to an employing authority are to be read as including a former employing authority or where the member's employer or former employer ceased to be an employing authority and has not been succeeded by another employing authority, the Committee.

Textual Amendments

- F1** Words in Sch. 3 para. 1(1)(a) inserted (18.11.2019) by [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/206\)](#), regs. 1(1), **92(a)**
- F2** Sch. 3 para. 1(1)(aa) inserted (18.11.2019) by [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/206\)](#), regs. 1(1), **92(b)**
- F3** Word in Sch. 3 para. 1(1)(aa) omitted (with effect in accordance with reg. 1(2)(b) of the amending Rule) by virtue of [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/77\)](#), regs. 1(1), **6(a)**
- F4** Words in Sch. 3 para. 1(1)(c) omitted (with effect in accordance with reg. 1(2)(b) of the amending Rule) by virtue of [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/77\)](#), regs. 1(1), **6(b)**
- F5** Words in Sch. 3 para. 1(1)(c) inserted (18.11.2019) by [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/206\)](#), regs. 1(1), **92(c)**
- F6** Sch. 3 para. 1(1)(d)(e) inserted (18.11.2019) by [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/206\)](#), regs. 1(1), **92(d)**
- F7** Words in Sch. 3 para. 1(2) substituted (18.11.2019) by [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/206\)](#), regs. 1(1), **92(e)**
- F8** Words in Sch. 3 para. 1(3)(a) inserted (with effect in accordance with reg. 1(1) of the amending Rule) by [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2022 \(S.R. 2022/163\)](#), regs. 1(1), **20**
- F9** Words in Sch. 3 para. 1(5) substituted (18.11.2019) by [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/206\)](#), regs. 1(1), **92(f)**

2.—(1) A member's employing authority may determine on compassionate grounds to waive the reduction referred to in paragraph 1(4), 9(2) or, except where paragraph 1(1)(c) applies, paragraph 1(3)(b).

^{F10}(1A) A member's employing authority may determine to waive ^{F11}in whole or in part] the reduction referred to in paragraph 1(3)(b) where paragraph 1(1)(c) applies in relation to that paragraph.]

(2) Regulation 66 (statements of policy about the exercise of discretionary functions) of the 2014 Regulations applies to paragraph 1(1)(b)(ii) as if it were specified in paragraph (1) of that regulation.

^{F12}(3) Where an employing authority agrees that paragraph 1(1)(aa), 1(1)(b)(ii) or 1(1)(e) should apply to a member, or determines to waive a reduction under sub-paragraph (1), the Committee shall require the employing authority concerned, or itself, to make additional payments to the fund in respect of any extra charge on the fund, as calculated by an actuary appointed by the Committee, resulting from the agreement or waiver of the reduction.]

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Textual Amendments

- F10** Sch. 3 para. 2(1A) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/128\)](#), regs. 1(1), **31(a)**
- F11** Words in Sch. 3 para. 2(1A) inserted (18.11.2019) by [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/206\)](#), regs. 1(1), **92(g)(i)**
- F12** Sch. 3 para. 2(3) substituted (18.11.2019) by virtue of [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/206\)](#), **regs. 1(1), 92(g)(ii)**

3.—(1) For the purposes of paragraph 1, the relevant date for a member who will be aged 60 or more on 31st March 2016 and who was a member of the 2002 Scheme before 1st October 2006, is the earlier of—

- (a) 1st April 2016; and
- (b) the date on the day after the day on which the member leaves local government employment.

(2) For the purposes of paragraph 1, the relevant date for a member who will not be aged 60 or more on 31st March 2016 and who was a member of the 2002 Scheme before the 1st October 2006, is 1st April 2008.

4.—(1) A member satisfies the 85 year rule if the sum of—

- (a) the member's age in whole years on the date of early retirement under paragraph 1;
- (b) the member's total membership in whole years;
- (c) in a case where the request is made after the member's local government employment ends, the period beginning with the end of that employment and ending with the early retirement date requested by the member; and
- (d) in the case of a person who was a member of the 2000 Scheme immediately before 1st February 2003, any qualifying period counted by virtue of regulation 127 (rights as to service not matched by credited period) of the 2002 Regulations which was awarded before 1st February 2003,

is 85 years or more.

(2) In calculating the member's total membership—

- (a) the periods of membership taken into account are—
 - (i) the total membership the member accrued under the earlier Schemes which counts as membership in relation to the employment in respect of which the member has made a request to receive immediate payment of retirement benefits under paragraph 1; plus
 - (ii) the period during which the member paid, or is treated as having paid, contributions under regulations 11 (contributions) or 12 (temporary reduction in contributions) of the 2014 Regulations; plus
 - (iii) any period after 31st March 2015 of unpaid absence due to industrial action, or absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave, if contributions have been paid under regulation 18 (additional pension contributions) of the 2014 Regulations to cover that period; and
- (b) no account is to be taken of—

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- (i) any increase in membership awarded under regulation 12 (power of employing authority to increase total membership of active members) of the Benefits Regulations;
- (ii) any membership credited after 1st October 2012 under regulation 80 (right to count credited period) of the Administration Regulations or regulation 9 (transfers); or
- (iii) subject to paragraph 5, any period on or after the date specified in regulation 33(4) (commencement of pensions following flexible retirement) of the 2014 Regulations or the date benefits became payable under regulation 18^{M1} (flexible retirement) of the Benefits Regulations or regulation 38(1A)^{M2} (requirements as to time of payment) of the 2002 Regulations.

Marginal Citations

- M1** S.R. 2009 No. 32; regulation 18 has been amended by S.R. 2012 No. 183 and S.R. 2013 No. 71.
- M2** S.R. 2002 No. 352; regulation 38(1A) was inserted by S.R. 2007 No. 152; it was revoked, with savings, by S.R. 2009 No. 34.

5.—(1) This paragraph applies to a member who received immediate payment under regulation 31(6) of the 2014 Regulations, regulation 18 of the Benefits Regulations, or regulation 38(1A) of the 2002 Regulations (retirement benefits: flexible retirement) of some, but not all, of the benefits to which that member was entitled.

(2) Where this paragraph applies, this Schedule, with the exception of paragraph 4(2)(b)(iii), continues to apply to any undrawn benefits accrued by the member before the date the member started to receive payment of benefits under those regulations.

6.—(1) This paragraph applies to a member to whom regulation 4 (membership accrued before 1st April 2009: deferred members) of the Transitional Regulations 2009 [F13, regulation 12 (re-employed and rejoining members) of the Administration Regulations or regulation 9A(1) (aggregation adjustments etc.)] applies.

(2) Where such a member does not choose, or does not choose as respects all periods of membership, to be treated as if regulation 3 (membership accrued before 1st April 2009: active members) of the Transitional Regulations 2009 applies, or to have the member's membership aggregated under regulation 12 (re-employed and rejoining deferred members) of the Administration Regulations, or under regulation 24 (pension accounts) of the 2014 Regulations, as the case may be, then in applying paragraphs 1 to 5 and 9 as respects any later membership, the total membership excludes unaggregated periods.

Textual Amendments

- F13** Words in Sch. 3 para. 6(1) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of [The Local Government Pension Scheme \(Amendment\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/128\)](#), regs. 1(1), **31(b)**

7.—(1) This paragraph applies to a member who was a member of the 2002 Scheme before 1st October 2006 who—

- (a) before 1st October 2006 elected to make additional contributions to the Scheme to increase total membership under regulation 57(1) (payments to increase total membership) of the 2002 Regulations; and

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- (b) was assumed to retire from local government employment on a date before the member's 65th birthday (“the assumed date”) for the purposes of calculating additional contributions under regulation 57(5) of the 2002 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,

the member shall not pay any additional contributions after that date and the whole of the additional period shall be counted as part of the total membership for the purposes of paragraphs 1 to 5 and 9.

(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 before 1st April 2008.

8.—(1) This paragraph applies to a person who was an active member of one of the earlier Schemes before 1st October 2006 and who—

- (a) ceases to be an active member of the 2002 Scheme, the 2009 Scheme or the Scheme (whether before, on or after that date); and
- (b) resumes active membership.

(2) If a member to whom this paragraph applies aggregates any period of membership after the resumption of employment with the period of membership accrued in the previous local government employment—

- (a) where the member resumed active membership in the Scheme and has had a disqualifying break, this Schedule does not apply to the earlier period, except in applying this Schedule to the later period of membership, for the purposes of paragraph 4 (determining whether the member satisfies the 85 year rule); or
- (b) where a member resumed active membership in an earlier Scheme, or resumed active membership in the Scheme without a disqualifying break, this Schedule applies to the whole period of aggregated membership.

(3) A disqualifying break for the purposes of paragraph (2) is a continuous break in active membership of a public sector pension scheme of more than five years.

9.—(1) This paragraph applies to a member who was a member before 1st October 2006, who will reach or has reached the age of 60 on or after 1st April 2016 and before 1st April 2020, and whose retirement benefits would (but for the provisions of this paragraph) have been actuarially reduced on account of the age at which they were drawn.

(2) That part of the member's retirement benefits which is calculated by reference to any period of membership after 31st March 2008 shall be reduced in accordance with actuarial guidance issued by the Department.

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Changes and effects yet to be applied to the whole Rule associated Parts and Chapters:

Whole provisions yet to be inserted into this Rule (including any effects on those provisions):

- Sch. 1(d) word omitted by [S.R. 2023/157 reg. 20\(2\)\(a\)](#)
- Sch. 1(e) word inserted by [S.R. 2023/157 reg. 20\(2\)\(b\)](#)
- Sch. 1(f) inserted by [S.R. 2023/157 reg. 20\(2\)\(c\)](#)