

SCHEDULE M4

Regulation M8.

TRANSITIONAL AND TRANSITORY PROVISIONS

PART I

GENERAL PROVISIONS

1. In this Schedule “the revoked instruments” means the statutory instruments revoked by these regulations.

2.—(1) The substitution of these regulations for the revoked instruments does not affect the continuity of the law.

(2) Anything done or having effect as if done under or for the purposes of a provision of the revoked instruments has effect, if it could have been done under or for the purposes of the corresponding provision of these regulations, as if done under or for the purposes of that corresponding provision.

(3) Any reference, whether express or implied, in these regulations or any other instrument or document to a provision of these regulations shall, so far as the context permits, be construed as including, in relation to the times, circumstances and purposes in relation to which the corresponding provision of the revoked instruments has effect, a reference to that corresponding provision.

(4) Any reference, whether express or implied, in any instrument or document to a provision of the revoked instruments shall be construed, so far as is required for continuing its effect, as including a reference to the corresponding provision of these regulations.

(5) Any document made, served or issued on or after the commencement date which contains a reference to any of the revoked instruments shall be construed, except so far as a contrary intention appears, as referring or, as the context may require, including a reference to the corresponding provision of these regulations.

(6) Where any provision of the revoked instruments (“the replacement provision”) re-enacted, with or without modification, a previous provision revoked by the revoked instruments (“the previous provision”), the, so far as is necessary to prevent the continuity of the law from being affected, any reference in these regulations to the replacement provision shall, so far as the context permits, be construed as including a reference to the previous provision.

3. Where—

(a) these regulations revoke a provision (“the commencement provision”) relating to the coming into force of another provision (including a commencement provision deeming another provision to have had effect from a date earlier than that which would otherwise apply), and

(b) the effect of that other provision is reproduced in a corresponding provision of these regulations,

the revocation does not affect the operation of the commencement provisions, in so far as it is not specifically the produced in these regulations but remains capable of having effect, in relation to the corresponding provision of these regulations.

4.—(1) The revocation by these regulations of any provision previously revoked subject to savings does not affect the continued operation of those savings.

(2) The revocation by these regulations of saving to which a previous revocation of a provision is subject does not affect the operation of the saving in so far as it is not specifically reproduced in these regulations but remains capable of having effect.

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(3) The revocation by these regulations of a provision which has effect as respects another provision of the revoked instruments (Being a provision which is not reproduced in these regulations but continues in effect by virtue of this Schedule or the Interpretation Act 1978(1)) does not affect its operation as respects that other provision.

5. Where by virtue of Part II of this Schedule a reference in these regulations not anything has effect as respects any time before the commencement date as if it were a reference to another thing, then where any provision of the revoked instruments continues in effect (by virtue of this Schedule or otherwise) on and after that date, any reference in that provision to that other thing shall, so far as is necessary to give effect to it, have effect on and after that date with the appropriate modification.

PART II SPECIFIC PROVISIONS

Membership

6.—(1) References in these regulations to a member shall have effect as respects any time before the commencement date as references to a pensionable employee (and related expressions shall have effect accordingly).

(2) Nothing in these regulations affects the date of the commencement of the membership of any person who is a member immediately before the commencement date.

(3) Where immediately before the commencement date any person—

- (a) is eligible to be and is a member of the Scheme, or
- (b) has the right to make an election to joining the Scheme,

by virtue of any provision of the 1986 regulations which is revoked by these regulations and is not re-enacted by them or is re-enacted with modifications, he shall notwithstanding the revocation or modification remain eligible to be a member, or as the case may be to make such an election, subject to the same terms and conditions as under the provision.

(4) Without prejudice to the previous provisions of this paragraph—

- (a) no person who is a member of the Scheme immediately before the commencement date shall be ineligible for membership of the Scheme by virtue of anything in regulation B3 (definitions of whole-time, part-time and variable-time employment);
- (b) notwithstanding the revocation of paragraph 4 of Part IV of Schedule 2 to the 1986 regulations, any person to whom that paragraph applied immediately before the commencement date shall continue to be treated as there mentioned.

Existing reckonable service etc.

7. Without prejudice to any other provision in these regulations, any period which immediately before the commencement date counted as a period of reckonable service for any purpose of the Scheme (including any period which counted by virtue of regulation E28 or E30 of the 1986 regulations)—

- (a) shall continue to be counted for that purpose as a period of membership of the same length as it then counted for that purpose,

(1) 1978 c. 30.

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- (b) if it counted as service in whole-time employment or part-time employment, shall count as membership in whole-time employment or, as the case may be, membership in part-time employment, and
- (c) if it counted as service before or after a particular date, shall count as membership before or, as the case may be, after that date.

War service

- 8.** The revocation of Part F (war service) and regulation N4 (decisions by administering authorities as to such service) of the 1986 regulations shall not affect—
- (a) any right to which a person is or would apart from the revocation become entitled under or by virtue of that Part; or
 - (b) any decision made under that regulation or under regulation N8 (appeals) of those regulations as respects such a decision;

but, in so far as they continue to have effect by virtue of this paragraph, references in those provisions to reckonable service shall be taken, where appropriate, to be references to periods of membership.

Regulation E2(1)(d) of the 1986 regulations: continued entitlement for transitional period

- 9.** The revocation of regulation E2(1)(d) of the 1986 regulations (entitlement to pension on leaving at or near state pensionable age) and of the provisions of those regulations which relate to the payment of pensions or other benefits by virtue of that regulation or are incidental to it shall not affect the rights of—
- (a) any person who has become entitled before the commencement date to an annual retirement pension or a retiring allowance by virtue of that regulation (whether or not it has become payable before that date);
 - (b) any person who attains state pensionable age before the expiry of the period of two years beginning with the commencement date; or
 - (c) any person who (apart from the revocation) would have any rights in respect of any person falling within paragraph (a) or (b);

and accordingly, so far as is necessary to give effect to those rights and to make provision for any matters incidental to them, those provisions shall be treated as if they had continued in effect.

Remuneration

10.—(1) Nothing in these regulations shall affect the meaning of “remuneration” as respects the calculation of any benefit in respect of a person who has ceased to be a member of the Scheme before the commencement date.

(2) Where, apart from paragraph 7(b), a period of reckonable service in whole-time employment before the commencement date would count on and after that date as a period of membership in part-time employment, then for the purpose of calculating any benefit by reference to that period of service, paragraph 7 of Schedule D1 shall not apply (and accordingly the benefit shall be calculated, in so far as it relates to that period, by reference to pensionable remuneration which has not been increased by virtue of that paragraph).

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Continuation of options under regulation S2 of the 1986 regulations

11. Nothing in these regulations shall affect the rights of any person who duly elected under regulation S2 of the 1986 regulations (application of those regulations to benefits in respect of former employments).

Continuation of savings for gratuities and policy schemes affected by local government reorganisation etc.

12.—(1) The revocation of regulation H3 of the 1986 regulations shall not affect its operation as respects the exercise of any discretionary power to which it applies as respects gratuities.

(2) Notwithstanding the revocation of regulations H7 and H8 of the 1986 regulations—

- (a) an authority who became responsible under J11(1) of the 1974 regulation for the continued payment of a gratuity or allowance and by virtue of regulation H7(a) of the 1986 regulations are so responsible immediately before the commencement date remain so responsible,
- (b) an authority who became liable under regulation J11A of the 1974 regulations to contribute towards such continued payment and by virtue of regulation H7(b) of the 1986 regulations are so responsible immediately before the commencement date remain so liable,
- (c) every agreement and every determination under regulation J11A of the 1974 regulations which had effect immediately before the commencement date by virtue of regulation H7(b) of the 1986 regulations continues to have effect,
- (d) any agreement or trust deed which immediately before the commencement date had effect by virtue of regulation H8 of the 1986 regulations as mentioned in regulation J12 of the 1974 regulations continues so to have effect, and
- (e) any policy of insurance held by a LGPS employer immediately before that date for the purposes mentioned in regulation J12 of the 1974 regulations shall continue to be held by them for those purposes.

Resolutions

13. Where by virtue of any provision of these regulations which is not derived from a corresponding provision of the 1986 regulations, a resolution under these regulations is to make any particular provision or to be made in accordance with any procedure, then any corresponding resolution made under those regulations and continuing to have effect after the commencement date—

- (a) shall be deemed to have complied with that procedure, and
- (b) may be varied so as to make that particular provision.

Discretionary additional benefits for certain female nursing staff

14. Notwithstanding the revocation of regulations E2(3) and E13 of the 1986 regulations (special provision concerning certain female nursing staff), in so far as either of those regulations is capable of continuing to have effect, it shall continue to do so.

PART III

CONTINUATION OF SAVINGS IN STATUTORY INSTRUMENTS AMENDING THE 1986 REGULATIONS

15.—(1) No provision of these regulations which is derived from a provision of the Local Government Superannuation (Amendment) Regulations 1989⁽²⁾ (“the original provision”) shall apply to any person who duly elected under regulation 30 of those regulations that the original provision should not apply to him.

(2) Where any person has duly made an election under regulation 27(2) of those regulations, then, notwithstanding the revocation of that regulation, he shall be treated for the purposes of these regulations as if—

- (a) regulation 5 of the Local Government Superannuation (Local Government Reorganisation) Regulations 1985⁽³⁾ had not applied to him and he had accordingly become entitled to preserved benefits, and
- (b) he had elected under regulation D12(1)(c) to remain entitled to them.

16. No provision of these regulations which is derived from a provision of the Local Government Superannuation (Valuation and Community Charge Tribunals) Regulations 1989⁽⁴⁾ (“the original provision”) shall apply to any person who duly elected under regulation 5 of those regulations that the original provision should not apply to him.

17.—(1) Nothing in the Local Government Superannuation (Interchange) Regulations 1991⁽⁵⁾ which is derived from amendments made by regulations 10 to 15 and 19 and 20 of those regulations shall have effect—

- (a) as respects any person to whom paragraph 25(1) of those regulations (pre-1986 leavers) applied, so as to allow him to exercise an option under regulation K2 (outwards transfers) which would not have been available to him had these regulations not been made; or
- (b) in relation to any payments to which paragraph 25(1)(b) of those regulations (payments made or in process at the commencement of those regulations) applied, unless both the fund authority and the scheme managers agree otherwise.

(2) Subject to sub-paragraph (3), no provision of these regulations which is derived from a provision of those regulations (“the original provision”) shall apply to any person in relation to any benefit if he duly elected under regulation 27 of those regulations that the original provision should not apply to him in relation to that benefit.

(3) Where such an election was made in relation to a benefit which was being paid or became or might have become payable in respect of a person who is employed in a local government employment, or if he subsequently recommences service in such an employment, then—

- (a) The election has effect in relation to the benefit only to the extent that it accrues by virtue of—
 - (i) periods of service rendered before he ceased (before 25th November 1991) to hold the employment in respect of which he was a member (or last so ceased before that date); or
 - (ii) contributions paid in respect of any such periods of service; and

(2) S.I. 1989/371.
(3) S.I. 1985/1515.
(4) S.I. 1989/1624.
(5) S.I. 1991/2471.

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(b) without prejudice to the application of this paragraph, in determining entitlement to, or the amount of, the benefit to that extent, he shall be treated as if he had never recommenced service in such employment at any time after that cessation (or that last cessation); and the provision in question shall apply accordingly.

18.—(1) Subject to sub-paragraph (2), where any person duly elected under regulation 43 of the Local Government Superannuation (Amendment) Regulations 1992⁽⁶⁾ that in relation to a benefit the 1986 regulations should apply to him as if they had not been amended by those regulations of 1992, the provisions of these regulations deriving from provisions of the 1986 regulations which were so amended shall apply in relation to that person and that benefit as if those regulations of 1992 had not been made.

(2) Where such an election was made in relation to a benefit which was or might have become payable in respect of a person who is employed in a local government employment, or if he subsequently recommences service in such an employment, then—

- (a) the election has effect in relation to the benefit only to the extent that it accrues by virtue of—
 - (i) periods of service rendered before he ceased (before 28th February 1992) to hold the employment in respect of which he was member (or last so ceased before that date); or
 - (ii) contributions paid in respect of any such periods of service; and
- (b) without prejudice to the application of this paragraph, in determining entitlement to, or the amount of, the benefit to that extent, he shall be treated as if he had never recommenced service in such employment at any time after that cessation (or that last cessation);

and these regulations shall apply accordingly.

19.—(1) Subject to sub-paragraph (2), where any person duly elected under regulation 3(2) of the Local Government Superannuation (Maternity Absence) Regulations 1993⁽⁷⁾ that in relation to a relevant benefit the 1986 regulations should apply to a relevant beneficiary as if they had not been amended by those regulations of 1993, the provisions of these regulations deriving from provisions of the 1986 regulations which were so amended shall apply in relation to that beneficiary and that benefit as if those regulations of 1993 had not been made.

(2) Where such an election was made in relation to a benefit which was or might have become payable in respect of a person who is employed in a local government employment, or if she subsequently recommences service in such an employment, then—

- (a) the election has effect in relation to the benefit only to the extent that it accrues by virtue of—
 - (i) periods of service rendered before she ceased (before 16th November 1993) to hold the employment in respect of which she was a member (or last so ceased before that date); or
 - (ii) contributions paid in respect of any such periods of service; and
- (b) without prejudice to the application of this paragraph, in determining entitlement to, or the amount of, the benefit to that extent, she shall be treated as if she had never recommenced service in such employment at any time after that cessation (or that last cessation);

and these regulations shall apply accordingly.

⁽⁶⁾ S.I. 1992/172.

⁽⁷⁾ S.I. 1993/2531; relevant amending instrument is S.I. 1995/901.

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20.—(1) Where an administering authority made an admission agreement under regulation B3 of the 1986 regulations at any time before 1st January 1994 with a body (“the employing body”) which immediately before that date was either—

- (a) specified in regulation B3(8)(c) or (d) of those regulations, or
- (b) deemed to be specified in regulation B3(8) of those regulations by virtue of regulation B4 of those regulations,

and immediately before the commencement date that agreement was treated as an admission agreement by virtue of regulation 2(2) of the Local Government Superannuation (Membership) Regulations 1993⁽⁸⁾, it shall, subject to sub-paragraph (2), continue to be so treated.

(2) Where—

- (a) immediately before 1st January 1994 the employing body was a company under the control of a body described in Part I of Schedule B1, and
- (b) that body ceases to be such a company,

then—

- (i) the admission agreement shall cease to have effect when the body so ceases, and
- (ii) any employee of the employing body shall no longer be entitled to participate in the benefits of the pension fund maintained by the administering authority with whom the agreement was made (and accordingly shall no longer be an admission agreement employee).

21. Nothing in these regulations shall affect the right of any person to given notice under regulation 9(2)(b) of the Local Government Superannuation (Amendment) Regulations 1994⁽⁹⁾ or the effect of such a notice.

⁽⁸⁾ S.I. 1993/3043.

⁽⁹⁾ S.I. 1994/3026; relevant amending instrument is S.I. 1995/963.