

2006 No. 966

PENSIONS, ENGLAND AND WALES

**The Local Government Pension Scheme (Amendment)
Regulations 2006**

Made - - - - - *29th March 2006*

Laid before Parliament *30th March 2006*

Coming into force in accordance with regulation 1

These Regulations are made in exercise of the powers conferred by section 7 of the Superannuation Act 1972(a).

In accordance with section 7(5) of that Act, the First Secretary of State has consulted (a) such associations of local authorities as appeared to him to be concerned; (b) the local authorities with whom consultation appeared to him to be desirable; and (c) such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate.

The First Secretary of State makes the following Regulations:

PART 1

General

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations 2006.

(2) These Regulations apply in relation to England and Wales(b).

(3) These Regulations shall come into force as follows—

- (a) Parts 1 and 2, paragraph (a) of regulation 34 and regulation 46 on 1st April 2006;
- (b) Part 3 (except paragraph (a) of regulation 34) and regulations 47 and 48 on 6th April 2006; and
- (c) Part 4 on 1st October 2006.

(a) 1972 c. 11.

(b) The Secretary of State's functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (1998 c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(4) In these Regulations, “the principal Regulations” means the Local Government Pension Scheme Regulations 1997(a).

Amendment of Regulations

2. The principal Regulations shall be amended in accordance with regulations 3, 5 to 8(1) and 9 to 46 of these Regulations.

PART 2

Cost of liabilities

Calculations

3. In regulation 20, after paragraph (3) insert—

“(3A) A member in respect of whom a benefit crystallisation event occurs on or after 6th April 2006 may elect in writing to the appropriate administering authority before any benefits become payable to increase the retirement grant payable under paragraph (3) by commuting his pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered.

(3B) But the total amount of the member’s retirement grant, including any sum received in accordance with an election under paragraph (3A), shall not exceed 25% of the capital value of his accrued rights.

(3C) For the purposes of this regulation, a member’s accrued rights include rights accrued in respect of any payments made by him in accordance with Chapter IV of Part III (Additional Voluntary Contributions).

(3D) The capital value of a person’s accrued rights shall be calculated as shown in guidance issued by the Government Actuary.”.

Revised rates and adjustments certificates: period over which increased costs to be spread

4.—(1) This regulation applies where in considering whether to obtain a revised rates and adjustments certificate an administering authority, pursuant to regulation 7 of the Local Government Pension Scheme (Amendment) Regulations 2005(b), has determined an increased liability over that shown in the valuation of the relevant pension fund as at 31st March 2004 (“the 2004 valuation”).

(2) The administering authority shall spread the increased liability over the 2005 Funding Strategy Statement Period.

(3) In this regulation, “the 2005 Funding Strategy Statement Period” means the period over which the administering authority decided to spread the liabilities identified in the 2004 valuation, as set out in the first statement of their funding strategy published in accordance with regulation 76A of the principal Regulations.

(a) S.I.1997/1612; the relevant amending instruments are S.I. 1999/1212, 2000/1164, 2001/1481, 2002/206, 2004/573, 2004/3372 and 2005/1903.
(b) S.I. 2005/1903.

PART 3

The tax regime

Further restrictions on eligibility

5. In regulation 6(3), for “his 65th birthday” substitute “the day before his 75th birthday”.

Periods of membership

6. In regulation 9, omit paragraph (1A).

High earners

7. After regulation 11, insert—

“**11A.**—(1) This regulation applies where a member’s pay (calculated in accordance with regulation 13) in the year ending 5th April 2006 exceeds £105,600.

(2) In such a case, his period of membership for calculating his entitlement to any benefits payable under these Regulations is obtained by aggregating his period of membership after that date with the period obtained by applying the formula set out in paragraph (3).

(3) That formula is M times 105,600 divided by P, where M is his period of membership after 5th April 1989 and before 6th April 2006 (excluding any membership credited by virtue of a transfer under regulation 121) and P is his pay as mentioned in paragraph (1).”

Employer’s discretion to reduce member’s contribution rate

- 8.—(1) Omit regulation 15.

(2) Where, before its omission by paragraph (1), a member’s liability to make contributions to the Scheme has been reduced or, as the case may be, extinguished in accordance with regulation 15, his employing authority may recover any such contributions as would have otherwise have been made.

Inland Revenue limits on contributions

9. Omit regulation 16.

Limit on total amount of benefits

10. After regulation 19 insert—

“Limit on total amount of benefits

19A.—(1) A member and any dependant of his shall not be entitled, under any provision of these Regulations, to receive benefits the capital value of which exceeds his lifetime allowance increased, where applicable, by his primary protection or enhanced protection.

(2) In this regulation, “lifetime allowance”, “primary protection” and “enhanced protection” are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004(a).

(3) Any calculation of the capital value of a member’s benefits is to be carried out in accordance with guidance issued by the Government Actuary.

(a) 2004 c. 12.

(4) The appropriate administering authority is responsible for deducting from any payments of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004. ”

Calculations

11. For regulation 20(4A) substitute—

“(4A) Where no benefit crystallisation event has occurred before the day after a member’s 65th birthday in respect of any benefits payable under the Scheme, those benefits shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary.”.

Final pay

12. In regulation 21(1), omit the words “and Schedule 4”.

Retirement after the normal retirement date

13. For regulation 25A(2) substitute—

“(2) The pension and retirement grant are payable immediately on retirement or, if earlier, on the day before the member’s 75th birthday.”.

Other early leavers: deferred retirement benefits and elections for early payment

14.—(1) In regulation 31(7), at the beginning insert “Subject to paragraph (7A)”.

(2) After regulation 31(7), insert—

“(7A) A member who continues to be employed by a Scheme employer listed in Schedule 2 is only entitled to receive a pension and grant without reduction payable from his NRD if his employer consents to his doing so.”.

Re-employed and rejoining deferred members

15. In regulation 32, omit sub-paragraphs (a) and (b) of paragraph (2).

Surrenders of pensions

16. Omit regulation 33.

Requirements as to time of payment

17.—(1) After regulation 35(1) insert—

“(1A) But where, after 5th April 2006, a member who has attained the age of 50, with his employer’s consent, reduces the hours he works, or the grade in which he is employed, he may elect in writing to the appropriate administering authority and such benefits may be paid to him notwithstanding that he has not retired from that employment.

(1B) If the payment of benefits referred to in paragraph (1A) takes effect before the member’s 65th birthday, the benefits payable are reduced in accordance with guidance issued by the Government Actuary.

(1C) But the employer may choose to waive, in whole or in part, any such reduction.

(1D) Where the employer so chooses, it shall pay to the fund the cost incurred as a result of such waiver as calculated by the fund’s actuary.

(1E) Any benefits paid following an election under paragraph (1A) are not subject to abatement under regulation 110 in respect of any subsequent employment with the person who is his employer at the date of his election.”

(2) In paragraph (2), for “But they” substitute “In any event, retirement benefits under this Chapter”.

Guaranteed minimum pensions etc.

18. In regulation 36, omit paragraphs (7), (8) and (9).

Surviving spouse’s long-term pension

19. In regulation 41(6), after “death” insert “or half his pension before any commutation under regulation 20(3A), whichever is the greater”.

Meaning of “eligible child”

20. In regulation 44—

- (a) at the beginning of paragraph (2) insert “Subject to paragraph (2A)”; and
- (b) after paragraph (2) insert—

“(2A) Notwithstanding paragraph (2)(b), a pension coming into payment on or after 5th April 2006 which would otherwise be payable by virtue of that paragraph shall only continue while the child is aged under 23.”.

Commutation: exceptional ill-health

21.—(1) After regulation 50(1) insert—

“(1A) An administering authority cannot be satisfied as mentioned in paragraph (1) unless they have first obtained a certificate from a fully registered person within the meaning of the Medical Act 1983(a) to the effect that the member’s life expectancy is less than one year.”.

(2) In regulation 50(2), omit the words “(except the guaranteed minimum)”.

(3) Omit regulation 50(3).

Scope of Part III: limits on benefits

22. In regulation 51, omit paragraph (2).

Power of employing authority to increase total membership

23. In regulation 52—

- (a) at the end of sub-paragraph (2)(a) insert “or”;
- (b) omit sub-paragraph (2)(b); and
- (c) after paragraph (10) insert—

“(11) An additional period arising from a resolution under this regulation on or after 1st October 2006 shall be treated as a period of membership after that date.”.

Effect of increases under this Chapter for older members

24. Omit regulation 54.

Payments to increase total membership

25. For regulation 55(2) substitute—

(a) 1983 c.54.

“(2) That period must not exceed $6\frac{2}{3}$ years.”.

Effect of increases under this Chapter for older members

26. Omit regulation 57.

Election for pension in lieu of retirement grant

27. Omit regulation 58.

Election for lump sum in lieu of pension

28. Omit regulation 59.

Accounts and audit

29.—(1) Regulation 76 is renumbered “76(1)”.

(2) After regulation 76(1) (as so renumbered in accordance with paragraph (1)) insert—

“(2) The input period for the purposes of section 238 of the Finance Act 2004 is the year ending 31st March 2007 and each year ending 31st March thereafter.”.

Over-provision: calculation and return of surplus AVC and SVAVC funds

30. Omit regulation 85.

Commencement of pensions

31. For regulation 93(2)(b) substitute—

“(b) otherwise, unless he elects to defer payment, with his NRD (but any such deferral shall not extend beyond the day before his 75th birthday).”.

Treatment of other benefits

32. After regulation 96 insert—

“96A. Any payment of employment-related benefits made to a member by an administering authority other than in accordance with regulations made under section 7 of the Superannuation Act 1972 shall be treated as if it had been made under the Scheme.”.

First instance decisions

33. In regulation 97(6) —

- (a) at the end of sub-paragraph (b), insert “and”;
- (b) in sub-paragraph (c), for “membership; and” substitute “membership.”; and
- (c) omit sub-paragraph (d).

Interpretation

34. In Schedule 1—

(a) after the definition of “Base rate” insert—

““Benefit crystallisation event” shall be construed in accordance with section 216 of the Finance Act 2004.”,

(b) omit the definitions of “Class A member”, “Class B member” and “Class C member”, and

- (c) omit the definition of “Continuity conditions”.

Excluded membership

35. In the Table in Schedule 3—

- (a) in paragraph 1, in the second column, omit the words “or paragraph 2, 4, 5 or 6(1) of Schedule 4”; and
- (b) omit paragraphs 4 and 5.

Revenue restrictions

36. Omit Schedule 4.

Councillor members

37. In Schedule 8—

- (a) omit paragraph 1;
- (b) omit paragraph 3;
- (c) omit paragraph (3) of regulation 20 as substituted by paragraph 5, and substitute “65” for “70” in paragraph (5) as so substituted;
- (d) for paragraph 7, substitute—

“In regulation 25A(1) omit the words “with the consent of his employing authority”.”;
- (e) in paragraph 9, omit sub-paragraph (b) and the word “and” immediately preceding it;
- (f) in paragraph 10, omit sub-paragraph (a);
- (g) omit paragraph 12;
- (h) omit paragraph (5)(b) of regulation 38 as substituted by paragraph 15; and
- (i) omit paragraph 19.

PART 4

The 85 year rule

Normal retirement

38. In regulation 25, omit paragraph (3A).

Other early leavers: deferred retirement benefits and elections for early payment

39. In regulation 31(4), omit the words from the beginning of the paragraph up to and including “is less than 85 years,”.

Re-employed and rejoining deferred members

40. In regulation 32 (5)(a), for “29 and 31(4)” substitute “and 29”.

Right to count credited period

41. In regulation 122—

- (a) in paragraph (4), omit the words “or, if earlier” to the end of the paragraph; and
- (b) after paragraph (6), insert—

“(6C) A credited period arising from a request to accept a transfer value under regulation 121 which is made by a person who was an active member immediately before 1st October 2006 shall be treated as a period of membership before that date.

(6D) A credited period arising from a request to accept a transfer value under regulation 121 which is made by a person who becomes a member on or after 1st October 2006 shall be treated as a period of membership after that date.”(a)

Credited periods for transferring members with mis-sold pension rights

42. In regulation 122A(1), at the end of paragraph (1) add “(and regulation 122(6B) does not apply to a transfer value credited under this regulation)”.

Rights as to service not matched by credited period

43. In regulation 123(2), omit sub-paragraph (b).

Excluded membership

44. In Schedule 3, in paragraphs 7 and 8 of the Table, omit “or calculating NRD under regulation 25(3A)”.

Former members of the Metropolitan Civil Staffs Superannuation Scheme

45. In Schedule 7, in paragraph 2(4), for “for the words from the beginning of the paragraph to “is less than 85 years” substitute” substitute “add at the beginning”.

PART 5

Miscellaneous

Scheme Employers: Firebuy Limited

46.—(1) In Schedule 2 (Scheme Employers), add at the end of the list “Firebuy Limited.”.

(2) In the Table in Part 2 of Schedule 5, add at the end—

“12 Employee of Firebuy Limited.

Fund administered by the London Pensions Fund Authority.”.

Transitional provisions and savings

47. The Schedule to these Regulations (transitional provisions and savings) has effect.

Right to opt out

48.—(1) Where—

- (a) apart from this regulation, the amendments made by these Regulations would place any relevant beneficiary in a worse position that 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 1st October 2006,

then the principal Regulations shall have effect in relation to him as if those amendments had never been made.

(a) Paragraphs (6A) and (6B) of regulation 122 were inserted by S.I. 2004/3372 and revoked by S.I. 2005/1903.

(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 any employment in respect of which he was a member (whether or not he had subsequently recommenced any such employment), or
- (b) dies while in such employment,

before—

- (i) 1st April 2006, in respect of amendments made by Parts 2 and 5; and
- (ii) 6th April 2006, in respect of amendments made by Part 3.

Signed by authority of the First Secretary of State

29th March 2006

Phil Woolas
Minister of State
Office of the Deputy Prime Minister

TRANSITIONAL PROVISIONS AND SAVINGS

1. Where a member—

- (a) elects to receive the immediate payment of retirement benefits under regulation 31(1) of the principal Regulations; and
- (b) satisfies the 85 year rule;

that part of his retirement pension and grant which is calculated by reference to any period of membership before the relevant date shall not be reduced in accordance with regulation 31(4) of the principal Regulations (as amended by regulation 39 of these Regulations).

2. For the purposes of paragraph 1, the relevant date, for a member who was a member before 1st October 2006 is—

- (a) in the case of a member who will be aged 60 or more on 31st March 2013, the earlier of—
 - (i) 1st April 2013; and
 - (ii) the date on the day after the day on which the member leaves local government employment; or
- (b) in any other case, 1st October 2006.

3. For the purposes of this Schedule, a member satisfies the 85 year rule if the sum of —

- (a) his age in whole years on the date his local government service ends or the date he elects under regulation 31(1) of the principal Regulations if later;
- (b) his total membership in whole years;
- (c) in a case where he elects after his local government employment ends, the period beginning with the end of that employment and ending with the date he elects; and
- (d) in the case of a person who was a member immediately before 1st April 1998, any qualifying period counted by virtue of regulation 123 which was awarded before 1st October 2006,

is 85 years or more.

4. Where a member who may elect under regulation 32(1) of the principal Regulations (re-employed and rejoining deferred members) does not do so or does not so elect as respects all periods of his membership, in applying paragraph 2 of this Schedule as respects any later membership, his total membership excludes unaggregated periods.

5.—(1) This paragraph applies to a member who—

- (a) before 1st October 2006 elected to make additional contributions to the Scheme to increase his total membership under regulation 55(1) of the principal Regulations (payments to increase total membership); and
- (b) was assumed to retire from a local government employment on a date before his 65th birthday (“the assumed date”) for the purposes of calculating his additional contributions under regulation 55(6) of the principal 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,

he shall not pay any additional contributions after that date and the whole of the additional period may be counted as part of his total membership.

(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 October 2006.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of amendments to the Local Government Pension Scheme (“the Scheme”) constituted by the Local Government Pension Scheme Regulations, as amended (“the principal Regulations”).

Regulation 3 inserts new paragraphs into regulation 20 of the principal Regulations, to provide for the commutation of annual pension entitlement.

Regulation 4 requires an administering authority which has considered whether to obtain a revised rates and adjustments certificate, and which has thereby determined an increased liability over the 2004 valuation of its pension fund, to spread that liability over the 2005 Funding Strategy Statement Period.

Part 3 makes a number of amendments to the principal Regulations to address changes in the tax regime consequent on the Finance Act 2004.

Part 4 deals with the so-called “85 year rule”. This term refers to the current provisions of the Scheme which allow members to retire and take their pension entitlements without actuarial reduction if the sum of their age and their length of service exceeds 85 years. Members over 60 can do so as of right; members over 50 but under 60 require their employer’s consent.

Part 4 makes a number of technical amendments to the Scheme to effect the removal of the 85 year rule.

Regulation 46 inserts Firebuy Limited into the list of Scheme Employers in Schedule 2 to the principal Regulations. Regulations 47 and 48 and the Schedule make transitional and savings provisions.

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