

2008 No. 1083

PENSIONS, ENGLAND AND WALES

**The Local Government Pension Scheme (Amendment)
Regulations 2008**

<i>Made</i> - - - -	<i>14th April 2008</i>
<i>Laid before Parliament</i>	<i>16th April 2008</i>
<i>Coming into force</i> - -	<i>7th May 2008</i>

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(a).

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

The Secretary of State makes the following Regulations:

Citation, application, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations 2008.

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

(3) These Regulations shall come into force on 7th May 2008 but have effect from 1st April 2008.

(4) In these Regulations “the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(c).

Amendment of the Benefits Regulations

2. The Benefits Regulations are amended in accordance with regulations 3 to 23.

3. In regulation 1 (citation, commencement, interpretation and application) —

(a) after the definition of “the 1997 Regulations”, insert—

(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 (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).

(c) S.I. 2007/1166.

““the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008(a);” and

(b) after the definition of “the 1997 Scheme”, insert—

““administering authority” has the meaning ascribed by Schedule 1 to the Administration Regulations;”.

4. For regulation 2 (active members) substitute—

“2.—(1) The term “active member” in relation to the Scheme is to be construed in accordance with regulation 4(1) of, and Schedule 1 to, the Administration Regulations.

(2) An active member of the 1997 Scheme is an active member of the Scheme for as long as he continues to be in employment which makes him eligible to be such in accordance with Part 2 of the Administration Regulations.

(3) But a person is not an active member unless he is employed under a contract of employment for at least three months.”.

5. In regulation 3 (contributions payable by active members) —

(a) for paragraph (2), substitute—

“(2) Subject to paragraph (4) the annual contribution rate to be applied to a person who becomes an active member is determined by his employing authority at the commencement of his membership on the basis of his pensionable pay in accordance with the following table.

<i>Band</i>	<i>Range</i>	<i>Contribution rate</i>
1	£0 to £12,000	5.5%
2	£12,001 to £14,000	5.8%
3	£14,001 to £18,000	5.9%
4	£18,001 to £30,000	6.5%
5	£30,001 to £40,000	6.8%
6	£40,001 to £75,000	7.2%
7	More than £75,000	7.5%”

(b) for paragraph (3), substitute—

“(3) On 1st April 2009, and each subsequent anniversary, the figures in the second column of the table in paragraph (2) (“*Range*”) are increased by applying the appropriate increase and rounding the result down to the nearest £100.

(3A) In paragraph (3), “the appropriate increase” means the amount by which the figures would be increased with effect from 6th April of the relevant year if they were pensions to which the Pensions (Increase) Act 1971 applied”.

(c) for paragraph (4) substitute—

“(4) (a) Where there has been a permanent material change to the terms and conditions of a member’s employment which affect his pensionable pay in the course of a financial year, his employing authority may determine that the contribution rate to be applied in his case is not to be calculated in accordance with paragraph (2).

(b) In such a case, the authority shall inform the member of the contribution rate applicable to him, and the date from which it is to be applied.”

(d) in paragraph (6), for the words “But a term-time worker” substitute “But a whole time term-time worker”.

(e) in paragraph (10), at the end add “at the rate applicable to the sum of his pensionable pay in each such employment”.

6. In regulation 5 (benefits) at the end insert—

(a) S.I. 2008/239.

“(3) Subject to paragraph (4), a member who has satisfied one of the conditions in paragraph (1) need not satisfy either of them again if he ceases to be an active member and subsequently becomes such a member again before drawing benefits under regulation 16, 17, 19, 20, 30 or 31.

(4) Paragraph (3) does not apply to a member in respect of whom a transfer payment has been made under regulations 79 to 82 of the Administration Regulations.”

7. For regulation 6 (periods of membership), substitute—

“6. These are the periods that count as periods of membership (and which may accordingly be aggregated under regulation 16, or as the case may be, 17 of the Administration Regulations)—

- (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 3;
- (b) any period added under regulation 12 or 20; and
- (c) any period added following a transfer in of pension rights under regulations 83 to 87 of the Administration Regulations.”.

8. In regulation 7(5) (calculation of length of periods of membership) for the word “benefit” substitute “annual pension”.

9.—(1) In regulation 8 (final pay: general) for paragraphs (1) and (2) substitute—

“(1) Subject to regulations 9 to 11, a member’s final pay for an employment is his pensionable pay for as much of the final pay period as he is entitled to count as active membership in relation to that employment.

(2) A member’s final pay period is the year ending with the day on which he stops being an active member or, if that would produce a higher figure, either of the two immediately preceding years.”

(2) Omit regulation 8(2A)(a).

10. Omit regulation 9(5) (final pay: reserve forces, maternity leave etc.).

11. For regulation 10 (final pay: reductions), substitute—

“10.—(1) Subject to paragraph (2), where a member’s pensionable pay in a continuous period of employment is reduced because he chooses to be employed by the same employer at a lower grade or with less responsibility, he may choose to have his final pay calculated as mentioned in paragraph (3).

(2) Paragraph (1) does not apply if the member’s employment at a lower grade or with less responsibility—

- (a) commences before the beginning of the period of ten years ending with his last day as an active member; or
- (b) immediately follows a period in which he occupies a post on a temporary basis.

(3) The calculation is made by dividing by three the member’s annual pensionable pay in any three consecutive years of his choice ending with 31st March within the period of ten years ending with his last day as an active member.

(4) Paragraph (1) applies to a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006(b) apply as if the transferor employer were the same employer as the transferee employer.” .

12. In regulation 18 (flexible retirement)—

(a) Regulation 8(2A) was inserted by S.I. 2007/1488.
(b) S.I. 2006/246.

- (a) in paragraph (1), for “and the authority may pay those benefits”, substitute “and such benefits may, with his employer’s consent, be paid”.
- (b) in paragraph (4), for “In”, substitute “Subject to paragraph (4A), in”.
- (c) after paragraph (4), insert—

“(4A) Paragraph (4) only applies to a member whose employment has been continuous with that same employer throughout that period.

(4B) For the purposes of paragraph (4A), the employment of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply shall be treated as being continuous employment with the transferee employer.”.

- (d) for paragraph (5), substitute—

“(5) The value of any benefits paid to a member under paragraph (1) shall be taken into account in any subsequent calculation of his benefits under regulation 16, 17, 19, 20, 30 or 31 in accordance with guidance issued by the Government Actuary.”.

13. For regulation 20 (early leavers: ill-health) substitute—

“**20.**—(1) If an employing authority determine, in the case of a member who satisfies one of the qualifying conditions in regulation 5—

- (a) to terminate his employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and
- (b) that he has a reduced likelihood of obtaining any gainful employment before his normal retirement age,

they shall agree to his retirement pension coming into payment before his normal retirement age in accordance with this regulation in the circumstances set out in paragraph (2), (3) or (4), as the case may be.

(2) If the authority determine that there is no reasonable prospect of his obtaining any gainful employment before his normal retirement age, his benefits are increased—

- (a) as if the date on which he leaves his employment were his normal retirement age; and
- (b) by adding to his total membership at that date the whole of the period between that date and the date on which he would have retired at normal retirement age.

(3) If the authority determine that, although he cannot obtain gainful employment within three years of leaving his employment, it is likely that he will be able to obtain any gainful employment before his normal retirement age, his benefits are increased—

- (a) as if the date on which he leaves his employment were his normal retirement age; and
- (b) by adding to his total membership at that date 25% of the period between that date and the date on which he would have retired at normal retirement age.

(4) If the authority determine that it is likely that he will be able to obtain any gainful employment within three years of leaving his employment, his benefits—

- (a) are those that he would have received if the date on which he left his employment were the date on which he would have retired at normal retirement age; and
- (b) unless discontinued under paragraph (8), are payable for so long as he is not in gainful employment.

(5) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result

of that condition he has a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age.

(6) A person who receives benefits under paragraph (4) shall—

- (a) inform the authority if he obtains employment; and
- (b) answer any inquiries made by the authority as to his current employment status, including as to his pay and working hours.

(7) (a) Once benefits have been in payment to a person for 18 months, the authority shall make inquiries as to his current employment.

- (b) If he is not in gainful employment, the authority shall obtain a further certificate from an independent registered medical practitioner as to the matters set out in paragraph (5).

(8) (a) The authority shall discontinue the payment of benefits under paragraph (4) if they consider—

- (i) that the person is in gainful employment; or
- (ii) in reliance on the certificate obtained under paragraph (7)(b), that he is capable of obtaining such employment

and may recover any payment made in respect of any period before discontinuance during which they considers him to have been in gainful employment.

- (b) The authority shall in any event discontinue the payment of benefits under paragraph (4) after they have been in payment to a person for three years.
- (c) The authority shall forthwith notify the appropriate administering authority of any action they have taken under this paragraph.

(9) A person in respect of whom the payment of benefits is discontinued under paragraph (8) shall be treated as a pensioner member with deferred benefits from the date the suspension takes effect, and shall not be eligible to receive benefits under paragraph (4) in respect of any future period.

(10) If a person in respect of whom the payment of benefits is discontinued under paragraph (8) subsequently becomes an active member of the Scheme, his earlier period of active membership in respect of which benefits were paid under paragraph (4) shall not be aggregated with his later active membership.

(11) (a) An authority which has made a determination under paragraph (4) in respect of a member may make a subsequent determination under paragraph (3) in respect of him.

- (b) Any increase in benefits payable as a result of any such subsequent determination is payable from the date of that determination.

(12) (a) Subject to sub-paragraph (b) and to paragraph (13), in the case of a member in part-time service, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is calculated in accordance with regulation 7(3) as if he had remained in such part-time service until his normal retirement age.

- (b) If the certificate obtained under paragraph (5) states that, in the medical practitioner's opinion, the member is wholly or partly in part-time service as a result of the condition that has caused him to be incapable of discharging efficiently the duties of the relevant local government employment, no account shall be taken of such reduction in his service as is attributable to that condition.

(13) But if, in the case of a person who is a member before 1st April 2008, and who has attained the age of 45 before that date, the period to be added under paragraph (2)(b) or (3)(b) is less than the period that would have been added had regulation 28 of the 1997 Regulations applied, then his benefits are increased by adding the latter period.

(14) In this regulation –

- “gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months;

“permanently incapable” means that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday; and

“qualified in occupational health medicine” means—

(a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, “competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003(a); or

(b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

(15) Where, apart from this paragraph, the benefits payable to a member in respect of whom his employing authority makes a determination under paragraph (1) before 1st October 2008 would place him in a worse position than he would otherwise be had the 1997 Regulations continued to apply, then those Regulations shall have effect in relation to him as if they were still in force instead of the preceding paragraphs of this regulation.”.

14. In regulation 25 (meaning of “nominated cohabiting partner”)—

(a) in paragraphs (5) and (6), for “the Secretary of State” substitute “the administering authority”;

(b) in paragraph (6)(b), for “in paragraph (2)” substitute “in paragraph (3)”; and

(c) after paragraph (7) insert—

“(8) In this regulation, “member” means an active member or a former active member who has become a deferred or pensioner member in accordance with these Regulations.”.

15. For regulation 26 (meaning of “eligible child”), substitute—

“**26.**—(1) Subject to paragraph (3), the child of a deceased member is an eligible child if he is wholly or mainly dependent on the member, and is less than 18 years of age, at the date of the member’s death.

(2) But a child who is born on or after the first anniversary of the date of the member’s death is not an eligible child.

(3) A dependent child who has reached the age of 18 but has not reached the age of 23 and is in full time education or undertaking vocational training at the date of the member’s death is an eligible child.

(4) An appropriate administering authority may treat a dependent child who commences full time education or vocational training after the date of the member’s death as an eligible child after he reaches the age of 18 and until he reaches the age of 23 .

(5) In the case of a dependent child falling within paragraph (4), an appropriate administering authority may —

(a) treat education or training as continuous despite a break; and

(b) suspend payment of any entitlement to benefits under regulation 28, 34 or 37 during such a break.

(6) An appropriate administering authority may treat a dependent child who is disabled within the meaning of the Disability Discrimination Act 1995(b) as an eligible child.”.

16. For regulation 29 (calculation on leaving early) substitute—

“**29.**—(1) This regulation applies in the case of a member who leaves his employment and is not entitled to immediate payment of retirement pension under any of regulations 16 to 20.

(a) S.I. 2003/1250.

(b) 1995 c. 50.

(2) His entitlement to benefits that would, apart from any other provision of these Regulations, become payable on his attaining normal retirement age, is calculated in accordance with regulation 7 as at the date of his leaving such employment.

(3) Subject to regulations 30 and 31, his retirement pension becomes payable on attaining normal retirement age.

(4) But that entitlement is extinguished if an aggregation takes place under regulation 6(2) or if a transfer out takes place under regulations 78 to 80 of the Administration Regulations.

(5) Where a member chooses not to receive payment of his retirement pension, or any part of it, immediately on attaining normal retirement age, his entitlement is enhanced in accordance with guidance issued by the Government Actuary.”

17.—(1) In regulation 30 (choice of early payment of pension)—

- (a) in paragraph (2), omit “(but see paragraph (6))”;
- (b) at the end of paragraph (3) insert “calculated in accordance with regulation 29”;
- (c) in regulation 30(5), omit “and grant”; and
- (d) for regulation 30(6), substitute—

“(6) In the case of a person who is an active member on 31st March 2008, and who makes an election before 1st April 2010, paragraph (1) applies as if “the age of 50” were substituted for “the age of 55”.”

18. For regulation 31 (early payment of pension: ill-health) substitute—

“**31.**—(1) Subject to paragraph (2), if a member who has left his employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body he may ask to receive payment of his retirement benefits immediately, whatever his age.

(2) Before determining whether to agree to a request under paragraph (1), an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether that condition is likely to prevent the member from obtaining gainful employment (whether in local government or otherwise) before reaching his normal retirement age, or for at least three years, whichever is the sooner .

(3) In this regulation, “gainful employment”, “permanently incapable” and “qualified in occupational health medicine” have the same meaning as in regulation 20.”.

19. In regulation 33 (survivor benefits: deferred members), in paragraph (2), for “salary” substitute “pay”.

20. In regulation 35 (death grants: pensioner members), in paragraph (3), for “his pension multiplied by 10” substitute “his pension in payment multiplied by 10”.

21. In regulation 36 (survivor benefits: pensioners) in paragraph (2), for “salary” substitute “pay”.

22. For regulation 39 (commutation and small pensions), substitute—

“**39.**—(1) A lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act may be paid in accordance with the rules relating to the payment of such benefits under the Finance Act 2004.

(2) Any payment under paragraph (1) is calculated in accordance with guidance issued by the Government Actuary.

(3) The benefits referred to in paragraph (1) do not include any survivor benefit that is being paid to the member.”.

23. After regulation 40 (guidance on future costs), insert—

“Pension debits

41. Administering authorities shall have regard to guidance issued by the Government Actuary as to reduction of benefits payable under these Regulations in consequence of a pension debit created under section 29 of the Welfare Reform and Pension Act 1999(a).

No double entitlement

42.—(1) Where (apart from this regulation) any member would be entitled to a pension or retirement grant under two or more regulations by reason of the same period of membership—

- (a) he shall be entitled to benefits under only one regulation;
- (b) he may choose under which provision he is to be paid those benefits; and
- (c) if he does not choose, the administering authority may notify him in writing of the provision.

(2) A member’s choice must be by notice in writing, given to the administering authority before the expiry of three months beginning with the day on which he becomes entitled to choose under which provision his pension or retirement grant is to be paid.

(3) Paragraph (1) does not affect the member’s rights under the Pension Schemes Act 1993(b).

(4) This regulation also applies to any survivor benefits payable under regulation 24, 27, 33, 34, 36 or 37.”.

Amendment of the Local Government Pension Scheme (Administration) Regulations 2008

24. Regulation 56(1) of the Local Government Pension Scheme (Administration) Regulations 2008 is amended by substituting for the words “regulation 20(6) of the Benefits Regulations” the words “under regulation 20(5) of the Benefits Regulations in respect of a determination under paragraph (2), (3) or (4) of that regulation”.

Amendment of the Local Government Pension Scheme (Transitional Provisions) Regulations 2008

25.—(1) For regulation 9(3) of the Local Government Pension Scheme (Transitional Provisions) Regulations 2008(c) substitute—

“(3) But if the application of the table set out in paragraph (2) would result in a member’s contribution rate being higher than if the 2007 table applied, his contribution shall be paid at the lower rate.”.

(2) In Schedule 1 to those Regulations, at the appropriate place in the list of provisions of the Local Government Pension Scheme Regulations 1997 which are saved from revocation, insert—

“Regulation 10(3) to (5);
Regulation 66(8);
Schedule 3, paragraph 3 and Notes 1 and 2;”.

(3) In that list, for “Regulations 83(1) to (8), (11) and (12)” substitute “Regulation 83”.

(a) 1999 c. 30.
(b) 1993 c. 48.
(c) S.I. 2008/238.

(4) For paragraph 2(b) of Schedule 2 to those Regulations, substitute—

“(b) in any other case, 1st April 2008.”.

(5) In paragraph 6(3) of that Schedule, for “paragraph 3(1)(c)” substitute “paragraph 3(1)(b)”.

(6) For paragraph 7(1) of that Schedule substitute—

“(1) This paragraph applies to a member who retires, having reached the age of 60, on or after 1st April 2016 and before 1st April 2020, and whose retirement pension and grant would (but for the provisions of this paragraph) have been actuarially reduced by virtue of paragraphs 1 and 2.”.

Signed by authority of the Secretary of State

14th April 2008

John Healey
Minister of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain amendments relating to the new Local Government Pension Scheme (“the Scheme”) which came into existence on 1st April 2008 and replaced the Local Government Pension Scheme 1997 (“the 1997 Scheme”). The majority of the amendments are to the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (“the Benefits Regulations”). All the amendments have effect from 1st April 2008.

Regulation 3 inserts some additional definitions into the Benefits Regulations.

Regulation 4 substitutes regulation 2 of the Benefits Regulations, setting out who is an active member of the Scheme.

Regulation 5 amends regulation 3 of the Benefits Regulations, relating to contributions payable by active members.

Regulations 7 substitutes regulation 6 of the Benefits Regulations, providing for calculation of periods of membership.

Regulation 11 substitutes regulation 10 of the Benefits Regulations, dealing with Scheme members who choose to continue in employment, but at a lower grade or with less responsibility.

Regulation 13 substitutes regulation 20 of the Benefits Regulations, making provision for members who leave employment early because of ill-health. There are three tiers of benefit, depending on whether the employing authority determines that the member is permanently disabled from obtaining gainful employment, is likely to be able to obtain gainful employment at some stage before his normal retirement age (but not within three years), or is likely to obtain such employment within three years of leaving his local government employment. The employing authority is required to obtain a certificate from a specialist occupational health medical practitioner before making a determination.

Regulation 15 substitutes regulation 26 of the Benefits Regulations (meaning of “eligible child”).

Regulation 16 substitutes a new regulation 29 of the Benefits Regulations (calculation of benefits on leaving early).

Regulation 18 substitutes regulation 31 of the Benefits Regulations (early payment of pension in cases of ill-health after leaving local government employment).

Regulation 23 inserts new regulations 43 (dealing with pension debits) and 44 (preventing double entitlement) into the Benefits Regulations.

The remaining provisions make minor and technical amendments to the Benefits Regulations, to the Local Government Pension Scheme (Administration) Regulations 2008, and to the Local Government Pension Scheme (Transitional Provisions) Regulations 2008.

A regulatory impact assessment was produced for the Benefit Regulations and is available via the Local Government Pension Scheme website at <http://www.xoq83.dial.pipex.com/whatsnew.htm>.