

2008 No. 239

# PENSIONS, ENGLAND AND WALES

## The Local Government Pension Scheme (Administration) Regulations 2008

<i>Made - - - - -</i>	<i>6th February 2008</i>
<i>Laid before Parliament</i>	<i>14th February 2008</i>
<i>Coming into force - - -</i>	<i>1st April 2008</i>



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The Secretary of State for Communities and Local Government makes these Regulations in exercise of the powers conferred by section 7 of the Superannuation Act 1972 (a).

In accordance with section 7(5) of the Superannuation Act 1972 the Secretary of State consulted such associations of local authorities as appeared to her to be concerned; the local authorities with whom consultation appeared to her to be desirable; and such representatives of other persons likely to be affected by the Regulations as appeared to her to be appropriate.

## PART 1

### PRELIMINARY

#### **Citation, commencement and application**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Administration) Regulations 2008 and shall come into force on 1st April 2008.

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

#### **Interpretation**

2.—(1) Schedule 1 (interpretation) contains definitions of expressions used in these Regulations which apply for their interpretation unless the context indicates they have a different meaning.

(2) References to members or membership refer to active members of the Scheme or active membership under the Scheme respectively unless otherwise stated or the context indicates a different meaning.

(3) The definition of “Reference banks” in Schedule 1 must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000(c);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

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(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).

(c) 2000 c.8.

### **Application to Isles of Scilly**

3. These Regulations apply in relation to the Isles of Scilly as if they were a district in the county of Cornwall and the council of the Isles of Scilly were the council of that district.

## **PART 2**

### **MEMBERSHIP OF SCHEME**

#### **General eligibility for membership**

4.—(1) A person may only be an active member of the Scheme if—

- (a) this regulation, or any of regulations 5 to 9 and 10(3); or
- (b) regulation 2(3) of the Benefits Regulations<sup>(a)</sup>

enables him to be one and he is not prevented by regulation 12.

(2) A person may be an active member if he is employed by a body which is listed in Schedule 2.

(3) But a person who is employed by a body listed in Part 2 of that Schedule may only be an active member if he, or a class of employees to which he belongs, is designated by the body as being eligible for membership of the Scheme.

#### **Employees of non-Scheme employers: community admission bodies**

5.—(1) Subject to the requirements of this regulation and regulation 7, an administering authority may make an admission agreement with any community admission body.

(2) The following are community admission bodies—

- (a) a body, other than the governors or managers of a voluntary school (within the meaning of the School Standards and Framework Act 1998<sup>(b)</sup>), which provides a public service in the United Kingdom otherwise than for the purposes of gain and which either—
  - (i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise), or
  - (ii) is approved by the Secretary of State for the purposes of admission to the Scheme;
- (b) a body, other than the governors or managers of a voluntary school, to the funds of which a Scheme employer contributes;
- (c) a body representative of—
  - (i) local authorities,
  - (ii) local authorities and officers of local authorities,
  - (iii) officers of local authorities where it is formed for the purpose of consultation on the common interests of local authorities and the discussion of matters relating to local government, or
  - (iv) Scheme employers;
- (d) the Housing Corporation;
- (e) the Commission for the New Towns;
- (f) a company for the time being subject to the influence of a local authority (within the meaning of section 69 of the Local Government and Housing Act 1989 (companies subject to local authority influence))<sup>(c)</sup>; and

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(a) S.I. 2007/1166.

(b) 1998 c.31.

(c) 1989 c.42.

(g) a company for the time being subject to the influence of a body listed in Part 1 of Schedule 2 (other than a local authority).

(3) An approval under paragraph (2)(a)(ii) may be subject to such conditions as the Secretary of State thinks fit and she may withdraw an approval at any time if such conditions are not met.

(4) Where, at the date that an admission agreement is made with a body mentioned in paragraph (2)(b), the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, it must be a term of the admission agreement that the Scheme employer paying contributions (or, if more than one pays contributions, all of them) guarantees the liability of the body to pay all amounts due from it under these Regulations or the Benefits Regulations.

(5) In paragraph (2)(c) “local authorities” and (f) “local authority” includes the Greater London Authority.

(6) For the purpose of determining whether a company is subject to the influence of a body as mentioned in paragraph (2)(g), section 69 of the Local Government and Housing Act 1989 shall have effect as if references in that section to a local authority were references to the body.

### **Employees of non-Scheme employers: transferee admission bodies**

**6.**—(1) Subject to the requirements of this regulation and regulation 7, an administering authority may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing or will provide—

(a) a service or assets in connection with the exercise of a function of a Scheme employer as a result of—

(i) the transfer of the service or assets by means of a contract or other arrangement,

(ii) a direction made under section 15 of the Local Government Act 1999<sup>(a)</sup>, or

(iii) directions made under section 497A of the Education Act 1996<sup>(b)</sup>,

(“a (2)(a) transferee admission body”); or

(b) a public service and is approved by the Secretary of State for the purposes of admission to the Scheme (“a (2)(b) transferee admission body”).

(3) In the case of an admission agreement with a (2)(a) transferee admission body, the Scheme employer, if it is not also the administering authority, must be a party to the admission agreement.

(4) An approval under paragraph (2)(b) may be subject to such conditions as the Secretary of State thinks fit and she may withdraw an approval at any time if such conditions are not met.

(5) An admission agreement with a transferee admission body shall require the Scheme employer, in the case of a (2)(a) transferee admission body, or the transferee admission body, in any other case, to carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee admission body.

(6) An assessment carried out by a (2)(b) transferee admission body shall be carried out to the satisfaction of the administering authority.

(7) The admission agreement shall further provide that, where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.

(8) The indemnity or bond must be with—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000<sup>(c)</sup> to accept deposits or to effect and carry out contracts of general insurance;

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(a) 1999 c.27.

(b) 1996 c.56. Section 497A was inserted by section 8 of the School Standards and Framework Act 1998 (c.31).

(c) 2000 c.8.

- (b) an EEA firm of the kind mentioned in paragraph (5)(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or
- (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.

(9) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 3.

(10) This paragraph applies where a transferee admission body undertakes to meet the relevant requirements of this regulation and—

- (a) in the case of a (2)(a) transferee admission body, the Scheme employer undertakes to meet the relevant requirements of this regulation; or
- (b) in the case of a (2) (b) transferee admission body—
  - (i) the Secretary of State approves the body for admission to the Scheme, and
  - (ii) the conditions, if any, to which the approval is subject have been met.

(11) Where paragraph (11) applies—

- (a) an administering authority must admit to the Scheme the eligible employees of the transferee admission body designated by that body; and
- (b) where the administering authority does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

(12) Only those employees of the transferee admission body who are employed in connection with the provision of a service or assets mentioned in paragraph (2) are eligible to be designated, under regulation 7(1), members of the Scheme.

#### **Admission agreements – further provisions**

7.—(1) A person employed by a community admission body or an eligible person employed by a transferee admission body may only be a member if he, or a class of employees to which he belongs, is designated in the admission agreement by the body as being eligible for membership of the Scheme.

(2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.

(3) When an administering authority makes an admission agreement it must promptly inform the Secretary of State of—

- (a) the date the agreement takes effect;
- (b) the admission body’s name; and
- (c) in the case of an agreement with a (2)(a) transferee admission body, the name of the relevant Scheme employer.

(4) An administering authority and an admission body may make an admission agreement despite the fact that they do not exercise their functions or provide services or assets in areas that overlap or adjoin each other.

(5) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Secretary of State for determination.

(6) These Regulations and the Benefits Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the admission body were a Scheme employer.

#### **Eligibility for membership of employees of other bodies not listed in Schedule 2**

8.—(1) A person may be an active member if he is an employee of the governing body of—



- (a) a voluntary school (within the meaning of the School Standards and Framework Act 1998);
- (b) a foundation school or foundation special school (within the meaning of that Act) maintained by a local education authority; or
- (c) any technical institute or other similar institution which is for the time being assisted by a local education authority under the Education Act 1996(a),

and the local education authority has, with the consent of his employer, designated him, or a class of employees to which he belongs, as being eligible for membership of the Scheme.

(2) Such a person shall be deemed to be in employment with the relevant local education authority and all references in these Regulations to employment by or under a Scheme employer and all similar expressions shall include references to that person.

**Eligibility in certain cases of persons who are not employees**

9.—(1) A person may be an active member if he is—

- (a) a registration officer;
- (b) a coroner (other than a coroner to whom paragraph (2) applies);
- (c) the Mayor of London;
- (d) a member of the London Assembly; or
- (e) the chairman of the London Transport Users’ Committee.

(2) This paragraph applies to—

- (a) the Queen’s coroner and attorney;
- (b) the coroner of the Queen’s household; and
- (c) a coroner who—
  - (i) held office immediately before 6th April 1978, and
  - (ii) did not choose, in accordance with article 3(b) of the Social Security (Modification of Coroners (Amendment) Act 1926) Order 1978(b), that the provisions of the Coroners (Amendment) Act 1926(c) relating to pensions should not apply to him.

(3) If a registration officer is an active member, he must be treated as being in employment with the local authority who made the scheme under section 14 of the Registration Service Act 1953(d) for the district in or for which he acts.

(4) If a coroner is an active member, he must be treated—

- (a) if appointed by a local authority, as being in employment with that local authority; or
- (b) if appointed by the Common Council of the City of London, as being in employment with that Council.

(5) If the Mayor of London or a member of the London Assembly is an active member, he must be treated as being in the employment of the Greater London Authority.

(6) If the chairman of the London Transport Users’ Committee is an active member, he must be treated as being in employment with that Committee.

(7) A person who is a Local Commissioner for the purposes of Part 3 of the Local Government Act 1974(e) must be treated as being in employment with the Commission for Local Administration in England.

(8) In this regulation—

“registration officer” means—

(a) 1996 c.56. See section 579(6).

(b) S.I.1978/374.

(c) 1926 c.59.

(d) 1953 c.37; section 14 was amended by Schedule 29 to the Local Government Act 1972 (c.70).

(e) 1974 c.7.

- (a) a superintendent registrar or registrar of births and deaths;
- (b) a registrar of births and deaths exercising any of the functions of a registrar of marriages;
- (c) a person provided by and at the expense of a local authority to act as a deputy superintendent registrar or deputy registrar of births and deaths.

**Supplementary provisions for certain members**

**10.**—(1) A person who is a rent officer who—

- (a) was appointed in pursuance of a scheme made under section 63 of the Rent Act 1977(a);  
or
- (b) was appointed by the Secretary of State under the Administration of the Rent Officer Service (England) Order 1999(b)

and is a member on the commencement date must be treated as being in employment with the London Pensions Fund Authority.

(2) A member of a passenger transport executive or a director of a subsidiary of such an executive must be treated as being in employment with that executive.

(3) But, as respects such a member, the passenger transport authority for which the executive exercises its functions must consent to the designation mentioned in regulation 4(3).

**Separate employments etc**

**11.**—(1) Where a person holds separate employments under one employing authority, these Regulations and the Benefits Regulations apply as if each of the employments were under a different employer.

(2) This paragraph applies where a whole-time or a part-time employee of an employing authority is also employed to carry out one or more of the additional duties.

(3) The additional duties are duties as—

- (a) a returning officer at—
  - (i) local government elections, or
  - (ii) elections for the National Assembly for Wales, or
- (b) an acting returning officer (including as a regional or local returning officer at a European Parliamentary election).

(4) This paragraph applies where, immediately before 1st April 1974, an employee mentioned in paragraph (2) was in the whole-time or part-time employment and had duties which included one or more of the additional duties

(5) Where paragraphs (2) and (4) apply, each additional duty must be treated as a separate variable-time employment with a different employing authority from the employing authority with whom he is in the whole-time or, as the case may be, part-time employment.

(6) Where—

- (a) paragraph (2) applies, and
- (b) paragraph (4) does not apply,

his employment to carry out an additional duty (or duties) must be treated as a single separate variable-time employment with a different Scheme employer.

(7) A person who—

- (a) is a member in any employment, and

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(a) 1977 c.42.  
(b) S.I. 1999/2403.

- (b) is also a medical inspector of immigrants appointed under the Immigration Act 1971(a) who receives his pay in that appointment from a Scheme employer listed in Part 1 of Schedule 2,

is eligible to be an active member in that appointment and shall be deemed to be in the employment of that Scheme employer.

#### **Further restrictions on eligibility**

**12.**—(1) Subject to paragraph (6), if a person’s employment entitles him to belong to another public service pension scheme, or would so entitle him were it not for his age, that employment does not entitle him to be a member, unless that other scheme was made under section 7 of the Superannuation Act 1972.

(2) “Public service pension scheme” has the meaning given by section 150 of the Finance Act 2004(b).

(3) An employee of an admission body may not be a member if he is a member of another occupational pension scheme in relation to the employment in respect of which he would otherwise be eligible to be designated for membership of the Scheme under regulation 7(1) .

(4) A person may not become a member after the day before his 75th birthday.

(5) Retained or volunteer membership with a fire and rescue authority (within the meaning given by section 1 of the Fire and Rescue Services Act 2004(c)) on terms under which the retained or voluntary member is or may be required to engage in fire-fighting does not entitle the member to be a member of the Scheme.

(6) A person may be a member of the Scheme despite being entitled to be a member of the National Health Service Pension Scheme for England and Wales (“the NHS Scheme”) if—

- (a) his entitlement to be a member of the NHS Scheme is by reason of his employment by—
  - (i) a Care Trust; or
  - (ii) an NHS Scheme employing authority as a result of a prescribed arrangement under section 75 of the National Health Service Act 2006(d);
- (b) he is specified in, or within a class of employees specified in, an admission agreement made between an administering authority and a Care Trust or NHS Scheme employing authority; and
- (c) he was an active member of the Scheme immediately before his employment by the Care Trust or by the NHS Scheme employing authority.

#### **Joining the Scheme**

**13.**—(1) A person other than an employee of an admission body who is eligible to be an active member of the Scheme on the day his employment begins becomes an active member on that day unless he notifies his employer in writing before his employment begins that he does not wish to become a member on that date.

(2) A person who applies to become a member after the date he would otherwise become a member under paragraph (1) becomes a member on the first day of the first payment period following the application.

(3) Subject to paragraph (5), a person other than an employee of an admission body who only becomes eligible to be a member of the Scheme on a date after his employment begins becomes an active member on that date unless he notifies his employer in writing before that date that he does not wish to become a member on that date.

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(a) 1971 c.77.  
(b) 2004 c.12.  
(c) 2004 c.21.  
(d) 2006 c.41.

(4) A person who applies to become a member after the date he would otherwise become a member under paragraph (3) becomes a member on the first day of the first payment period following the application.

(5) A person referred to in paragraph (3) who is employed by a body listed in Part 1 of Schedule 2 may be an active member from the date that his employment began if he applies to be so and pays contributions in respect of that earlier period at the appropriate contribution rate as provided in regulation 3 of the Benefits Regulations.

(6) An eligible employee of an admission body who wishes to become an active member in that employment must apply in writing to his employer and

(a) if he applies before that employment begins, he becomes a member when the employment begins; or

(b) if he applies after his employment begins, he becomes a member on the first day of the first payment period following the application.

(7) A former active member who is eligible for membership may reapply for membership of the Scheme and he becomes an active member on the first day of the first payment period following the application.

(8) In paragraphs (2), (4), (6) and (7), regulation 14(5) (ending of membership) and regulation 23(7) (payment of additional regular contributions), a payment period is a period of service to which the employee's wages or salary payment relate.

### **Ending of membership**

**14.—**(1) A person stops being a member in an employment if he stops being eligible for membership in that employment.

(2) A person who wishes to leave the Scheme must notify his employer in writing.

(3) A person with more than one employment may leave the Scheme if he wishes in respect of one, some or all of the employments.

(4) A member who gives notice under paragraph (2) stops being a member in the specified employment from the date the notice specifies.

(5) But, if a date earlier than the date the notice is given or no date is specified, he stops being a member at the end of the payment period during which the notice is given.

(6) Where a person gives notice before he has been a member for three months, he must be treated as not having been a member in that period.

(7) A person who is a member and is an employee of a transferee admission body shall be treated for the purposes of these Regulations and the Benefits Regulations as leaving a local government employment when he ceases to be employed in connection with the provision of the service or assets referred to in regulation 6(2) by virtue of which he became eligible to join the scheme.

### **Periods of membership**

**15.—**(1) A person may not count any period of membership if his contributions for that period have been returned to him.

(2) A person may not count any period of membership if his rights in respect of it have been transferred by payment of a transfer value (see Part 9).

(3) A person may not count as a period of membership for the purpose of calculating any benefit under regulations 16 to 20 or 29 to 31 of the Benefits Regulations so much of his membership as requires to be excluded to reduce the value referred to in regulation 74 (2) (b) of these Regulations by the amount recovered or retained under regulation 74 (recovery or retention where former member has misconduct obligation).

(4) Where a person pays contributions under regulation 20 (trade disputes) for any period, that period counts as a period within regulation 6 of the Benefits Regulations even if his contract of employment did not subsist throughout that period.

(5) A period of membership under regulation 6(1)(a) of the Benefits Regulations includes any period for which a member is treated as having paid contributions under regulations 17 (concurrent employments) or 46(4) (rights to return of contributions).

### **Re-employed and rejoining deferred members**

**16.—**(1) Where a deferred member becomes an active member in an employment (“the new employment”) before becoming entitled to the immediate payment of retirement benefits, he may, by giving notice in accordance with paragraph (4), choose to have his membership in any former employment aggregated with his membership in the new employment.

(2) Where he has ceased to be an active member more than once, he may choose to aggregate under paragraph (1)—

- (a) his membership at each of the times he so ceased; or
- (b) only such periods of membership as are specified in the notice.

(3) But a member cannot choose to aggregate any period of former membership which he could have chosen to aggregate with another period of former membership but did not before the expiry of the period mentioned in paragraph (4)(b).

(4) Notice for the purposes of paragraph (1) must be given in writing—

- (a) while the deferred member is an active member in the new employment;
- (b) before the expiry of—
  - (i) the period of 12 months beginning with the date on which he became an active member in that employment, or
  - (ii) such longer period as his employer may allow;
- (c) to his appropriate administering authority in that employment; and
- (d) if the appropriate fund for membership in the new employment is different from that for any former employment to which the notice relates, to the appropriate administering authority in that former employment.

(5) References in this regulation to former membership include all membership which the member was entitled to count as membership immediately before he ceased his former active membership.

(6) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, he shall be treated for the purposes of this regulation as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

### **Concurrent employments**

**17.—**(1) Where a person—

- (a) ceases to be an active member in one employment in respect of which he has at least three months’ total membership (“the first employment”); and
- (b) continues as an active member in another employment he held concurrently with the first employment,

he may elect to have his former membership in respect of the first employment aggregated with his membership in that other employment.

(2) If he so elects, the provisions of regulation 16 shall apply as if references to—

- (a) his former membership or former active membership were references to his membership from his first employment;

- (b) the new employment were references to his concurrent employment; and
- (c) the employment in which he becomes an active member again were references to that concurrent employment.

(3) In the case of a person to whom this regulation applies, the period of membership which will be aggregated with his membership from the concurrent employment will be equal to his membership from his first employment, as reduced under regulation 7(3) and (4) of the Benefits Regulations if the first employment was part-time, multiplied by the fraction—

$$\frac{\text{whole - time rate of pay in the first employment}}{\text{whole - time rate of pay in concurrent employment}}$$

where the rate of pay in each case is the annual rate of pay on the last day of the first employment.

## PART 3

### CONTRIBUTIONS

#### **Contributions during child-related leave**

**18.—**(1) If a person who is a member, or has applied to be a member, goes on maternity, paternity or adoption leave, the person must make contributions as respects any part of the period of maternity, paternity or adoption absence for which the person is a member and entitled to receive pay (including statutory pay).

(2) But that pay does not include any amount that reduces the member's actual pay on account of possible entitlement to statutory pay.

(3) Such contributions must be made at the contribution rate on that pay.

(4) If a person who is a member or has applied to be a member—

- (a) goes on ordinary maternity leave, paternity leave or ordinary adoption leave; and
- (b) is not entitled to receive pay (including statutory pay) for all or any part of that period of leave,

the person shall be treated for the purposes of these Regulations and the Benefits Regulations as if the person had paid contributions under paragraph (1) for the unpaid period of that leave and on the pay that the person would have received during that period but for the absence.

(5) If a person who is a member or has applied to be a member—

- (a) is on maternity or adoption leave (other than ordinary maternity or adoption leave), and
- (b) for all or part of the period of maternity or adoption absence is not entitled to receive pay (including statutory pay) but is a member,

the person may make contributions at the contribution rate as respects the unpaid period of that absence as if the person's pay in the employment were equal to the adjusted pay.

(6) The adjusted pay shall be the pay the person was entitled to receive immediately before the unpaid period first began (including statutory pay) but—

- (a) not including any amount that reduces actual pay on account of the person's possible entitlement to statutory pay; and
- (b) disregarding any amount the person receives on account of a day's work carried out under regulation 12A of the Maternity and Parental Leave etc. Regulations 1999(a) or regulation 21A of the Paternity and Adoption Leave Regulations 2002(b) that exceeds any maternity, paternity or parental leave pay due for that day.

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(a) S.I. 1999/3312; regulation 12A was inserted by S.I. 2006/2014, regulations 3, 9.  
 (b) S.I. 2002/2788; regulation 21A was inserted by S.I. 2006/2014, regulation 4.

(7) A member to whom paragraph (5) applies may continue to pay contributions under regulation 25 (additional voluntary contributions) which the member was paying immediately before the leave began.

(8) If an active member goes on maternity, paternity or adoption leave, the member must continue to make any payments the member was making under regulation 23 of these Regulations (additional regular contributions) or regulation 55 of the 1997 Regulations (payments to increase total membership) on the pay the member would have received during the period but for the leave.

(9) In this regulation—

“ordinary adoption leave” means leave under section 75A of the Employment Rights Act 1996(a);

“ordinary maternity leave” means leave under section 71 of that Act (b);

“paternity leave” means leave under regulations 4 or 8 of the Paternity and Adoption Leave Regulations 2002;

“period of maternity, paternity or adoption absence” means any period throughout which a member is absent from duty because the member is exercising the right to take—

(a) ordinary maternity or adoption leave;

(b) additional maternity or adoption leave under section 73 or 75B of the Employment Rights Act 1996(c); or

(c) paternity leave; and

“statutory pay” means any statutory maternity, paternity or adoption pay payable under the Social Security Contributions and Benefits Act 1992(d).

### **Contributions during reserve forces service leave**

19.—(1) This regulation applies to a person who—

(a) is a member or has applied to be a member; and

(b) goes on reserve forces service leave.

(2) He must pay contributions under regulation 3 of the Benefits Regulations and any payments under regulation 23 of these Regulations or regulation 55 of the 1997 Regulations that he was paying immediately before his relevant reserve forces service began if (and only if) his reserve forces pay during that service equals or exceeds the pay he would have received if he had continued to be employed in his former employment.

(3) Those contributions continue to be payable to the appropriate fund at the same rates on that pay.

(4) If he is not obliged to pay contributions under paragraph (2), he must be treated for the purposes of these Regulations and the Benefits Regulations as if he had paid them and also any payments under regulation 23 of these Regulations or regulation 55 of the 1997 Regulations that he would have been liable to pay if he had continued to be employed in his former employment.

(5) If he was paying any contributions under regulation 25(1) immediately before his leave began—

(a) he may continue to pay, or may stop paying, them; and

(b) unless he has stopped paying them, the appropriate administering authority must, throughout the period of his relevant reserve forces service, continue to pay such contributions as were to be used to provide benefits for him on his death.

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(a) 1996 c.18. Section 75A was inserted by section 3 of the Employment Act 2002 (c.22).

(b) Section 71 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 (c.26).

(c) Section 73 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 and section 75B was inserted by section 3 of the Employment Act 2002.

(d) 1992 c.4.

(6) His relevant reserve forces service counts as a period of membership in his former employment.

(7) If during that service, he—

- (a) dies;
- (b) attains his normal retirement age; or
- (c) becomes incapable for health reasons of working efficiently in local government employment,

he must be treated as if he were in that employment at that time.

(8) In this regulation—

“cancelling notice” in relation to a person’s relevant reserve forces service, means—

- (a) an agreement, by a member who has not waived his right to receive a return of contributions under regulation 46, to receive a return of contributions; or
- (b) a notice in writing given by him to the appropriate administering authority not later than 12 months after the end of the period of service to which the notice relates (or within such longer period as the administering authority may allow) that the service should not be treated as relevant reserve forces service;

“relevant reserve forces service” means service (other than service for the purposes of training only or service for a period in respect of which a cancelling notice has been served)—

- (a) in pursuance of any notice or directions given under any enactment which provides for the calling out on permanent service, or the calling into actual service, or the embodiment of, any reserve or auxiliary force, or members of such a force, or the recall of service pensioners;
- (b) in pursuance of any obligation or undertaking to serve when called upon as a commissioned officer; or
- (c) rendered by virtue of section 14(1) or 34 of the Reserve Forces Act 1980(a), and paragraph (b) applies whether or not the obligation or undertaking is legally enforceable, but not in the case of an obligation or undertaking to accept a permanent commission or a commission for a fixed term or to serve for the purposes of periodical training;

“reserve forces pay” in relation to any person, is the total of—

- (a) his pay for performing relevant reserve forces service (including marriage, family and similar allowances); and
- (b) any payments under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(b);

“reserve forces service leave” in relation to a person, means being away from work—

- (a) after—
  - (i) he has left the employment in which he is an active member, or
  - (ii) he has been granted leave of absence from such an employment, in order to perform relevant reserve forces service;
- (b) without having agreed to receive a return of contributions under regulation 46; and
- (c) without having elected that the absence is not to count as such by giving notice in writing to the appropriate administering authority not later than 12 months after the end of the period of relevant reserve forces service to which the notice relates (or within such longer period as the administering authority may allow);

“reserve or auxiliary force” means the whole or part of the Royal Navy Reserve (including the Royal Fleet Reserve), the Royal Marines Reserve, the Territorial Army, the Army Reserve, the

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(a) 1980 c.9.  
(b) 1951 c.65.



Air Force Reserve, the Royal Air Force Volunteer Reserve or the Royal Auxiliary Air Force;  
and

“service pensioner” means a person in receipt of a pension (other than a pension awarded in respect of disablement) granted—

- (a) in respect of service in the Royal Navy, the Royal Marines, the regular army and the regular air force or any reserve or auxiliary force which has been called out on permanent service or which has been embodied; or
- (b) in respect of that and other service.

### **Contributions during trade dispute absence**

**20.**—(1) If a person—

- (a) is away from work without permission for a period of one or more days during and because of a trade dispute (“a trade dispute absence”), and
- (b) was a member immediately before—
  - (i) that period, or
  - (ii) where two or more periods of absence have occurred because of one such dispute, the first such period,

he may make a contribution for the relevant contribution period at the rate of 16% on his lost pay for that period.

(2) A person’s lost pay is the difference between—

- (a) his actual pay (if any), and
- (b) the pay he would have received but for the trade dispute absence;

and, in determining that difference, any guarantee payments under Part 3 of the Employment Rights Act 1996(a) must be disregarded.

(3) A period is a person’s relevant contribution period if—

- (a) it is co-extensive with one of the intervals at which he is required under regulation 3 of the Benefits Regulations to make contributions; and
- (b) it includes all or part of his trade dispute absence.

(4) The termination of a person’s contract of employment because of a trade dispute does not prevent this regulation applying to him if he again becomes an employee of the same employing authority and a member not later than the day after the dispute ends.

(5) A member to whom paragraph (1) applies—

- (a) may continue to pay contributions under regulation 25 (additional voluntary contributions) which he was paying immediately before his trade dispute absence began; and
- (b) must continue to make any payments he was making under regulation 23 of these Regulations (additional regular contributions) or regulation 55 of the 1997 Regulations (payments to increase total membership) on the pay he would have received during the relevant contribution period but for his absence.

(6) In paragraph (1)(a), “trade dispute” has the meaning given in section 218 of the Trade Union and Labour Relations (Consolidation) Act 1992(b).

### **Contributions during absences with permission**

**21.**—(1) If a member—

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(a) 1996 c.18.  
(b) 1992 c.52.

- (a) is away from his employment with permission (otherwise than because of illness or injury)—
  - (i) for a continuous period of less than 31 days, or
  - (ii) on jury service for any period; and
- (b) is receiving reduced pay or no pay,

he must make the payments specified in paragraph (2) on the pay he would have received during that period but for his absence (“his deemed pay”).

(2) The payments are—

- (a) contributions at the contribution rate; and
- (b) any payments he was making under regulation 23 of these Regulations (additional regular contributions) or regulation 55 of the 1997 Regulations (payments to increase total membership).

(3) The member may continue to pay contributions under regulation 25 (additional voluntary contributions) which he was paying immediately before the absence began.

(4) If a member—

- (a) is away from his employment with permission (otherwise than because of illness or injury) for a continuous period of more than 30 days; and
- (b) is receiving reduced pay or no pay,

he must make the payments specified in paragraph (5) on his deemed pay.

(5) The payments are—

- (a) contributions at the contribution rate for the first 30 days’ absence; and
- (b) any payments he was making under regulation 23 of these Regulations or regulation 55 of the 1997 Regulations.

(6) The member may—

- (a) make contributions at the contribution rate on his deemed pay for the remainder of the period of absence subject to a maximum of 36 months; and
- (b) continue to pay contributions under regulation 25 which he was paying immediately before the absence began.

### **Applications to make absence contributions**

**22.**—(1) To make contributions under regulation 18(5), 20 or 21(6)(a) a person must apply to his employing authority in writing before the expiry of a period of 30 days beginning with the day—

- (a) on which he returns to work, if he returns to work following the absence; or
- (b) on which he ceases to be employed, if he ceases to be employed by that authority without returning to work.

(2) In either case, the authority may allow a longer period.

(3) A person’s personal representatives may make an application under paragraph (1) if the person has died without making an application.

### **Payment of additional regular contributions (ARCs)**

**23.**—(1) A member who chooses to pay additional contributions under regulation 14 of the Benefits Regulations must make his request in writing to the appropriate administering authority.

(2) The member’s request must be copied to the member’s employing authority and must state the length of the period (“the ARC payment period”) over which he wishes to pay the additional regular contributions (“ARCs”).

(3) If—

- (a) the member's appropriate administering authority passes a resolution requiring him to satisfy it that he is in reasonably good health by producing to it a report by a registered medical practitioner of the results of a medical examination undertaken at the member's own expense; but
  - (b) it is not so satisfied,
- it may refuse his request.
- (4) The length of the ARC payment period must be such that it ends before the member's normal retirement age.
- (5) The member may only pay ARCs if the appropriate administering authority notifies him in writing that it agrees to the request.
- (6) The Government Actuary shall from time to time determine the amount of ARCs required for any given amount of increased pension and may determine different amounts of ARCs—
- (a) for—
    - (i) persons of different ages, or
    - (ii) men or women; or
  - (b) depending on the length of different payment periods.
- (7) Where the appropriate administering authority agrees to the member's request—
- (a) it must notify him and his employing authority of the amount of ARCs payable by him in accordance with the Government Actuary's determination, expressed as an amount in pounds sterling; and
  - (b) the member must pay those ARCs from the next payment period (as defined in regulation 13(8)) following the date of the administering authority's notification under paragraph (5).
- (8) The Government Actuary may at any time redetermine any amount determined under paragraph (6) and, if he does so, the member must, from 1st April following the redetermination, pay ARCs in accordance with the redetermination.
- (9) If the member pays (or is treated under regulation 24 as having paid) ARCs for the whole of the ARC payment period, he must be credited with the additional annual pension of the amount that those ARCs purchase.

### **Discontinuance of ARCs**

**24.—**(1) A member—

- (a) may stop paying his ARCs before the end of the ARC payment period if he notifies the appropriate administering authority and the employing authority in writing that he wishes to do so; and
- (b) must stop doing so if he ceases to be an active member.

(2) If a member stops paying his ARCs before the end of the ARC payment period—

- (a) on leaving his employment on the grounds of ill-health and his employing authority making a determination in respect of him under regulation 20(2) or (3) of the Benefits Regulations; or
- (b) on his death,

he is to be treated as having paid his ARCs up to the end of that period.

(3) If a member stops paying his ARCs and paragraph (2) does not apply to him, he must be credited with additional pension of an amount determined by the Government Actuary, having regard to the ARCs he paid before he stopped.

### **Additional voluntary contributions and shared cost additional voluntary contributions**

**25.**—(1) An active member may elect to pay additional voluntary contributions (“AVCs”) into a scheme established under contract between his appropriate administering authority and a body approved for the purposes of the Finance Act 2004 (“an additional voluntary contributions arrangement”).

(2) The additional voluntary contributions arrangement must be a money purchase pension scheme registered in accordance with the Finance Act 2004 and administered in accordance with that Act and the Pensions Act 2004(a).

(3) Where the member’s employing authority contributes to the scheme, the additional voluntary contributions arrangement is to be known as a shared cost additional voluntary contributions arrangement and contributions to it as “SCAVCs”.

(4) Such AVCs or SCAVCs are in addition to any other contributions the member may pay under regulation 23.

(5) Where the member elects to pay AVCs or SCAVCs, he must first—

- (a) notify his employing authority in writing; and
- (b) in the notification specify—
  - (i) the percentage of his pensionable pay he wishes to pay or the amount he wishes to pay on his usual pay days from his pay,
  - (ii) whether he wishes any of his AVCs or SCAVCs to be used to provide benefits payable on his death, and
  - (iii) if he does, the proportion to be so used.

(6) A member may—

- (a) vary—
  - (i) the amount of his AVCs or SCAVCs, or
  - (ii) the proportion of them to be used to provide benefits payable on his death; or
- (b) stop paying AVCs or SCAVCs.

(7) Where he wishes to do so, he must first notify his employing authority in writing.

(8) An active member may, by notifying his administering authority in writing, transfer into his additional voluntary contributions arrangement constituted under this regulation the accumulated value of any other additional voluntary contributions arrangement to which he has subscribed.

(9) An election to pay AVCs or SCAVCs may be made in respect of each employment in respect of which a person is a member.

(10) The maximum a person may specify under paragraph (5)(b)(i) or notify under paragraph (7) as the varied amount in respect of each employment is 50 per cent of the pensionable pay of that employment or an amount equal to 50 per cent of the pensionable pay of that employment.

### **Use of accumulated value of AVCs and SCAVCs**

**26.**—(1) This regulation applies where a person who has paid AVCs or SCAVCs during his employment or made a transfer under regulation 25(8) —

- (a) leaves his employment with the employing authority he notified under regulation 25(5)(a)—
  - (i) without entitlement to the immediate payment of retirement benefits, or
  - (ii) with such entitlement under regulation 16, 17, 18, 19, 30 or 31 of the Benefits Regulations;
- (b) stops being an active member without leaving that employment; or

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(a) 2004 c.35.

(c) becomes entitled to ill-health benefits under regulation 20 of those Regulations.

(2) A person mentioned in paragraph (1)(a)(i) must notify the employing authority in writing that he wishes the accumulated value of the AVCs or SCAVCs (“the accumulated value”) to be used in one or more of the permissible ways specified in the notification.

(3) The permissible ways are—

- (a) to subscribe to a registered pension scheme (other than the Scheme);
- (b) to purchase an appropriate policy from one or more insurance companies (within the meaning of section 275 of the Finance Act 2004).

(4) A person mentioned in paragraph (1)(a)(ii) or (c) may notify the employing authority in writing that he wishes the accumulated value to be used to provide additional pension for him under the Scheme, or partly to provide such pension for him.

(5) If he does so, he becomes entitled to such additional pension as is shown as appropriate in guidance issued by the Government Actuary.

(6) The employing authority must send a notification under paragraph (2) or (4) to the appropriate administering authority as soon as possible.

(7) In the case of a person mentioned in paragraph (1) (b)—

- (a) the employing authority must, as soon as possible, inform the appropriate administering authority that the person has stopped being an active member; and
- (b) the accumulated value must be used to subscribe to a registered scheme that is not an occupational pension scheme.

(8) The appropriate administering authority must make such arrangements as are necessary for the use of the accumulated value in accordance with a notification under paragraph (2) or (4) or with paragraph (7)(b).

#### **Separate treatment of AVCs and SCAVCs from other contributions**

**27.—**(1) Regulations 46 (return of contributions) and 47 (exclusion of rights to return of contributions) do not apply to—

- (a) AVCs or SCAVCs payable under these Regulations or under any agreement made for the payment of AVCs before the commencement date; or
- (b) interest on late payments which relate to AVCs or SCAVCs.

(2) The regulations mentioned in paragraph (3) do not apply in relation to benefits under—

- (a) such a policy as is mentioned in regulation 26(3)(b); or
- (b) any agreement made for the payment of AVCs or SCAVCs before the commencement date.

(3) Those regulations are—

- (a) regulation 55 (first instance decisions);
- (b) regulation 72 (forfeiture of pension rights);
- (c) regulation 73 (interim payments directions); and
- (d) regulation 74 (recovery and retention where former member has misconduct obligations).

#### **Cost of calculations of additional pension where no notification given under regulation 26(4)**

**28.—**(1) This regulation applies where, at a member’s request, an administering authority give him information concerning the amount of additional pension which would be payable if he were to give a notification under regulation 26(4).

(2) If the member does not give such a notification before the expiry of the period of three months beginning with the date the authority gives him the information, it may deduct the cost of calculating that amount from the accumulated value of the additional contributions mentioned in regulation 15(1) of the Benefits Regulations.

## PART 4

### PENSION FUNDS AND EMPLOYERS' PAYMENTS

#### **The pension funds**

**29.** The bodies responsible for maintaining pension funds for the Scheme immediately before the commencement date must continue to maintain them unless the fund is vested in a different body by or under any enactment.

#### **Appropriate funds**

**30.**—(1) The appropriate fund for a member or a person who is entitled to any benefit in respect of a person who has been a member is—

- (a) in the case of an active member, the fund specified for a member of his description in accordance with Schedule 4;
- (b) in the case of—
  - (i) a deferred or pensioner member who is an active member on the commencement date or has been an active member since that date, the fund so specified for a member of his description when he ceases to be an active member, or
  - (ii) a person who is entitled under the Benefits Regulations in respect of a member, the fund so specified for a member of the description of such member when he ceased to be an active member;
- (c) in the case of any other deferred or pensioner member, the fund specified for him by virtue of regulation 11 of the Transitional Regulations<sup>(a)</sup>.

(2) Where these Regulations or the Benefits Regulations refer to payments being made without referring to the fund to which or from which they are to be made, the reference is to payments being made to or from the fund which is the appropriate fund for the member in question.

(3) Paragraph (2) does not apply where the payments made are benefits paid under an additional voluntary contributions arrangement or a shared cost additional voluntary contributions arrangement.

#### **Pension funds: governance compliance statement**

**31.**—(1) This regulation applies to the written statement prepared and published by an administering authority under regulation 73A of the 1997 Regulations <sup>(b)</sup>.

- (2) The authority must—
  - (a) keep the statement under review;
  - (b) make such revisions as are appropriate following a material change in respect of any of the matters mentioned in paragraph (3); and
  - (c) if revisions are made—
    - (i) publish the statement as revised, and
    - (ii) send a copy of it to the Secretary of State.
- (3) The matters are—
  - (a) whether the authority delegates its function, or part of its function, in relation to maintaining a pension fund to a committee, a sub-committee or an officer of the authority;
  - (b) if it does so—

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<sup>(a)</sup> S.I. 2008/238.

<sup>(b)</sup> Regulation 73A was inserted by S.I.2005/3199 and substituted by S.I.2007/1561.

- (i) the terms, structure and operational procedures of the delegation,
  - (ii) the frequency of any committee or sub-committee meetings,
  - (iii) whether such a committee or sub-committee includes representatives of employing authorities (including authorities which are not Scheme employers) or members, and, if so, whether those representatives have voting rights;
- (c) the extent to which a delegation, or the absence of a delegation, complies with guidance given by the Secretary of State and, to the extent it does not so comply, the reasons for not complying.
- (4) In reviewing and making revisions to the statement, the authority must consult such persons as it considers appropriate.

### **Admission agreement funds**

**32.**—(1) An administering authority which has made an admission agreement may establish a further pension fund (an “admission agreement fund”) in addition to the fund maintained under regulation 29 (“the main fund”).

(2) Immediately after an authority establishes an admission agreement fund, it must give the Secretary of State written notice that it has done so.

(3) The notice must specify the admission bodies whose employees are eligible for benefits from the admission agreement fund.

(4) Where an admission agreement fund is established—

- (a) the liabilities of the main fund as respects membership in employment with those specified bodies become liabilities of the admission agreement fund; and
- (b) assets of such value as an actuary appointed by the appropriate administering authority determines to be appropriate must be transferred from the main fund to the admission agreement fund.

(5) When valuations under regulation 36 of both the main fund and the admission agreement fund are first obtained after the admission agreement fund is established, the administering authority must obtain a transfer statement from an actuary appointed by the authority.

(6) The transfer statement must specify whether, in the actuary’s opinion, there is a need for further assets to be transferred from the main fund to the admission agreement fund and, if so, their value.

(7) Where the transfer statement specifies that assets of a specified value need to be transferred, the administering authority must arrange for assets of that value to be transferred as soon as is reasonably practicable.

### **Accounts and audit**

**33.**—(1) After any of its pension funds has been audited, an administering authority must immediately send copies of the following to each body whose employees are active members—

- (a) a summary of the revenue account and balance sheet of the fund; and
- (b) any report by the auditor.

(2) The pension input period for the purposes of section 238 of the Finance Act 2004<sup>(a)</sup> is the year ending on 31st March 2009 and each year ending on 31st March after that year.

### **Pension fund annual report**

**34.**—(1) An administering authority must, in relation to each year beginning on 1st April 2008 and each subsequent year, prepare a document (“the pension fund annual report”) which contains—

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(a) 2004 c.12.

- (a) a report about the management and financial performance during the year of each of the pension funds maintained by the authority;
  - (b) a report explaining the authority’s investment policy for each of those funds and reviewing the performance during the year of the investments of each fund;
  - (c) a report of the arrangements made during the year for the administration of each of those funds;
  - (d) for each of those funds, a statement by the actuary who carried out the most recent valuation of the assets and liabilities of the fund in accordance with regulation 36 (actuarial valuations and certificates), of the level of funding disclosed by that valuation;
  - (e) the current version of the statement under regulation 31 (governance compliance statement);
  - (f) for each of those funds, the fund account and net asset statement with supporting notes and disclosures prepared in accordance with proper practices<sup>(a)</sup>;
  - (g) an annual report dealing with—
    - (i) the extent to which the authority and the employing authorities in relation to which it is the administering authority have achieved any levels of performance set out in the pension administration strategy in accordance with regulation 65(2)(b), and
    - (ii) such other matters arising from its pension administration strategy as it considers appropriate;
  - (h) the current version of the statement referred to in regulation 35 (funding strategy statement);
  - (i) the current version of the statement under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (statement of investment principles)<sup>(b)</sup>;
  - (j) the current version of the statement under regulation 67 (statements of policy concerning communications with members and employing authorities); and
  - (k) any other material which the authority considers appropriate.
- (2) The authority must publish the pension fund annual report on or before 1st December following the year end.
- (3) In preparing and publishing the pension fund annual report, the authority must have regard to guidance given by the Secretary of State.

### **Funding strategy statement**

**35.**—(1) This regulation applies to the funding strategy statement prepared and published by an administering authority under regulation 76A of the 1997 Regulations <sup>(c)</sup>.

(2) The authority must—

- (a) keep the statement under review;
- (b) make such revisions as are appropriate following a material change—
  - (i) in its policy on the matters set out in the statement, or
  - (ii) to the current version of its statement under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (statement of investment principles); and
- (c) if revisions are made, publish the statement as revised.

(3) In reviewing and making revisions to the statement, the authority must—

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(a) For “proper practices” see section 21 of the Local Government Act 2003 (c.26) and regulation 31 of S.I. 2003/3146.  
(b) S.I. 1998/1831; regulation 9A was inserted by S.I. 1999/3259 and amended by S.I. 2002/1852.  
(c) Regulation 76A was inserted by S.I.2004/573.



- (a) have regard to the guidance set out in the document published in March 2004 by CIPFA and called “CIPFA Pensions Panel Guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No.6)”; and
- (b) consult such persons as it considers appropriate.

**Actuarial valuations and certificates**

**36.**—(1) Each administering authority must obtain—

- (a) an actuarial valuation of the assets and liabilities of each of its pension funds as at 31st March 2010 and in every third year afterwards;
- (b) a report by an actuary in respect of the valuation; and
- (c) a rates and adjustments certificate prepared by an actuary.

(2) Each of those documents must be obtained before the first anniversary of the date (“the valuation date”) as at which the valuation is made or such later date as the Secretary of State may agree.

(3) A report under paragraph (1)(b) must contain a statement of the demographic assumptions used in making the valuation; and the statement must show how the assumptions relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(4) A rates and adjustments certificate is a certificate specifying—

- (a) the common rate of employer’s contribution; and
- (b) any individual adjustments,

for each year of the period of three years beginning with 1st April in the year following that in which the valuation date falls.

(5) The common rate of employer’s contribution is the amount which, in the actuary’s opinion, should be paid to the fund by all bodies whose employees contribute to it so as to secure its solvency, expressed as a percentage of the pay of their employees who are active members.

(6) The actuary must have regard to—

- (a) the existing and prospective liabilities of the fund arising from circumstances common to all those bodies;
- (b) the desirability of maintaining as nearly constant a common rate as possible; and
- (c) the current version of the administering authority’s funding strategy statement mentioned in regulation 35.

(7) An individual adjustment is any percentage or amount by which, in the actuary’s opinion, contributions at the common rate should, in the case of a particular body, be increased or reduced by reason of any circumstances peculiar to that body.

(8) A rates and adjustments certificate must contain a statement of the assumptions on which the certificate is given as respects—

- (a) the number of members who will become entitled to payment of pensions under provisions of the Scheme; and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(9) The authority must provide the actuary preparing a valuation or a rates and adjustments certificate with the consolidated revenue account of the fund and such other information as he requests.

**Supply of copies of valuations, certificates etc**

**37.**—(1) An administering authority must send copies of any valuation, report, certificate or revised certificate obtained under regulation 36 or 38 to—

- (a) the Secretary of State;

- (b) each body with employees who contribute to the fund in question; and
  - (c) any other body which is or may become liable to make payments to that fund.
- (2) An administering authority must also send to the Secretary of State—
- (a) a copy of the consolidated revenue account with which the actuary was provided under regulation 36(9); and
  - (b) a summary of the assets of the fund at the valuation date (unless such a summary is contained in the report under regulation 36(1)(b)).

**Special circumstances where revised actuarial valuations and certificates must be obtained**

**38.**—(1) When obtaining a transfer statement under regulation 32(5), an administering authority must also obtain from the actuary a rates and adjustments certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for its main fund.

(2) Where an admission agreement ceases to have effect, the administering authority which made it must obtain—

- (a) an actuarial valuation as at the date it ceases of the liabilities of the fund in respect of current and former employees of the admission body which is a party to that agreement (“the outgoing admission body”); and
- (b) a revision of any rates and adjustments certificate for any fund which is affected, showing the revised contributions due from that body.

(3) Where, for any reason, it is not possible to obtain revised contributions from the outgoing admission body, or from an insurer or any person providing an indemnity or bond on behalf of that body, the administering authority may obtain a further revision of any rates and adjustments certificate for the fund, showing—

- (a) in a case where that body is a transferee admission body within regulation 6(2)(a) or (b), the revised contributions due from the body which is the Scheme employer in relation to that admission body; and
- (b) in any other case, the revised contributions due from each employing authority which contributes to the fund.

(4) An administering authority may obtain from an actuary a certificate specifying, in the case of an admission body, the percentage or amount by which, in the actuary’s opinion—

- (a) the contribution at the common rate should be adjusted; or
- (b) any prior individual adjustment should be increased or reduced,

with a view to providing that the value of the assets of the fund in respect of current and former employees of that body is neither materially more nor materially less than the anticipated liabilities of the fund in respect of those employees at the date the admission agreement is to end.

(5) Paragraph (6) applies where—

- (a) an administering authority agrees with an employing authority as mentioned in regulation 40(4); or
- (b) it appears to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with an employing authority exceeds the amount specified in, or likely as a result of, the assumptions stated for that authority in a rates and adjustments certificate by virtue of regulation 36(8).

(6) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that employing authority.

### **Employer's contributions**

**39.**—(1) An employing authority must contribute to the appropriate fund in each year covered by a rates and adjustments certificate under regulation 36 or 38 the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).

(2) During each of those years an employing authority must make payments to the appropriate fund on account of the amount required for the whole year.

(3) Those payments on account must—

- (a) be paid at the end of the intervals determined under regulation 42; and
- (b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.

(4) An employer's contribution for any year is the common percentage for that year of the pay on which contributions have, during that year, been paid to the fund under regulations 18 (contributions during child-related leave), 19 (contributions during reserve forces service leave) or 21 (contributions during absences with permission) or regulation 3 of the Benefits Regulations (contributions payable by active members) by employees who are active members, increased or reduced by any individual adjustment specified for that employer for that year in the rates and adjustments certificate.

(5) The common percentage is the common rate of employer's contribution specified in that certificate, expressed as a percentage.

(6) Where an employee—

- (a) is treated under paragraph (4) of regulation 18 as if he had paid contributions; or
- (b) has paid contributions during a period of maternity, paternity or adoption absence (within the meaning of that regulation),

the pay on which the common percentage is calculated is the pay the employee would have received if he had not been absent.

### **Employer's payment following resolution to increase membership or award additional pension**

**40.**—(1) This regulation applies where an employing authority makes a resolution under—

- (a) regulation 12 of the Benefits Regulations (which confers power to increase the membership of an active member by an additional period); or
- (b) regulation 13 of those Regulations (which confers power to award additional pension).

(2) Unless paragraph (4) applies, the employing authority must pay the appropriate sum for the person to whom the resolution relates to the appropriate fund before the expiry of the relevant period.

(3) The appropriate sum for a person is such sum as is shown as appropriate in guidance issued by the Government Actuary.

(4) This paragraph applies where the administering authority and the employing authority agree before the expiry of the relevant period that the employing authority will pay increased contributions under regulation 39 or an amount to meet the cost of the increase in membership or the additional pension.

(5) Any extra charge on the appropriate fund resulting from the resolution must be repaid to the fund by the employing authority concerned but only so far as not paid under paragraph (2) or (4).

(6) In the case of a resolution under regulation 12 of the Benefits Regulations, the additional period in question may only be counted as a period of membership if one of the conditions in paragraph (8) is met.

(7) In the case of a resolution under regulation 13 of those Regulations, a person is only entitled to the additional pension awarded if one of those conditions is met.

(8) The conditions are that either—

- (a) the employing authority makes the payment required by paragraph (2) within the relevant period; or
  - (b) paragraph (4) applies.
- (9) The relevant period is—
- (a) the period of one month beginning with the date of the resolution; or
  - (b) such longer period as the employing authority and the administering authority agree.
- (10) If neither of the conditions in paragraph (8) is met, the resolution ceases to have effect.

**Employer’s further payments**

**41.—**(1) Any extra charge on the appropriate fund resulting from a member’s becoming entitled to benefits calculated under paragraph (2)(b), (3)(b) or (4) of regulation 20 or regulation 31 of the Benefits Regulations must be repaid to the fund by the employing authority concerned.

(2) The appropriate administering authority may require the employing authority concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund resulting from retirement benefits becoming immediately payable to a member under regulation 18 or 19 of the Benefits Regulations, including the cost, as calculated by the fund’s actuary, incurred by the fund as a result of a waiver of such reduction as is referred to in regulation 18(2) of those Regulations.

**Payment by employing authorities to appropriate administering authorities**

**42.—**(1) Every employing authority must pay to the appropriate administering authority on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine—

- (a) all amounts from time to time deducted from the pay of its employees under these Regulations;
- (b) any amount it has received by deduction or otherwise under regulation 18(5), 20, 21 or 25 during the interval;
- (c) any extra charge payable under regulation 40 or 41 of which it has been notified by the administering authority during the interval; and
- (d) a contribution towards the cost of the administration of the fund, which shall include any amount specified in a notice given in accordance with regulation 43.

(2) But—

- (a) an employing authority must pay the amounts mentioned in paragraph (1)(a) not later than the time required under section 49(8) of the Pensions Act 1995(a); and
- (b) paragraph (1)(d) does not apply where the cost of the administration of the fund is paid out of the fund under regulation 5(6) of the Local Government Pensions Scheme (Management and Investment of Funds) Regulations 1998(b).

(3) Every payment under paragraph (1)(a) must be accompanied by a statement showing—

- (a) the name, pay and band (as set out in column 1 of the table in regulation 3(2) of the Benefits Regulations) of each of the employing authority’s employees who is an active member;
- (b) which employees are paying contributions under regulation 23(1) (payment of additional regular contributions) or 25(1) (additional voluntary contributions and shared cost additional voluntary contributions); and

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(a) 1995 c.26.  
 (b) S.I. 1998/1831.

(c) the amounts which represent deductions in each of the pay bands from the pay of each of the employees and the periods covered by the deductions, distinguishing amounts representing deductions for any voluntary contributions.

(4) An appropriate administering authority may direct that the information mentioned in paragraph (3) shall be given to the authority in such form and at such intervals (not exceeding 12 months) as it specifies in the direction.

(5) If an amount payable under paragraph (1)(d) cannot be settled by agreement, it must be determined by the Secretary of State.

(6) Paragraphs (1) and (3) do not apply to an employing authority which is an appropriate administering authority.

(7) An administering authority must pay to the fund of which it is the administering authority its fair share of any contribution towards the cost of the administration of the fund in circumstances where it has required a contribution towards such cost from employing authorities as referred to in paragraph (1)(d).

(8) An administering authority must also pay any additional costs due to the fund which are incurred because of its level of performance in carrying out its functions under these Regulations.

#### **Additional costs arising from employing authority's level of performance**

43.—(1) This regulation applies where, in the opinion of the appropriate administering authority, it has incurred additional costs which should be recovered from an employing authority because of that employing authority's level of performance in carrying out its functions under these Regulations or the Benefits Regulations.

(2) The administering authority may give written notice to the employing authority stating—

- (a) the administering authority's reasons for forming the opinion mentioned in paragraph (1);
- (b) the authority's opinion that the employing authority's contribution under regulation 42(1)(d) should include an amount specified in the notice in respect of the additional costs attributable to that authority's level of performance;
- (c) the basis on which the specified amount is calculated; and
- (d) where the administering authority has prepared a pension administration strategy under regulation 65, the provisions of the strategy which are relevant to the decision to give the notice and to the matters in sub-paragraph (a), (b) or (c).

#### **Interest**

44.—(1) An administering authority may require an administering or employing authority from which payment of any amount due under regulations 39 to 42 (employers' contributions or payments) or regulation 86 (changes of fund) is overdue to pay interest on that amount.

(2) The date on which any amount due under regulations 39 to 41 is overdue is the date one month from the date specified by the administering authority for payment.

(3) The date on which any amount due under regulation 42 (other than any extra charge payable under regulation 40 or 41 and referred to in regulation 42(1)(c)) is overdue is the day after the date when that payment is due.

(4) Interest due under paragraph (1) or payable to a person under regulation 45(5) (deduction and recovery of member's contributions), 46(2) (rights to return of contributions) or 51 (interest on late payment of certain benefits) must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

(5) Interest on any amount due in respect of regulation 86 shall be calculated in accordance with guidance issued by the Government Actuary.

### **Deduction and recovery of member's contributions**

45.—(1) An employing authority may deduct from a person's pay any contributions payable by him under these Regulations or the Benefits Regulations.

(2) Sums payable under regulation 19(2) or (5) (reserve forces) may be deducted by the member's former employer from any payment made to him under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(a), to the extent that they are payable in respect of the same period.

(3) The appropriate administering authority may recover any contributions or sum remaining due and not deducted under paragraph (1) or (2)—

- (a) as a simple contract debt in any court of competent jurisdiction; or
- (b) by deducting it from any payment by way of benefits to or in respect of the person in question under these Regulations or the Benefits Regulations.

(4) But the sums mentioned in paragraph (2) are only recoverable under paragraph (3) if unpaid for 12 months after the person ceases to perform relevant reserve forces service.

(5) If—

- (a) an employing authority deduct in error any amount in respect of contributions from a person's pay or any other sum due to him; and
- (b) the amount has not been repaid to him before the expiry of the period of one month beginning with the date of deduction,

the appropriate body must pay him interest on that amount; and the due date for the calculation of the interest under regulation 44(4) is the date of deduction.

(6) Where the employee's contributions have been paid into the appropriate fund, the repayment and interest must be made out of that fund.

(7) The "appropriate body" for the purpose of paragraph (5) is—

- (a) the appropriate administering authority where the employee's contributions have been paid into the appropriate fund; and
- (b) the person's employing authority where the employee's contributions have not yet been paid into the appropriate fund.

### **Rights to return of contributions**

46.—(1) If a member with less than three months' membership ceases to be employed by an employing authority or to be an active member without becoming entitled to a retirement pension he is entitled to be repaid his contributions from the appropriate fund.

(2) If repayment of the contributions has not been made before the expiry of the period of one year beginning with the date when active membership ceases, the person is entitled to interest on the repayment which should have been made, calculated as provided in regulation 44(4), the due date being the date when active membership ceased.

(3) A person who is entitled to a repayment of contributions under paragraph (1) may waive his entitlement for any period and, if he becomes an active member again before the expiry of that period, he shall cease to be so entitled (but without prejudice to any entitlement arising later under that paragraph in respect of those contributions).

(4) A person who continues as an active member in another employment he held concurrently with the employment in which he has ceased to be an active member may elect for an amount equal to the repayment to be treated as contributions to the Scheme as respects his membership in that concurrent employment, entitling him to a period of membership equal to the period of membership in the employment which has ceased, as reduced under regulation 7(3) of the Benefits Regulations if the employment which has ceased was part-time, multiplied by the fraction—  
whole-time rate of pay of the employment which has ceased

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(a) 1951c.65.

whole-time rate of pay of the employment which is continuing

where the rate of pay in each case is the annual rate of pay on the last day of employment in the employment that has ceased.

(5) A person who elects under paragraph (4) ceases to be entitled to that repayment (but without prejudice to any entitlement arising later in respect of the concurrent employment).

#### **Exclusion of rights to return of contributions**

**47.**—(1) A person is not entitled to a repayment under regulation 46 if—

(a) he becomes a member again within one month and one day;

(b) he left his employment because of—

(i) an offence of a fraudulent character, or

(ii) grave misconduct,

in connection with his employment; or

(c) regulation 79(2) (right to payment out of fund authority's pension fund) applies.

(2) But where paragraph (1)(b) applies, the employing authority may direct the payment out of the appropriate fund to him or, in a case of an offence of a fraudulent character, to him or to his spouse, civil partner, nominated cohabiting partner or any dependant of his, of a sum equal to all or part of his contributions.

(3) A person is not entitled to a repayment under regulation 46(1) if a transfer value has been credited to the appropriate fund for him.

(4) A person ceases to be entitled to such a repayment if he returns to local government employment before receiving it.

## **PART 5**

### **PAYMENT OF BENEFITS ETC**

#### **Pension increases under the Pension Schemes Act 1993**

**48.** Any increase in a pension required by reason of Chapter 3 of Part 4 of the Pension Schemes Act 1993(a) (protection of increases in guaranteed minimum pensions: anti-franking) must be paid from the appropriate fund.

#### **Contributions equivalent premiums**

**49.**—(1) Where an employing authority pays a contributions equivalent premium under section 55 of the Pension Schemes Act 1993 in respect of a member, that employer may recover or, if an administering authority, may retain from the appropriate fund a sum not exceeding the premium.

(2) But if the employing authority may recover or retain any sum under section 61 of that Act in respect of the premium, only the balance may be recovered or retained under paragraph (1).

(3) Where a contributions equivalent premium is refunded under regulation 54(1)(c) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (re-entry into employment which is contracted-out by reference to the same scheme)(b), the authority to which it is refunded must pay to the appropriate fund a sum equal to the amount of the premium.

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(a) 1993 c.48.

(b) S.I.1996/1172.

## **Commencement of pensions**

**50.**—(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable begins with the day after the date on which his employment ends.

(2) In the case of a member who leaves local government employment and is not entitled to immediate payment of retirement pension under any of regulations 16 to 20 of the Benefits Regulations and does not make a choice under regulation 30 of those Regulations (choice of early payment of pension), the first period for which any retirement pension is payable begins, unless he asks by notice in writing to his administering authority to defer payment, with his 65th birthday (but any such deferral shall not extend beyond the day before his 75th birthday).

(3) The first period for which any retirement pension under regulation 30 of the Benefits Regulations is payable begins with the day on which the member chooses under paragraph (1) of that regulation.

(4) The first period for which any retirement pension under regulation 31 (early payment of pension: ill-health) of the Benefits Regulations is payable begins on the date when the member became permanently incapable as determined under regulation 31 of those Regulations.

(5) The first period for which any survivor's benefits are payable under regulation 24 (survivor benefits: active members), 27 (children's pensions), 33 (survivor benefits: deferred members), 34 (children's pensions: deferred members), 36 (survivor benefits: pensioners) or 37 (children's pensions: pensioner members) of the Benefits Regulations on the death of a member begins with the day after the date on which he dies.

(6) A person who is entitled to a retirement pension under regulation 16 (retirement benefits) or 17 (retirement after normal retirement date) of the Benefits Regulations may choose to defer payment until a date no later than the day before his 75th birthday.

(7) He must notify his appropriate administering authority in writing of his choice of date and such notice must be given not less than three months before the beginning of the first period for which the benefit would otherwise be payable.

(8) A person may by notice in writing to his administering authority alter the date specified in a notice referred to in paragraph (7) or in any subsequent notice under this paragraph but any such subsequent notice must be given not less than three months before the date specified in the preceding notice in order for the change of payment date to take effect.

## **Interest on late payment of certain benefits**

**51.**—(1) Where all or part of a pension or lump sum payment due under these Regulations, the Benefits Regulations or the Earlier Regulations is not paid within the relevant period after the due date, the appropriate administering authority must pay interest on the unpaid amount to the person to whom it is payable (see regulation 44(4)).

(2) The relevant period is—

- (a) in the case of a pension under regulation 24(1), 27(1), 33(1) or 36(1) of the Benefits Regulations, the period ending one month after the date on which the administering authority receives notification of the member's death;
- (b) in the case of any other pension, one year;
- (c) otherwise, one month.

(3) The due date is—

- (a) in the case of a pension, the date on which it becomes payable;
- (b) in the case of a lump sum under the Transitional Regulations or regulation 21 of the Benefits Regulations (election for lump sum in lieu of pension), the benefit crystallisation date;
- (c) in the case of a death grant under regulation 23, 32 or 35 of the Benefits Regulations, the date on which the member dies or, where notification of death is received more than two years after the date of death, the date of notification; and



- (d) in the case of a payment of a lump sum under regulation 39 (commutation: small pensions) of the Benefits Regulations, the date of the commutation election or, if later, the nominated date (within the meaning of paragraph 7(3) of Part 1 of Schedule 29 to the Finance Act 2004).

### **Payments due in respect of deceased persons**

**52.**—(1) Paragraph (2) applies if, when a person dies, the total amount due to his personal representatives under the Scheme (including anything due to him at his death) (“the amount due”) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965(a) and applying in relation to his death.

(2) The appropriate administering authority may pay the whole or part of the amount due from its pension fund to—

- (a) his personal representatives, or
  - (b) any person or persons appearing to the authority to be beneficially entitled to the estate, without the production of probate or letters of administration of his estate.
- (3) Such a payment discharges that authority from accounting for the amount paid.

### **Non-assignability**

**53.**—(1) Every benefit to which a person is entitled under the Scheme is payable to or in trust for him.

(2) No such benefit is assignable or chargeable with his or any other person’s debts or other liabilities.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with an income payments order under section 310 or 310A of the Insolvency Act 1986(b).

## **PART 6**

### **DETERMINATION OF QUESTIONS AND DISPUTES**

#### **Interpretation of Part**

**54.** In this Part a reference to the employing authority or the appropriate administering authority of a prospective member is a reference to the body that would be his employer or appropriate administering authority if he were to become an active member in the employment by virtue of which he would be eligible to join the Scheme.

#### **First instance decisions - general**

**55.**—(1) Any question concerning the rights or liabilities under the Scheme of any person other than an employing authority must be decided in the first instance by the person specified in this regulation.

(2) In relation to any employment in which a person is a member or prospective member, the appropriate administering authority must decide—

- (a) any question concerning his previous service or employment; and
- (b) any question about crediting additional pension.

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(a) 1965 c.32.

(b) 1986 c.45; section 310 was amended by the Pensions Act 1995 (c. 26), section 122, the Welfare Reform and Pensions Act 1999 (c.30), section 18 and the Enterprise Act 2002 (c. 40), section 259 and section 310A was inserted by the Enterprise Act 2002, section 260.

(3) Such a decision must be made as soon as is reasonably practicable after the person becomes a member in the employment.

(4) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount.

(5) That decision must be made as soon as is reasonably practicable after the event by virtue of which the entitlement arises or may arise.

(6) Any question whether a person is entitled to a benefit under the Scheme must be decided by the employing authority which last employed him.

(7) That decision must be made as soon as is reasonably practicable after the earlier of—

(a) the date the employment ends, or

(b) the date specified in the notification mentioned in regulation 14(4).

(8) In paragraphs (4) and (6) “benefit” includes a return of contributions.

(9) Any question concerning what rate of contribution a member is liable to pay to the appropriate fund must be decided by his employing authority.

(10) Other questions in relation to any member or prospective member must be decided by his employer as soon as is reasonably practicable after he becomes a member or a material change affects his employment.

#### **First instance determinations: ill-health**

**56.**—(1) An independent registered medical practitioner from whom a certificate is obtained under regulation 20(6) of the Benefits Regulations (early leavers: ill-health) must be in a position to declare that—

(a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and

(b) he is not acting, and has not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case,

and he must include a statement to that effect in his certificate.

(2) If the employing authority is not the member’s appropriate administering authority, it must first obtain that authority’s approval to its choice of registered medical practitioner for the purposes of regulation 20 and 31 of the Benefits Regulations.

(3) The employing authority and the independent registered medical practitioner must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation or, in the case of the employing authority, when making a determination under regulation 20 of the Benefits Regulations.

#### **Notification of first instance decisions**

**57.**—(1) Every person whose rights or liabilities are affected by a decision under regulation 55 must be notified of it in writing by the body which made it as soon as is reasonably practicable.

(2) A notification of a decision that the person is not entitled to a benefit must contain the grounds for the decision.

(3) A notification of a decision about the amount of a benefit must contain a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

(a) refer to the rights available under regulations 58 and 60;

(b) specify the time limits within which the rights under those regulations may be exercised; and

- (c) specify the job title and the address of the person to whom applications under regulation 58 may be made.

### **Applications to resolve disagreements**

**58.**—(1) This regulation applies where there is a disagreement about a matter in relation to the Scheme between a member (or an alternative applicant) and an employing authority or the administering authority.

(2) These persons are alternative applicants—

- (a) a widow, widower, surviving civil partner or nominated cohabiting partner (as defined in regulation 25 of the Benefits Regulations) of a deceased member;
- (b) a dependant of a deceased member or any other person to whom benefits in respect of him may be paid;
- (c) a prospective member;
- (d) a person who ceased to be a member, or to fall within any of sub-paragraphs (a) to (c) or (e), during the period of six months ending with the date of the application; and
- (e) in the case of a disagreement relating to the question whether a person claiming to be a member or to fall within any of sub-paragraphs (a) to (d) does so, the claimant.

(3) The member or, as the case may be, the alternative applicant may apply to—

- (a) the person specified under regulation 57(5)(c) to give a decision on the disagreement; or
- (b) the appropriate administering authority for that authority to refer the disagreement to that person for a decision.

(4) An application for a decision must—

- (a) set out the applicant's full name, address and date of birth;
- (b) include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;
- (c) be signed by or on behalf of the applicant; and
- (d) be accompanied by a copy of any written notification under regulation 57.

(5) An application by—

- (a) a member or prospective member;
- (b) a person who ceased to be a member or prospective member during the period of six months ending with the date of the application; or
- (c) a person claiming to be a person within sub-paragraph (a) or (b),

must also set out his national insurance number (if any) and the name of his employing authority.

(6) An application by any other person must also set out—

- (a) his relationship to the member; and
- (b) the member's full name, address, date of birth and national insurance number (if any) and the name of his employing authority.

(7) An application must be made before the end of—

- (a) the period of six months beginning with the relevant date; or
- (b) such longer period as the person giving the decision on the disagreement considers reasonable.

(8) The relevant date is—

- (a) in the case of a disagreement relating to a decision under regulation 55, the date notification of the decision is given under regulation 57; and
- (b) in any other case, the date of the act or omission which is the cause of the disagreement or, if there is more than one, the last of them.

(9) Paragraph (7)(b) does not apply where an appeal has been made under regulation 63(1) in respect of a matter that is the subject of an application under this regulation.

#### **Notice of decisions on disagreements**

**59.**—(1) A decision on a disagreement to which an application under regulation 58 relates must be given by notice in writing to—

- (a) the applicant;
- (b) the employing authority; and
- (c) if the employing authority is not the appropriate administering authority, to that authority, by notice in writing before the expiry of the period of two months beginning with the date the application was received.

(2) But, if no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out —

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision (“the expected decision date”).

(3) A notice under paragraph (1) must include—

- (a) a statement of the decision;
- (b) a reference to any legislation or provisions of the Scheme on which the person making the decision relied;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (d) a reference to the right of the applicant to refer the disagreement for reconsideration by the appropriate administering authority under regulation 60 and to the time within which the applicant may do so; and
- (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme that remains unresolved including the address at which it may be contacted.

#### **Reference of disagreement for reconsideration by appropriate administering authority**

**60.**—(1) This regulation applies where an application about a disagreement has been made under regulation 58 and—

- (a) notice of a decision has been given under regulation 59(1); or
- (b) an interim reply has been sent under regulation 59(2) but no such notice has been given before the expiry of the period of one month beginning with the expected decision date; or
- (c) no such notice has been given or interim reply sent before the expiry of the period of three months beginning with the date the application was made.

(2) The applicant under regulation 58 may, before the expiry of the period of six months beginning with the relevant date, make an application to the appropriate administering authority to reconsider the disagreement.

(3) The relevant date is—

- (a) in a case falling within paragraph (1)(a), the date of the notice given under regulation 59(1);
- (b) in a case falling within paragraph (1)(b), the date with which the period mentioned in that sub-paragraph expires; and
- (c) in a case falling within sub-paragraph (1)(c), the date with which the period mentioned in that sub-paragraph expires.

(4) The application must—

- (a) set out the applicant's full name, address and date of birth;
  - (b) set out details of the grounds on which it is made;
  - (c) include a statement that the applicant wishes the disagreement to be reconsidered by the appropriate administering authority;
  - (d) be accompanied by a copy of any written notification under regulation 57; and
  - (e) be signed by or on behalf of the applicant.
- (5) An application by a member or prospective member or a person claiming to be such must also set out his national insurance number (if any) and the name of his employing authority.
- (6) An application by any other person must also set out—
- (a) his relationship to the member; and
  - (b) the member's full name, address, date of birth and national insurance number (if any) and the name of his employing authority.
- (7) Where notice of a decision on the disagreement has been given under regulation 59, the application must also—
- (a) state why the applicant is dissatisfied with that decision; and
  - (b) be accompanied by a copy of that notice.
- (8) The appropriate administering authority must determine—
- (a) the procedure to be followed when exercising its functions under this regulation;
  - (b) the manner in which those functions are to be exercised.
- (9) For the purposes of this regulation, the appropriate administering authority is—
- (a) in the case of an applicant who is a member or prospective member, the administering authority which is or was his last appropriate administering authority for the other purposes of these Regulations; and
  - (b) in the case of an applicant who is the widow, widower or surviving civil partner, nominated cohabiting partner or dependant of a deceased member, the administering authority which was that member's appropriate administering authority.

### **Notice of decisions on reconsideration of disagreement**

**61.**—(1) The appropriate administering authority must give its decision on an application under regulation 60 by notice in writing—

- (a) to the applicant; and
- (b) if that authority is not the employing authority, to the employing authority,

before the expiry of the period of two months beginning with the date the application was received.

(2) But, if no such notice is given before the expiry of that period, an interim reply must immediately be sent to those parties setting out —

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision.

(3) A notice under paragraph (1) must include—

- (a) a statement of the decision;
- (b) in a case where a decision was given under regulation 59, an explanation of whether and, if so, the extent to which that decision is confirmed or replaced;
- (c) a reference to any legislation or provisions of the Scheme on which the authority relied;
- (d) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme which remains unresolved; and

- (f) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes Act 1993; and
- (g) the addresses at which the Pensions Advisory Service and the Pensions Ombudsman may be contacted.

### **Rights of representation**

**62.**—(1) An application under regulation 58 or 60 may be made or continued on behalf of the applicant by a representative nominated by him.

(2) Where a person who has the right to make or has made such an application dies, the application may be made or continued on his behalf by his personal representative.

(3) Where such a person is a minor or is or becomes incapable of acting for himself, the application may be made or continued on his behalf by a member of his family or some other person suitable to represent him.

(4) Where a representative is nominated before an application is made, the application must specify his full name and address and whether that address is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used the representative must nevertheless be sent a copy of—

- (a) a notice under regulation 59(1) or 61(1); or
- (b) an interim reply under regulation 59(2) or 61(2).

### **Appeals by administering authorities**

**63.**—(1) This regulation applies where an employing authority—

- (a) has decided, or failed to decide, any question falling to be decided by that employer under regulation 55 (otherwise than in the exercise of a discretion); and
- (b) is not an administering authority.

(2) The administering authority maintaining the pension fund to which the employing authority pays contributions may appeal to the Secretary of State to decide the question.

(3) Such an appeal must be made by notice in writing given before the end of—

- (a) the period of six months beginning with the relevant date; or
- (b) such longer period as the Secretary of State considers reasonable.

(4) The relevant date is—

- (a) in the case of an appeal relating to a decision notified under regulation 57(1), the date of the notification of the decision; and
- (b) in the case of an appeal relating to a failure to decide any question, the date of that failure.

(5) For the purposes of paragraph (4)(b), an employing authority is to be taken to have failed to decide a question at the expiry of the period of three months beginning with the date on which the administering authority has requested a decision in writing.

(6) The Secretary of State must issue her decision on the appeal by notice in writing to the appellant and to any other person appearing to her to be affected by it.

(7) Paragraph (8) applies where any person other than the administering authority—

- (a) has made an application under regulation 58 or 60 which has not been determined in respect of any of the matters which are the subject of an appeal under this regulation; or
- (b) makes such an application—
  - (i) at the same time as such an appeal is made, or
  - (ii) after such an appeal is made and before it is determined.

- (8) The appeal by the administering authority must be stayed—
- (a) pending notification of a decision under regulation 59 or 61 in respect of the application under regulation 58 or 60; or
  - (b) until the application is withdrawn.

## PART 7

### POLICY STATEMENTS AND INFORMATION

#### **Exchange of information by authorities**

- 64.**—(1) An employing authority which is not an administering authority must—
- (a) inform the appropriate administering authority of all decisions made by the employer under Part 6 or this Part concerning members; and
  - (b) give that authority such other information as it requires for discharging its Scheme functions.
- (2) If—
- (a) an administering authority makes any decision under Part 6 or this Part about a person for whom it is not the employing authority; and
  - (b) information about the decision is required by his employing authority for discharging that employer’s Scheme functions,

that authority must give that employer that information.

#### **Pension administration strategy**

**65.**—(1) An administering authority may prepare a written statement of the authority’s policies in relation to such of the matters mentioned in paragraph (2) as it considers appropriate (“its pension administration strategy”) and, where it does so, paragraphs (3) to (7) apply.

- (2) The matters are—
- (a) procedures for liaison and communication with employing authorities in relation to which it is the administering authority (“its employing authorities”);
  - (b) the establishment of levels of performance which the administering authority and its employing authorities are expected to achieve in carrying out their Scheme functions by—
    - (i) the setting of performance targets,
    - (ii) the making of agreements about levels of performance and associated matters, or
    - (iii) such other means as the administering authority considers appropriate;
  - (c) procedures which aim to secure that the administering authority and its employing authorities comply with statutory requirements in respect of those functions and with any agreement about levels of performance;
  - (d) procedures for improving the communication by the administering authority and its employing authorities to each other of information relating to those functions;
  - (e) the circumstances in which the administering authority may consider giving written notice to any of its employing authorities under regulation 43(2) on account of that authority’s unsatisfactory performance in carrying out its Scheme functions when measured against levels of performance established under sub-paragraph (b);
  - (f) the publication by the administering authority of annual reports dealing with—
    - (i) the extent to which that authority and its employing authorities have achieved the levels of performance established under sub-paragraph (b), and

- (ii) such other matters arising from its pension administration strategy as it considers appropriate; and
  - (g) such other matters as appear to the administering authority, after consulting its employing authorities and such other persons as it considers appropriate, to be suitable for inclusion in that strategy.
- (3) An administering authority must—
- (a) keep its pension administration strategy under review; and
  - (b) make such revisions as are appropriate following a material change in its policies in relation to any of the matters contained in the strategy.
- (4) In preparing or reviewing and making revisions to its pension administration strategy, an administering authority must consult its employing authorities and such other persons as it considers appropriate.
- (5) An administering authority must publish—
- (a) its pension administration strategy; and
  - (b) where revisions are made to it, the strategy as revised.
- (6) When an administering authority publishes its pension administration strategy, or that strategy as revised, it must send a copy of it to each of its employing authorities and to the Secretary of State.
- (7) An administering authority and its employing authorities must have regard to the current version of any pension administration strategy when carrying out their Scheme functions.
- (8) In this regulation references to the functions of an administering authority include, where applicable, its functions as an employing authority.

#### **Statements of policy about exercise of discretionary functions**

**66.—**(1) Each employing authority must prepare a written statement of its policy in relation to the exercise of its functions under regulations 12 (power of employing authority to increase total membership of active members), 13 (power of employing authority to award additional pension), 18 (flexible retirement) and 30 (choice of early payment of pension) of the Benefits Regulations.

(2) Before the expiry of the period of three months beginning with the commencement date, each employing authority must send a copy of its statement to each relevant administering authority and must publish its statement.

(3) An employing authority must—

- (a) keep its statement under review; and
- (b) make such revisions as are appropriate following a change in its policy.

(4) Before the expiry of the period of one month beginning with the date any such revisions are made, each employing authority must send a copy of its revised statement to each relevant administering authority and must publish its statement as revised.

(5) In preparing, or reviewing and making revisions to, its statement, an employing authority must have regard to the extent to which the exercise of any of the functions mentioned in paragraph (1) in accordance with its policy could lead to a serious loss of confidence in the public service.

(6) In this regulation, a relevant administering authority, in relation to an employing authority, is any authority which is an appropriate administering authority for that employer's employees.

#### **Statements of policy concerning communications with members and employing authorities**

**67.—**(1) This regulation applies to the written statement prepared and published by an administering authority under regulation 106B of the 1997 Regulations (a).

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(a) Regulation 106B was inserted by S.I.2005/3199.



- (2) The authority—
  - (a) must keep the statement under review,
  - (b) make such revisions as are appropriate following a material change in its policy on any of the matters mentioned in paragraph (3); and
  - (c) if revisions are made, publish the statement as revised.
- (3) The matters are—
  - (a) the provision of information and publicity about the Scheme to members, representatives of members and employing authorities;
  - (b) the format, frequency and method of distributing such information or publicity; and
  - (c) the promotion of the Scheme to prospective members and their employers.

### **Annual benefit statements**

**68.**—(1) An administering authority must issue an annual benefit statement to each of its active, deferred and pension credit members.

(2) The first such statement must be issued on or before 1st April 2010 and subsequent statements must be issued on or before 1st April in each year after that year.

(3) A statement must contain an illustration of the amount of benefit entitlement, in respect of the rights that may arise under the Scheme, which—

- (a) has been accrued by the member at the relevant date; and
- (b) in the case of an active member, is capable of being accrued by him if he remains in the Scheme until his normal retirement age.

(4) The illustration must be calculated—

- (a) in the case of active members, on the member’s pay (or, as respects part-time employees, the whole-time equivalent) for the 12 month period ending with the relevant date;
- (b) in the case of deferred members, on the member’s final pay; and
- (c) in the case of pension credit members, in accordance with regulation 153 of the 1997 Regulations, but with the substitution in paragraph (1) of that regulation of “the relevant date” for “normal benefit age”.

(5) The relevant date is—

- (a) 31st March before the date that the statement is issued; or
- (b) such later date as the authority may choose.

### **Information to be supplied by employees**

**69.**—(1) Before the expiry of the period of three months beginning with the date a person becomes a member, the employing authority must ask him in writing for the documents specified in paragraph (2).

(2) Those documents are—

- (a) a statement in writing listing all the person’s previous periods of employment; and
- (b) copies of all notifications previously given to him under these Regulations and the Earlier Regulations.

(3) It must also ask for those documents before the expiry of the period of three months beginning with the occurrence of any change as respects his employment which is material for the Scheme.

(4) A request under paragraph (1) or (3) must include a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining his rights under the Scheme.

(5) The employing authority need not request any documents if satisfied that it, or the appropriate administering authority (if different), already has all material information.

## PART 8

### SPECIAL ADJUSTMENTS

#### **Statements of policy concerning abatement of retirement pensions in new employment**

**70.**—(1) Each administering authority must formulate and keep under review its policy concerning abatement (that is, the extent, if any, to which the amount of retirement pension payable to a member from any pension fund maintained by it under the Scheme should be reduced (or whether it should be extinguished) where the member has entered a new employment with a Scheme employer, other than one in which he is eligible to belong to a teachers' scheme).

(2) Before formulating that policy, an administering authority must consult with the authorities who employ active members for whom it is the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with 1st April 2008, each administering authority shall publish a statement as to the policy that it currently applies where a member who is entitled to a retirement pension enters such a new employment on or after that date.

(4) Where, as a result of reviewing its policy concerning abatement, an administering authority determines to amend the policy, it must publish a statement of the amended policy before the expiry of the period of one month beginning with the date of its determination.

(5) In formulating its policy concerning abatement, an administering authority must have regard—

- (a) to the level of potential financial gain at which it wishes abatement to apply;
- (b) to the administrative costs which are likely to be incurred as a result of abatement in the different circumstances in which it may occur; and
- (c) to the extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.

(6) In paragraph (5)(a) the reference to financial gain is a reference to the financial gain which it appears to the administering authority may be obtained by a member as a result of his entitlement both to a pension and to pay under the new employment.

#### **Application of abatement policy to individual cases**

**71.**—(1) Where a member who is entitled to the payment of a retirement pension proposes to enter a new employment with an employing authority, he must inform the employer about that entitlement.

(2) If such a member enters such a new employment, he must immediately notify in writing the body from whom he has become entitled to receive the pension.

(3) Paragraphs (1) and (2) do not apply where the new employment is employment in which the person is eligible to belong to a teachers' scheme.

(4) The authority which is the member's appropriate administering authority as respects the retirement pension to which he is entitled—

- (a) must have regard to regulation 12 of the Transitional Regulations;
- (b) must apply to the member the policy published by it under regulation 70; and
- (c) may reduce the annual rate of that pension or, as the case may be, may cease to pay it, during the period while the member holds the new employment, in accordance with that policy.

(5) A retirement pension paid following a request under regulation 18(1) of the Benefits Regulations (flexible retirement) is not subject to abatement under regulation 70 in respect of any subsequent employment with the person who is his employer at the date of his request.

### **Forfeiture of pension rights after conviction of employment-related offences**

**72.—**(1) If a member is convicted of a relevant offence, his former employing authority may apply to the Secretary of State who may issue a forfeiture certificate.

(2) A relevant offence is an offence, committed in connection with an employment in which the person convicted is a member, and because of which he has left that employment.

(3) Where a forfeiture certificate is issued, the member's former employing authority may direct that any of the rights in respect of him under the Benefits Regulations, these Regulations or the Earlier Regulations as respects his previous membership are forfeited.

(4) A forfeiture certificate is a certificate that the offence—

(a) was gravely injurious to the State, or

(b) is liable to lead to serious loss of confidence in the public service.

(5) If the former employing authority incurred loss as a direct consequence of the relevant offence, it may only give a direction under paragraph (3) if it is unable to recover its loss under regulation 74 or 76 or otherwise, except after an unreasonable time or at disproportionate cost.

(6) A direction under paragraph (3) may only be given if an application for a forfeiture certificate has been made by the former employing authority before the expiry of the period of three months beginning with the date of the conviction.

(7) Where a former employing authority applies for a forfeiture certificate, it must at the same time send the convicted person and the appropriate administering authority a copy of the application.

### **Interim payments directions**

**73.—**(1) If—

(a) a person leaves an employment in which he was a member, because of an offence in connection with that employment; and

(b) a forfeiture certificate has been issued under regulation 72(1) in respect of that offence,

his former employing authority may give an interim payments direction to the appropriate administering authority.

(2) But it may not give such a direction if it has—

(a) notified him of a decision under regulation 55 (first instance decisions) on any question as to entitlement to benefit; or

(b) given any direction under regulation 72(3) (“a forfeiture direction”).

(3) An interim payments direction is a direction to make interim payments to any person who appears to the former employing authority to be a person who would be entitled to receive payment of a benefit under the Scheme if no forfeiture direction were given.

(4) The person to whom payments must be made and the amounts must be specified in the direction.

(5) The amounts must not exceed the amounts which the person specified would be entitled to be paid if no forfeiture direction were given.

(6) An interim payments direction is not a decision under regulation 55 as to any person's entitlement to a benefit.

(7) Payments in accordance with an interim payments direction shall be deemed to be payments in respect of a benefit to which the recipient was entitled (regardless of any contrary forfeiture direction or decision under regulation 55).

### **Recovery or retention where former member has misconduct obligation**

74.—(1) This regulation applies where a person—

- (a) has left an employment, in which he was or had at some time been a member, in consequence of a criminal, negligent or fraudulent act or omission on his part in connection with that employment;
- (b) has incurred some monetary obligation, arising out of that act or omission, to the body that was his employing authority in that employment; and
- (c) is entitled to benefits under the Benefits Regulations.

(2) The former employing authority may recover or retain out of the appropriate fund—

- (a) the amount of the monetary obligation; or
- (b) the value at the time of the recovery or retention of all rights in respect of the former employee under the Scheme with respect to his previous membership (as determined by an actuary),

whichever is less.

(3) The rights specified in paragraph (2) (b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of AVCs or SCAVCs.

(4) The former employing authority must give the former employee—

- (a) not less than three months' notice of the amount to be recovered or retained under paragraph (2); and
- (b) a certificate showing the amount recovered or retained, how it is calculated, and the effect on his benefits or prospective benefits.

(5) If there is any dispute over the amount of the monetary obligation specified in paragraph (1)(b), the former employing authority may not recover or retain any amount under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbitrator.

### **Protection of guaranteed minimum pension rights**

75.—(1) The power—

- (a) to give directions under regulation 72(3); or
- (b) to recover or retain amounts under regulation 74(2),

may not be exercised so as to deprive a person of his guaranteed minimum pension or any widow's, widower's or surviving civil partner's guaranteed minimum pension.

(2) But such a power may be so exercised if the person left his employment—

- (a) because of the offence of treason; or
- (b) because of one or more offences under the Official Secrets Act 1911 to 1989(a) for which the former member has been sentenced on the same occasion—
  - (i) to a term of imprisonment of at least 10 years, or
  - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years.

### **Transfer of sums from the pension fund to compensate for former member's misconduct**

76.—(1) This regulation applies where—

- (a) a person has left an employment in which he was a member because of—
  - (i) an offence involving fraud, or
  - (ii) grave misconduct,

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(a) 1911 c.28 and 1989 c.6.

- in connection with that employment;
- (b) his former employing authority in that employment has suffered direct financial loss by reason of the offence or misconduct; and
  - (c) either—
    - (i) the former employee became entitled to benefits under the Benefits Regulations and these Regulations or the 1997 Regulations and a forfeiture direction has been given, or
    - (ii) he did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 46 (whether or not he has waived his right).
- (2) If the former employing authority is an administering authority, it may transfer an appropriate amount from its pension fund to the appropriate fund or account.
- (3) Otherwise, the appropriate administering authority must pay the former employing authority an appropriate amount out of the pension fund, if requested to do so.
- (4) An appropriate amount is an amount not exceeding—
- (a) the amount of the direct financial loss, or
  - (b) the amount of any contributions which could have been returned to the former employee, or paid to his spouse, civil partner, nominated cohabiting partner or a dependant, under regulation 47(2) of these Regulations or regulation 88(2) of the 1997 Regulations, less the amount of any contributions which have been so returned or paid,
- whichever is the less.
- (5) If after making a payment under paragraph (3) the appropriate administering authority is required to make any transfer payment under Chapter 4 or Chapter 5 of Part 4 of the Pension Schemes Act 1993 or to make a payment under regulation 86 (changes of fund) for a former employee, the former employing authority must repay it, if requested to do so.

## PART 9

### TRANSFERS

#### Interpretation of Part

##### 77. In this Part—

“the 1993 Act” means the Pension Schemes Act 1993(a);

“Chapters 4 and 5” means Chapters 4 and 5 of Part 4 of that Act (transfer values and early leavers);

“club scheme” means an occupational pension scheme which—

- (a) (except where it is established and maintained in the Channel Islands or the Isle of Man) is a registered scheme;
- (b) provides benefits calculated by reference to final pay;
- (c) is open to new participants, or is a closed scheme the trustees or managers of which also provide an open scheme which is a club scheme for new employees of the same employer and of the same grade or level of post as the participants in the closed scheme; and
- (d) complies with reciprocal arrangements for the payment and receipt of transfer values with the schemes made under section 7 of the Superannuation Act 1972(b).

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(a) 1993 c.48; Part 5 was inserted by the Pensions Act 2004 (c.35), section 264.  
 (b) 1972 c.11.

## **Application of Chapter 4 etc**

**78.**—(1) For the purposes of—

- (a) sections 12C (requirements as to transfer, commutation etc. for contracting-out), 19 (discharge of liability) and 20 (transfer of accrued rights) of the 1993 Act;
- (b) Chapters 4 and 5; and
- (c) any regulations made under any of those sections or Chapters 4 and 5,

the managers of the Scheme in relation to a member are the fund authority.

(2) A member with a period of membership of under three months shall have the same rights to a cash transfer sum as if the three month condition in section 101AA(1)(b)(i) of the 1993 Act<sup>(a)</sup> were satisfied and Chapter 5 applied to him.

(3) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(b)</sup> (pre-1986 leavers), Chapter 4 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service.

(4) Regulation 5 of those Regulations (treatment of a number of employments as a single employment) only applies if the employments are treated as a single employment for the purposes of the Scheme.

(5) Regulation 10(2)(a) of those Regulations (interest on late payment of cash equivalents) does not apply where the member has required the cash equivalent to be paid to a club scheme.

(6) Regulation 18 of those Regulations (termination of pensionable service in certain circumstances to be disregarded) only applies if, in any case, no election has been made under regulation 16(1) (re-employed and rejoining deferred members), or regulation 17 (concurrent employments) to have the service which terminated aggregated with later or concurrent service or no election has been made under regulation 46(4) (rights to return of contributions).

(7) For this regulation and regulation 79—

- (a) the fund authority, in relation to a member, is the body maintaining the pension fund to which he was contributing immediately before his pensionable service terminated; but
- (b) if that fund has been closed, the fund authority is the body which would be liable to pay him his pension for that employment if he had been entitled to receive payment of such a pension when his pensionable service terminated.

(8) In this regulation “pensionable service” has the same meaning as in section 70 of the 1993 Act.

## **Rights to payment out of fund authority’s pension fund**

**79.**—(1) A member may apply for a transfer under Chapter 4 or 5 (as modified by regulation 78) and where he does so the amount of any transfer payment due in respect of the member under the relevant Chapter may only be paid by the fund authority from its pension fund if the transfer payment is a recognised transfer (within the meaning of section 169 of the Finance Act 2004<sup>(c)</sup>).

(2) Where such a transfer payment is to be or has been paid from a fund, no other payment or transfer of assets may be made from the fund as respects the accrued rights covered by the transfer payment.

(3) Paragraph (2) overrides anything to the contrary in—

- (a) the Former Regulations;
- (b) any local Act scheme;
- (c) the Earlier Regulations; or

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(a) Section 101AA was inserted by section 264 of the Pensions Act 2004.  
(b) S.I.1996/1847.  
(c) 2004 c.12.

- (d) any other provision of these Regulations, the Benefits Regulations or the Transitional Regulations.

#### **Contracting-out requirements affecting transfers out**

**80.**—(1) There must be deducted from the transfer payment to be made in respect of any person—

- (a) the amount of any contributions equivalent premium payable pursuant to section 55 of the 1993 Act; or
- (b) an amount sufficient to meet the liability in respect of his contracted-out rights.

(2) But the amount mentioned in paragraph (1) may not be deducted where the transfer payment is made to a registered pension scheme which is contracted-out.

(3) Where the amount mentioned in paragraph (1)(a) is deducted, the appropriate administering authority must use that amount to pay the premium.

(4) Where the amount mentioned in paragraph (1)(b) is deducted, the appropriate administering authority may use the amount in preserving the liability mentioned in that paragraph in the appropriate fund, unless the member wishes a transfer payment in respect of it to be paid to the trustees or managers of a non-contracted out registered pension scheme.

(5) Contracted-out rights, in relation to a member, are—

- (a) his and his surviving spouse's or civil partner's or nominated cohabiting partner's rights to guaranteed minimum pensions, and
- (b) his section 9(2B) rights (as defined in regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996(a)).

#### **Bulk transfers (transfers of undertakings etc.)**

**81.**—(1) This regulation applies where—

- (a) two or more members' active membership ends on their joining a registered non-local government scheme ("the new scheme");
- (b) it is agreed by—
  - (i) the members' appropriate administering authority,
  - (ii) the members' employing authorities (if different), and
  - (iii) the trustees or managers of the new scheme,that a payment should be made under this regulation; and
- (c) the members—
  - (i) agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5, and
  - (ii) waive any rights they might have under those Chapters by virtue of the cessation of their active membership.

(2) The appropriate administering authority must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which he would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5, as it applies by virtue of regulation 78 (assuming in any case where the member would not be entitled to such a payment that he was).

(3) The appropriate administering authority must provide each member with sufficient information in writing to check that fact before he agrees as mentioned in paragraph (1)(c).

(4) The appropriate administering authority must—

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(a) S.I.1996/1172. The definition of "section 9(2B) rights" was substituted by S.I.1997/786 and amended by S.I.1999/3198.

- (a) set aside (whether in cash or in assets or both) such part of the appropriate fund (“the transfer payment”) as an actuary appointed by the authority and an actuary appointed by the trustees or managers of the new scheme for the purpose may agree as appropriate for the acquisition of such rights in that scheme as they may so agree; and
- (b) pay or transfer it to the trustees or managers of the new scheme for the benefit of the relevant members.

(5) The appropriate administering authority must certify to the new scheme’s trustees or managers the amount included in the transfer payment which represents each member’s contributions and interest on them.

(6) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made from the pension fund by reason of membership covered by the transfer payment.

(7) Paragraph (6) overrides anything to the contrary in—

- (a) the Former Regulations;
- (b) any local Act scheme;
- (c) the Earlier Regulations; or
- (d) these Regulations or the Benefits Regulations.

### **Calculation of amount of transfer payment under regulation 81**

**82.**—(1) The amount of the transfer payment to be paid under regulation 81 is the amount determined by an actuary appointed by the members’ appropriate administering authority to be equal to the value at the date they join the new scheme of the actual and potential liabilities payable from its fund which have then accrued in respect of the members and the persons who are or may become entitled to benefits under the Scheme through them.

(2) The actuary may make such adjustments as he thinks fit in calculating that amount and, in particular, as respects the period from that date to the date of actual payment of the transfer value.

(3) He must specify in his valuation the actuarial assumptions he has used in making it.

(4) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund.

(5) But if there is more than one employing authority involved, each shall bear such part of the costs as the actuary determines to be appropriate.

### **Inward transfers of pension rights**

**83.**—(1) If a person who becomes an active member has relevant pension rights, he may request his fund authority to accept a transfer value for some or all of those rights from the relevant transferor.

(2) Relevant pension rights are accrued rights under a registered scheme but do not include rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit.

(3) Accrued rights include rights to preserved benefits and rights appropriately secured under section 19 of the 1993 Act.

(4) For the purposes of this regulation and regulation 84, the fund authority, in relation to a transferring person, is the body maintaining the pension fund of the Scheme to which he is contributing.

(5) The relevant transferor is the trustees or managers of the scheme under which the transferring person’s relevant pension rights arise.

(6) But the relevant transferor for the rights specified in paragraph (3) is the trustees or managers of the scheme, or the insurance company, to which a payment in respect of his accrued rights has been made.



(7) A request from a transferring person under paragraph (1) must be made by notice in writing.

(8) That notice must be given before the expiry of the period of 12 months beginning with the date he became an active member (or such longer period as his employer may allow).

(9) Where a request under paragraph (1) is duly made the fund authority may accept the transfer value and credit it to its pension fund.

### **Right to count credited period**

**84.**—(1) Where a transfer value has been accepted under regulation 83, the member may count the credited period as a period of membership for these Regulations.

(2) If the transfer value—

(a) is paid by the trustees or managers of a club scheme and the member has made the request under regulation 83 before the expiry of 12 months beginning with the date he became an active member;

(b) represents all the rights relating to the member in that scheme, and

(c) has been calculated—

(i) in a case where Chapter 4 or 5 applies, in accordance with that Chapter, and

(ii) otherwise, in a manner consistent with that prescribed under the relevant Chapter,

the credited period is the period which, if used to calculate a transfer value to be paid by the Scheme, would produce an amount equal to the transfer value received.

(3) If paragraph (2) does not apply, the credited period must be calculated in a manner consistent with Chapter 4 or 5.

(4) In calculating the credited period under paragraph (3) due allowance must be given for the expected increase in the member's pensionable pay between the date he became a member (or, if more than twelve months later, the date on which the transfer value is received) and his normal retirement age.

(5) The fund authority must give the member a written notice—

(a) stating the period of membership he may count under paragraph (1); and

(b) containing a conspicuous statement giving the address from which further information may be obtained.

### **Community scheme transferees**

**85.**—(1) The persons mentioned in paragraph (2) are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

(2) Those persons are—

(a) a person who became employed by a Community institution after having been employed in local government employment; or

(b) a surviving spouse, civil partner, nominated cohabiting partner, dependant or child of such a person.

(3) In this regulation—

(a) “Community institution” means a body treated as one of the Communities’ institutions for the purposes of the Communities’ scheme; and

(b) “the Communities’ scheme” means the pension scheme provided for officials and other servants of the Communities in accordance with regulations adopted by the Council of the European Communities.

### **Changes of fund**

**86.**—(1) This regulation applies where —

- (a) a pension fund becomes an active member's appropriate fund;
- (b) immediately before it does so, another fund was his appropriate fund; and
- (c) in a case where regulation 16 (re-employed and rejoining deferred members), 17 (concurrent employment) or 46(4) (rights to return of contributions) applies to him, he has made a choice or election under the relevant regulation.

(2) Where the member's appropriate administering authority has also changed, the authority which has ceased to be the member's appropriate administering authority must make such payment to his later appropriate administering authority as is indicated in guidance issued by the Government Actuary for the purposes of this regulation.

(3) Where paragraph (2) applies as respects 10 or more members by virtue of a single event, the amount of the payment under that paragraph shall be determined by agreement between the actuary appointed by the administering authority by which the payment must be made and the actuary appointed by the administering authority to which it must be made.

(4) Where the actuaries cannot agree on the amount within 12 months of the date of transfer or, where there is more than one date of transfer, the date of the last transfer which relates to the single event—

- (a) the matter shall be referred to a third actuary, chosen by agreement between the actuaries or, in default of agreement, by the President of the Institute of Actuaries; and
- (b) his determination shall be final.

(5) The costs of determining the amount to be transferred shall be paid in equal shares by the members' former appropriate fund and the members' new appropriate fund.

(6) Any payment under paragraph (2) must be credited to the new appropriate administering authority's fund.

(7) Where the member's appropriate administering authority has not changed, it must arrange for a payment such as is indicated in guidance issued by the Government Actuary for the purposes of this regulation to be made from the member's former appropriate fund to his new appropriate fund.

(8) Paragraph (1) does not apply where a member enters an employment which is concurrent with another in which he is also an active member.

#### **Changes of fund and variable time employees**

**87.** An inter-fund transfer under regulation 86(2) in respect of a member who is a variable-time employee prior to the transfer and who remains a variable-time employee after the transfer shall be on the basis that his period of membership transfers on a day for day basis.

Signed by authority of the Secretary of State for Communities and Local Government

6th February 2008

*John Healey*  
Minister of State  
Department for Communities and Local Government

## INTERPRETATION

“the 1986 Regulations” means the Local Government Superannuation Regulations 1986(a);

“the 1995 Regulations” means the Local Government Pension Scheme Regulations 1995(b);

“the 1997 Regulations” means the Local Government Pension Scheme Regulations 1997(c);

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(d);

“the Earlier Regulations” means all or any of the Local Government Superannuation Regulations 1974(e), the 1986 Regulations, the 1995 Regulations, the 1997 Regulations or the Local Government Pension Scheme (Transitional Provisions) Regulations 1997(f) as appropriate;

“the Former Regulations” means—

- (a) those of the enactments and instruments referred to in paragraph 5(1) of Schedule 7 to the Superannuation Act 1972(g) and applying in relation to England and Wales that were in force immediately before 1st April 1974;
- (b) the Local Government Superannuation (Miscellaneous Provisions) Regulations 1973(h); and
- (c) the Local Government Superannuation (Miscellaneous Provisions) (No.2) Regulations 1973(i);

“the Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions) Regulations 2008(j);

“Active member” has the same meaning as in section 124(1) of the Pensions Act 1995(k);

“Actuary” means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries;

“Administering authority” means a body required to maintain a pension fund under these Regulations and “appropriate administering authority” means the body maintaining the appropriate fund;

“Admission agreement”, in relation to an admission body, means an agreement that all, or any designated class, of the body’s employees may be members;

“Admission body” means a body mentioned in regulation 5(2) or 6(2);

“Appropriate fund”, in relation to a member, has the meaning given by regulation 30;

“Appropriate policy” means a policy of insurance or an annuity contract which provides an annuity which satisfies requirements prescribed under section 95(2)(c) of the Pension Schemes Act 1993(l);

“ARCs” means additional regular contributions as referred to in regulation 23;

“Assisted”, in relation to an educational institution, has the same meaning as in the Education Act 1996(m);

“AVCs” means additional voluntary contributions as referred to in regulation 25;

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- (a) S.I.1986/24.
  - (b) S.I.1995/1019.
  - (c) S.I. 1997/1612.
  - (d) S.I. 1997/1166.
  - (e) S.I. 1974/520.
  - (f) S.I. 1997/1613.
  - (g) 1972 c.11.
  - (h) S.I. 1973/313.
  - (i) S.I. 1973/1996.
  - (j) S.I.2008/xxx.
  - (k) 1995 c.26.
  - (l) 1993 c.48.
  - (m) 1996 c.56.

“Base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

“CIPFA” means the Chartered Institute of Public Finance and Accountancy;

“The commencement date” means 1st April 2008;

“Deferred member” has the same meaning as in section 124(1) of the Pensions Act 1995, except as provided in regulation 16;

“Employing authority” means a body employing an employee who is eligible to be a member;

“Guaranteed minimum” means the guaranteed minimum as defined in sections 14 and 17 of the Pension Schemes Act 1993 (minimum pensions for earners, widows, widowers and surviving civil partners)(a), so far as it is attributable to earnings factors for the tax year 1988-89 or for subsequent tax years, increased in accordance with the requirements of section 109 of that Act (annual increase of guaranteed minimum pensions) and in this definition “earnings factors” means the earnings factors referred to in section 14 of that Act and “tax year” means the 12 months beginning with 6th April in any year;

“Local Act scheme” has the meaning given by section 8 of the Superannuation Act 1972, except that where it refers to any time before 25th March 1972 it has the same meaning as in the Local Government Superannuation Act 1937(b);

“Local authority” has the same meaning as in the Local Government Act 1972(c);

“Local education authority” has the same meaning as in the Education Act 1996(d);

“Local government employment” means employment by virtue of which the person employed is or has been a member;

“Maintained”, in relation to an educational institution, has the same meaning as in section 20 of the School Standards and Framework Act 1998(e);

“Member” has the same meaning as in section 124(1) of the Pensions Act 1995 but, except in regulation 68, does not include a pension credit member;

“Normal retirement age” is 65;

“Occupational pension scheme” has the meaning given by section 150(5) of the Finance Act 2004(f);

“Part-time employee” means an employee—

(a) whose contract of employment provides that he is such an employee for the Scheme; or

(b) who is neither a whole-time employee nor a variable-time employee;

“Passenger transport authority” means a metropolitan county passenger transport authority established by section 28 of the Local Government Act 1985(g);

“Passenger transport executive” means the Executive for a designated area within section 9(1) of the Transport Act 1968(h);

“Pension credit” means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999(i) or corresponding Northern Ireland legislation;

“Pension credit benefits” means benefits payable under the Scheme to or in respect of a pension credit member by virtue of rights under the Scheme attributable to a pension credit;

“Pension credit member” means a person who has pension credit rights or benefits under the Scheme;

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(a) Section 17 was amended to refer to surviving civil partners by S.I. 2005/2050, article 2(1), Schedule 1, paragraph 4(a).

(b) 1937 c.68.

(c) 1972 c.70.

(d) See section 12 of the Act.

(e) 1998 c.31.

(f) 2004 c.12.

(g) 1985 c.51.

(h) 1968 c.73.

(i) 1999 c.30.

“Pension credit rights” means rights to future benefits under the Scheme which are attributable to a pension credit;

“Pensionable pay” has the meaning given by regulation 4 of the Benefits Regulations;

“Pensioner member” has the same meaning as in section 124(1) of the Pensions Act 1995;

“Prospective member” means a person who under his contract of service or these Regulations—

- (a) may, if he wishes or his employer consents, become a member;
- (b) will be able to do so if he continues long enough in the same employment; or
- (c) will become a member unless he chooses not to do so;

“Reference banks” means the seven largest persons for the time being who—

- (a) have permission under Part 4 of the Financial Services and Markets Act 2000(a) to accept deposits;
- (b) are incorporated in the United Kingdom and carry on there a regulated activity of accepting deposits; and
- (c) quote a base rate in sterling;

and for the purpose of this definition the size of a person at any time is to be determined by reference to the gross assets denominated in sterling of that person, together with any subsidiary (as defined in section 1159 of the Companies Act 2006(b)), as shown in the audited end-of-year accounts last published before that time;

“Registered scheme” means a pension scheme registered by the Commissioners for Her Majesty’s Revenue and Customs under Part 4 of the Finance Act 2004(c);

“SCAVCs” means shared cost additional voluntary contributions as referred to in regulation 25;

“The Scheme” means the occupational pension scheme constituted by these Regulations, the Benefits Regulations and the Transitional Regulations;

“Scheme employer” means a body listed in Schedule 2 (but see regulations 7(6) and 8);

“Scheme function” means any function under the regulations which constitute the Scheme;

“Teachers’ scheme” means an occupational pension scheme made under section 9 of the Superannuation Act 1972 (superannuation of teachers);

“Total membership” means the aggregate of periods of membership which count as such under regulation 6 of the Benefits Regulations;

“Variable-time employee” means an employee whose contract of employment provides that he is such an employee for the Scheme and—

- (a) whose pay is calculated by reference to his duties (rather than necessarily by reference to the number of hours he has worked); or
- (b) whose duties only have to be performed on an occasional basis;

“Whole-time employee” means an employee whose contract of employment provides—

- (a) that he is such an employee for the Scheme; or
- (b) that his contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis.

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(a) 2000 c.8.  
(b) 2006 c.46.  
(c) 2004 c 12.

## SCHEME EMPLOYERS

## PART 1

1. The Commission for Local Administration in England.
2. In England, a county council, a district council, a London borough council or the Common Council of the City of London.
3. In Wales, a county council or a county borough council.
4. A joint board, body or committee appointed under any Act or statutory order or statutory scheme, of which all the constituent authorities are councils of a description in paragraph 2 or 3 or a combination of such councils.
5. A fire and rescue authority within the meaning of the Fire and Rescue Services Act 2004(a).
6. A police authority within the meaning of the Police Act 1996(b).
7. A probation trust established under section 5 of the Offender Management Act 2007(c.) or a National Probation Service local board
8. The Chichester Harbour Conservancy.
9. The Lee Valley Regional Park Authority.
10. A passenger transport authority.
11. The Broads Authority.
12. A further education corporation.
13. A higher education corporation.
14. The London Pensions Fund Authority.
15. The South Yorkshire Pensions Authority.
16. The Environment Agency.
17. A National Park Authority established under Part 3 of the Environment Act 1995(d).
18. An Education Action Forum within the meaning of section 11 of the School Standards and Framework Act 1998(e).
19. The National College for School Leadership.
20. The Standards Board for England.
21. An Academy within the meaning of section 482 of the Education Act 1996(f) or by virtue of section 67 of the Education Act 2002 (conversion of city academies into Academies)(g).

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(a) 2004 c.21.  
(b) 1996 c.16.  
(c) 2007 c.21.  
(d) 1995.c.25.  
(e) 1998 c.31.  
(f) 1996 c.56.  
(g) 2002 c.32.

**22.** A body set up by a local housing authority in exercise of powers under section 2 of the Local Government Act 2000(a) as a housing management company to exercise management functions of the authority under an agreement approved by the Secretary of State under section 27 of the Housing Act 1985(b).

**23.** The Valuation Tribunal Service for England established under section 105 of the Local Government Act 2003(c) and the Valuation Tribunal Service for Wales established under regulation 5 of the Valuation Tribunals (Wales) Regulations 2005(d).

**24.** A conservation board established under section 86 of the Countryside and Rights of Way Act 2000(e).

**25.** Firebuddy Limited established under Section 29 of the Fire and Rescue Services Act 2004.

## PART 2

**1.** The Board of Governors of the Museum of London;

**2.** A body (other than a body listed in Part 1 of this Schedule) which is—

(a) a precepting authority (as defined in section 69 of the Local Government Finance Act 1992(f)),

(b) a levying body within the meaning of section 74 of the Local Government Finance Act 1988 (levies)(g), or

(c) a body to which section 75 of that Act (special levies) applies.

**3.** A passenger transport executive.

**4.** A designated institution which immediately before designation was assisted or maintained by a local education authority.

**5.** A company under the control of a body listed in Part 1 of this Schedule where “under the control” has the same meaning as in section 68 or, as the case may be, section 73 of the Local Government and Housing Act 1989(h) (except that any direction given by the Secretary of State must be disregarded, and any references to a local authority treated as references to such a body).

**6.** The Public Services Ombudsman for Wales.

**7.** The Serious Organised Crime Agency.

**8.** Transport for London.

**9.** The London Development Agency.

**10.** The Metropolitan Police Authority.

**11.** The London Transport Users’ Committee.

**12.** The Cultural Strategy Group for London.

**13.** The Children and Family Court Advisory and Support Service.

**14.** An urban development corporation.

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(a) 2000 c.22.

(b) 1985 c.68. A new section 27 was substituted by article 2 of S.I.2003/940.

(c) 2003 c.26.

(d) S.I. 2005/3364.

(e) 2000 c.37.

(f) 1992 c.14.

(g) 1988 c.41.

(h) 1989 c.42.

## MATTERS TO BE INCLUDED IN ADMISSION AGREEMENTS WITH TRANSFEREE ADMISSION BODIES

1. A requirement for the transferee admission body to pay to the administering authority all contributions and payments due under these Regulations and the Benefits Regulations.

2. If required by regulation 6(7), a reference to the indemnity or bond in accordance with regulation 6(8) and a warranty from the transferee admission body that such an indemnity or bond is in place.

3. A provision requiring the transferee admission body to adopt the practices and procedures relating to the operation of the Scheme set out in these Regulations, the Benefits Regulations, the Transitional Regulations and in any employer's guide published by the administering authority and provided to that body.

4. An undertaking from the transferee admission body to the administering authority that it will not do anything to prejudice the status of the Scheme as a registered scheme.

5. A representation and warranty from the transferee admission body to the administering authority that all the body's employees who are members are employed in connection with the provision of a service or assets mentioned in regulation 6(2).

6. An undertaking from the transferee admission body that it will promptly notify the administering authority in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for its employees who are members and of any terminations of employment by virtue of redundancy or in the interests of efficiency.

7. A requirement that the transferee admission body notifies the administering authority of each occasion on which it exercises a discretion under these Regulations, the Benefits Regulations or the Transitional Regulations and the manner in which it exercises that discretion.

8. A requirement that the transferee admission body—

- (a) notifies the administering authority of any matter which may affect, or is likely to affect, its participation in the Scheme; and
- (b) gives immediate notice to that authority of any actual or proposed change in its status which may give rise to a termination,

and, for these purposes, a termination includes a take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of the body's business or constitution.

9. A provision—

- (a) for automatic termination of the admission agreement, as required by regulation 7(2), if the transferee admission body ceases to be such a body; and
- (b) otherwise for a minimum period of three months' notice to terminate the agreement.

10. A right for the administering authority to terminate the agreement in the event of—

- (a) the insolvency, winding up or liquidation of the transferee admission body;
- (b) a breach by that body of any of its obligations under the admission agreement (but where the breach is capable of remedy only where it has not been remedied within a reasonable time); or
- (c) a failure by that body to pay any sums due to the fund within a reasonable period after receipt of a notice from the administering authority requiring it to do so.

11. A requirement that the admission agreement in its final form must be available for public inspection at the offices of the administering authority.



12. In relation to a transferee admission body under regulation 6(2)(a)—

- (a) a reference to the date of the contract, other arrangement or direction by which the body met the requirements of that regulation;
- (b) a provision whereby the Scheme employer may set off against any payments due to the body an amount equal to any overdue employer and employee contributions and other payments (including interest payable under these Regulations) due from the body as an employing authority;
- (c) a provision requiring the Scheme employer to keep under assessment the level of risk arising as a result of the matters mentioned in regulation 6(5);
- (d) provision that where a representation or notification must be given to an administering authority under paragraph 5, 6, 7 or 8, it must also be given to the Scheme employer; and
- (e) where the Scheme employer is not also the administering authority, a requirement that the admission agreement in its final form must be available for public inspection at the offices of that employer.

## SCHEDULE 4

Regulation 30

### APPROPRIATE FUNDS

1. The appropriate fund for a member is the fund specified in column 2 of the following Table for a member of his description.

2. But where a member is within paragraph 5 of that Table or is employed by an institution referred to in paragraph 3 of Part 2 of the Table in Schedule 5 to the 1997 Regulations<sup>(a)</sup> (educational establishments), the Secretary of State may by direction substitute another fund (“the substituted fund”).

3. Where a member is within paragraph 8 of the following Table and is an employee of the governing body of a voluntary, foundation or foundation special school who is deemed to be in employment with a local education authority, the Secretary of State may by direction substitute the fund maintained by the London Pensions Fund Authority as his appropriate fund.

4. Before giving a direction under paragraph 2 or 3, the Secretary of State must consult with any bodies appearing to her to be affected by the proposed direction.

5. The direction may require the making of financial adjustments between the funds, whether by way of a payment to the substituted fund or of a transfer of assets or both.

6. It may also contain provision as to the transfer of liabilities to the substituted fund and any other consequential and incidental matters.

7. Where an administering authority has established an admission agreement fund under regulation 32—

- (a) references in this Schedule and in regulation 30 to the fund are to the fund maintained by that authority under regulation 29, and
- (b) in relation to a member employed by a body specified in the notice required by regulation 32(3), the appropriate fund is the admission agreement fund.

#### TABLE

<i>Member</i>	<i>Appropriate fund</i>
1. An employee of an administering authority (other than a London member).	Fund maintained by that authority.
2. A London member <sup>(1)</sup>	Fund maintained by the London Pensions Fund

<sup>(a)</sup> Paragraph 3 of Part 2 of the Table in Schedule 5 to the 1997 Regulations was amended by S.I. 2000/1164.

3. A Welsh member <sup>(2)</sup>	Authority.
4. A Part 2 member <sup>(3)</sup>	Appropriate regulation 3 fund.
5. An employee of a company under the control of a Scheme employer specified in Schedule 2	Fund specified for him in Part 2 of Schedule 5 to the 1997 Regulations(a).
6. An employee of an admission body who is a member by reason of that employment.	Fund which is the appropriate fund for employees of that Scheme employer
7. Members for whom no fund is specified by paragraphs 1 to 6, being—	Fund maintained by the administering authority with whom the admission agreement making him eligible for membership was made..
(a) members whose employing authority is specified in column 1 of the Table in Part 3 of Schedule 5 to the 1997 Regulations;	Fund maintained by the administering authority specified for that authority in column 2 of the Table in Part 3 of that Schedule.
(b) members whose employing authority's area is situated wholly or mainly in the local government area of another employing authority which is specified in column 1 of the Table in Part 3 of Schedule 5 to the 1997 Regulations.	Fund maintained by the administering authority specified for that other authority in column 2 of the Table in Part 3 of that Schedule.
8. Members for whom no fund is specified by paragraphs 1 to 7.	Fund maintained by the administering authority within whose local government area all or most of his employing authority's area lies.

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<sup>(1)</sup> A London member is an active member who was a London member under the 1997 Regulations immediately before the commencement date.

<sup>(2)</sup> A Welsh member is an active member who was a Welsh member under the 1997 Regulations immediately before the commencement date and the “appropriate regulation 3 fund” is the fund determined for him in accordance with the 1997 Regulations.

<sup>(3)</sup> A Part 2 member is an active member who immediately before the commencement date was a Part 2 member under the 1997 Regulations.

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(a) Schedule 5 to the 1997 Regulations was amended by S.I. 2000/1164, 2001/1481, 2002/206, 2004/573, 2006/966.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations set out provisions relating to the administration of the new Local Government Pension Scheme (“the Scheme”) which is to come into existence on 1st April 2008 and is constituted by these Regulations, the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (“the Benefit Regulations”) and the Local Government Pension Scheme (Transitional Provisions) Regulations 2008.

The provisions in these Regulations supersede without modification most of those in the Local Government Pension Scheme Regulations 1997 that they replace. Reference is made where relevant to nominated cohabiting partners as they are a category of dependent beneficiary in the Benefits Regulations. The other main changes are mentioned in the following description of the arrangement of these Regulations.

The Regulations are divided into the following Parts—

Part 1 deals with citation, commencement and application, interpretation and the Regulations’ application to the Isles of Scilly;

Part 2 sets out rules relating to membership of the Scheme. Regulation 13 (joining the Scheme) does not require any person who is eligible to be a member of the Scheme to apply to be such, unless he is applying for membership on a date other than that on which he would otherwise automatically become a member or he is the employee of an admission body;

Part 3 deals with contributions. Regulation 23 (additional regular contributions) sets out the applicable procedure in circumstances where a member chooses to pay additional contributions under regulation 14 of the Benefits Regulations. Regulations 25 to 27 simplify and update provisions dealing with additional voluntary contributions and shared cost additional voluntary contributions;

Part 4 deals with pension funds and employers’ payments. Regulation 44 (interest) provides that interest payable on overdue amounts is payable from the day after the amount is due rather than from one month after the due date, the only exception being any extra charge payable by an employing authority under regulation 40 (employer’s payment following resolution to increase membership or award additional pension) or regulation 41 (employer’s further payments);

Part 5 deals with payment of benefits;

Part 6 deals with determination of questions and disputes. Regulation 55 requires the employing authority to decide what contribution rate a member must pay. This is consequential on regulation 3 of the Benefits Regulations, which provides that the contribution rate a member pays is based on his pensionable pay and a range of pay bands;

Part 7 deals with policy statements and information;

Part 8 deals with special adjustments;

Part 9 deals with transfers.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of businesses, charities or voluntary bodies and does not have a significant financial impact on any public bodies.

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