

2004 No. \*

**PENSIONS, ENGLAND AND WALES**

**The Local Government Pension Scheme (Amendment) (No. 2)  
Regulations 2004**

*Made* - - - - \* 2004  
*Laid before Parliament* \* 2004  
*Coming into force* - - 1st April 2005

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(a) and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned, the local authorities with whom consultation appeared to him to be desirable and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate, hereby makes the following Regulations:

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2004.

(2) These Regulations shall come into force on 1st April 2005.

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

(4) These Regulations extend to England and Wales(c).

**Amendment of Regulations**

2. The principal Regulations shall be amended in accordance with regulations 3 to 13 of these Regulations.

**Normal retirement**

3. In regulation 25, delete paragraph (3A).

**Redundancy etc.**

4. In regulation 26(1), for “50” substitute “55”.

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(a) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).  
(b) S.I. 1997/1612; relevant amending instruments are S.I. 1998/1238, 1999/3438, 2001/770, 3401, 2002/206, 2003/1022 and 2004/573.  
(c) 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).

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

5. In regulation 31—

- (a) in paragraph (1), for “50” substitute “55”;
- (b) in paragraph (4), delete the words from the beginning of the paragraph up to and including “is less than 85 years,”; and
- (c) in paragraph (7), delete “or from such” to the end of the paragraph.

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

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

### **Payments to increase total membership**

7. In regulation 55(10), for sub-paragraphs (a) and (b) substitute “his NRD”.

### **Employer’s further payments**

8. In regulation 80, after paragraph (1), insert—

“(1A) Where an authority determine under regulation 31(5) that a member’s retirement pension and grant should not be reduced, they must pay the appropriate sum to the appropriate fund before the expiry of the period of one month beginning with the date of the determination.”.

### **Commencement of pensions**

9. In regulation 93(2), delete sub-paragraph (aa).

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

10. In regulation 122—

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

“(6A) A credited period arising from a transfer value accepted under regulation 121 on or after 1st April 2005 shall be treated as a period of membership after that date.”.

### **Rights as to service not matched by credited period**

11. In regulation 123(2), delete sub-paragraph (b).

### **Excluded membership**

12. In Schedule 3, in paragraphs 7 and 8 of the Table, delete “or calculating NRD under regulation 25(3A)” in each place where it appears.

### **Former members of the Metropolitan Civil Staffs Superannuation Scheme**

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

### **Transitional provisions and savings**

14. The Schedule to these Regulations (Transitional provisions and savings) shall have effect.

## Right to opt out

15.—(1) Where—

- (a) apart from this regulation, the amendments made by these Regulations would place any relevant beneficiary in a worse position than he would otherwise be, and
- (b) that relevant beneficiary so elects by notice in writing given to the appropriate administering authority within the period of six months beginning with 1st April 2005,

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

(2) For the purposes of paragraph (1), a relevant beneficiary is a person to whom any benefit is or may become payable being a benefit payable to or in respect of a person who—

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

before 1st April 2005.

Signed by authority of the Secretary of State

Parliamentary Under Secretary of State  
Office of the Deputy Prime Minister

## SCHEDULE

Regulation 14

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *Redundancy*

1. Nothing in these Regulations shall affect the right of any member, who is aged 50 or more on 31st March 2005, to a pension and grant payable in accordance with regulation 26 of the principal Regulations (Redundancy etc.).

#### *Other early leavers*

2. Nothing in these Regulations shall affect the right of any member, who is aged 50 or more on 31st March 2005, to elect to receive the immediate payment of retirement benefits in accordance with regulation 31(1) of the principal Regulations (Other early leavers: deferred retirement benefits and elections for early payment).

3. Nothing in these Regulations shall affect the right of any member, who was a member prior to 1st April 2005 and will be aged 60 or more on 31st March 2013, to elect to receive a pension and grant in accordance with regulation 31(7) of the principal Regulations.

4. But a member to whom paragraphs 2 or 3 of this Schedule applies shall have his retirement benefits reduced in accordance with regulation 31(4) of the principal Regulations (as amended by regulation 5 of these Regulations) except in accordance with paragraphs 5 and 6 of this Schedule.

#### *Protection from reduction for early payment*

5. Where a member, who was a member prior to 1st April 2005, elects to receive the immediate payment of retirement benefits under regulations 31(1) or 31(7) of the principal Regulations and the sum of—

- (1) his age in whole years on the date his local government employment ends or the date he elects, if later;
- (2) his total membership in whole years; and
- (3) in a case where he elects after his local government employment ends, the period beginning with the end of that employment and ending with the date he elects,

is 85 years or more, that part of his retirement pension and grant which is calculated by reference to any period of membership prior to the relevant date shall not be reduced in accordance with regulation 31(4) of the principal Regulations (as amended by regulation 5 of these Regulations).

6. The relevant date is—

(1) in the case of an election under regulation 31(1), 1st April 2005; and

(2) in the case of an election under regulation 31(7), the earlier of—

(a) 1st April 2013; and

(b) the date on the day after the day on which the member leaves local government employment.

*Payments to increase total membership*

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

(a) elected prior to 1st April 2005 to make additional contributions to the Scheme to increase his total membership under regulation 55(1) of the principal Regulations (Payments to increase total membership); and

(b) was assumed to retire from a local government employment on a date prior to his 65th birthday (“the assumed date”) for the purposes of calculating his additional contributions under regulation 55(6) of the principal Regulations.

(2) Where a member to whom this paragraph applies—

(a) retires on or after the assumed date; and

(b) continues paying the additional contributions until the assumed date,

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

(3) An additional period counted as a period of total membership as a result of this paragraph shall be treated as a period of membership prior to 1st April 2005.

*Saving for transitional and incidental provisions*

8. So far as it is necessary to give effect to the entitlements in this Schedule and to make provision for any matters incidental to them, the principal Regulations shall be treated as if they had continued in effect without the amendments made by these Regulations.

**EXPLANATORY NOTE**

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

These Regulations amend the Local Government Pension Scheme Regulations 1997 (the “principal Regulations”) to have effect from 1st April 2005. The main changes are as follows—

– to raise the normal retirement date for members who joined the scheme prior to 1st April 1998, to their 65th birthday (regulation 25 of the principal Regulations, as amended by regulation 3);

– to raise the age at which a member will be entitled to the immediate payment of retirement benefits following redundancy from 50 to 55 (regulation 26 of the principal Regulations, as amended by regulation 4);

– to raise the age at which a member can elect to receive early payment of their retirement benefits from 50 to 55 and to provide that where an early leaver retires and elects to receive benefits prior to their 65th birthday, those benefits are reduced by the amounts shown as appropriate in guidance issued by the Government Actuary (regulation 31 of the principal Regulations, as amended by regulation 5); and

– to provide that where an employing authority determines not to apply the reduction of benefits under regulation 31 of the principal Regulations on compassionate grounds, the authority must pay the appropriate sum (as shown in guidance issued by the Government Actuary) into the

appropriate fund within one month of the date of the determination (regulation 80 of the principal Regulations, as amended by regulation 8).

The Schedule to these Regulations provides for transitional arrangements and regulation 15 allows certain persons who would be placed in a worse position by amendments made in these Regulations to elect for the amendments not to apply in their case.

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.