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STATUTORY INSTRUMENTS

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**2008 No. 2989**

**PENSIONS, ENGLAND AND WALES**

**The Local Government Pension Scheme  
(Amendment) (No. 2) Regulations 2008**

*Made - - - - 17th November 2008*  
*Laid before Parliament 24th November 2008*  
*Coming into force in accordance with regulation 1(3)*

These Regulations are made in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972<sup>(1)</sup>.

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

The Secretary of State makes the following Regulations:

**Citation, application and commencement**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2008.

(2) These Regulations apply in relation to England and Wales<sup>(2)</sup>.

(3) These Regulations shall come into force on 16th December 2008 and have effect from 1st December 2008, apart from regulation 3 which shall come into force on 1st April 2009.

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

2. The Local Government Pension Scheme (Administration) Regulations 2008<sup>(3)</sup> are amended in accordance with regulations 3 and 4.

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(1) 1972 c. 11.

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

(3) S.I. 2008/239, to which there are amendments not relevant to these Regulations.

3. In regulation 5 (employees of non-Scheme employers: community admission bodies) omit paragraph (2)(d) and (e).

4. In regulation 38 (special circumstances where revised actuarial valuations and certificates must be obtained) —

- (a) in paragraph (2), for “Where” substitute “Subject to paragraph (3A), where”;
- (b) after paragraph (3) insert —

“(3A) Paragraph (2) does not apply where, by virtue of a transfer scheme, the liabilities of the Housing Corporation<sup>(4)</sup> relating to pensions of current or former employees have been transferred to the Homes and Communities Agency<sup>(5)</sup> or the Regulator of Social Housing<sup>(6)</sup>.

(3B) But the Homes and Communities Agency or the Regulator of Social Housing, as the case may be, shall make arrangements with the relevant administering authority as to the contributions necessary to secure the funding of those liabilities.

(3C) Those arrangements shall include provision for the past service deficit to be paid in 15 annual instalments, the first of which shall be paid no later than 31st March 2009.

(3D) In paragraph (3C) “the past service deficit” means the deficit calculated as at 31st March 2007 from the actuarial valuation obtained under regulation 77 of the 1997 Regulations of the fund of which the Housing Corporation is a community admission body, revalorised by the fund actuary as at 30th November 2008, in respect of—

- (a) employees transferred by virtue of a transfer scheme; and
- (b) deferred and pensioner members to whom that scheme applies.

(3E) An admission agreement with a relevant administering authority shall provide that if it appears, on an actuarial valuation of the assets and liabilities of the relevant pension fund (whether under regulation 36 or otherwise), that an increased individual adjustment is required, the Homes and Communities Agency or the Regulator of Social Housing, as the case may be, will notify the Secretary of State forthwith.

(3F) An employee of the Housing Corporation whose contract of employment is transferred to the Homes and Communities Agency or the Regulator of Social Housing by virtue of a transfer scheme shall be treated as having—

- (a) applied in writing for the purposes of paragraph (6)(a) of regulation 13 (joining the Scheme); and
- (b) given notice for the purposes of paragraph (1) of regulation 16 (re-employed and rejoining deferred members).

(3G) In this regulation—

- (a) “individual adjustment” has the meaning given by regulation 36(7);
- (b) “relevant administering authority” means an administering authority which enters into an admission agreement with the Homes and Communities Agency or the Regulator of Social Housing following a transfer mentioned in paragraph (3A); and
- (c) “transfer scheme” means a scheme made under section 65 of the Housing and Regeneration Act 2008<sup>(7)</sup>.”

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(4) As to which see section 74 of, and Schedule 6 to, the Housing Associations Act 1985 (c. 69): the Housing Corporation is prospectively dissolved by section 64 of the Housing and Regeneration Act 2008.

(5) The Homes and Communities Agency was established by section 1 of the Housing and Regeneration Act 2008.

(6) The Regulator of Social Housing was established by section 81 of the Housing and Regeneration Act 2008.

(7) 2008 c. 17.

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

17th November 2008

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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

These Regulations amend the Local Government Pension Scheme (Administration) Regulations 2008 (“the Administration Regulations”) in consequence of the dissolution of the Housing Corporation, and the establishment of the Homes and Communities Agency and the Regulator of Social Housing, by the Housing and Regeneration Act 2008.

Regulation 3 (which comes into force on 1st April 2009) omits references to the Housing Corporation and the Commission for the New Towns from the list of community admission bodies in regulation 5 of the Administration Regulations.

Regulation 4 makes technical amendments to the Administration Regulations to provide pensions continuity for staff of the Housing Corporation who are transferred to the new bodies by transfer schemes made under the 2008 Act, and to ensure an agreed prudent management of ongoing pension liabilities with the administering authority.

The amendments are to regulation 38 of the Local Government Pension Scheme (Administration) Regulations 2008. The effect of the amendments is to disapply regulation 38(2), which would have imposed an obligation on the administering authority to obtain an actuarial valuation of the liabilities of the fund and a revised rates and adjustments certificate. Instead, an obligation is imposed on the Homes and Communities Agency and the Regulator of Social Housing to enter into arrangements with the administering authority of the pension scheme to secure the funding of the pensions liabilities of transferred or former staff of the Housing Corporation. Those arrangements must include provision for the deficit relating to those staff to be calculated on the basis of the last triennial actuarial valuation, revalued to 30th November 2008.

The amendments also impose reporting obligations on the Homes and Communities Agency and the Regulator of Social Housing to notify the Secretary of State if a future actuarial valuation of the pension funds discloses that an increased individual adjustment is required.

Finally, the amendments provide that the transferred staff are to be treated as having complied with certain application and notice provisions that would otherwise have applied.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.