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STATUTORY INSTRUMENTS

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**2012 No. 1989**

**PENSIONS, ENGLAND AND WALES**

The Local Government Pension Scheme  
(Miscellaneous) Regulations 2012

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|-------------------------------|---------|-------------------------|
| <i>Made</i>                   | - - - - | <i>27th July 2012</i>   |
| <i>Laid before Parliament</i> |         | <i>1st August 2012</i>  |
| <i>Coming into force</i>      | - -     | <i>1st October 2012</i> |

These Regulations are made in exercise of the powers conferred by sections 7, 12 and 24 of the Superannuation Act 1972<sup>(1)</sup>.

In accordance with section 7(5) of that Act, the Secretary of State has consulted such associations of local authorities as appeared to the Secretary of State to be concerned; the local authorities with whom consultation appeared to the Secretary of State to be desirable; and 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, extent, interpretation and commencement**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Miscellaneous) Regulations 2012.

(2) These Regulations extend to England and Wales<sup>(2)</sup>.

(3) In these Regulations “the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008<sup>(3)</sup>.

(4) These Regulations shall come into force on 1st October 2012, but—

- (a) regulations 19, 20, 22(a), 26 and 40 shall have effect from 1st April 2008;
- (b) the provision inserted by regulation 13(b) shall have effect from 1st October 2008;
- (c) regulation 41 and the provision inserted by 42(b)(i) shall have effect from 1st August 2010;
- (d) regulation 11 shall have effect from 30th September 2010;

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(1) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

(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.

- (e) regulation 10 shall have effect from 1st October 2010;
- (f) regulation 39 shall have effect from 6th April 2011;
- (g) regulation 43(a)(ii) shall have effect as follows—
  - (i) in relation to the provision omitting paragraphs 19 and 20 of Part 1 of Schedule 2 to the Administration Regulations, from 1st April 2012;
  - (ii) in relation to the provision omitting paragraph 25 of Part 1 of Schedule 2 to the Administration Regulations, from 13th July 2011;
- (h) regulation 43(b) shall have effect as follows—
  - (i) in relation to the provision omitting paragraph 9 of Part 2 of Schedule 2 to the Administration Regulations, from 31st March 2012;
  - (ii) in relation to the provision omitting paragraph 10 of Part 2 of Schedule 2 to the Administration Regulations, from 16th January 2012;
- (i) the provision inserted by regulation 43(a)(i) and the amendment contained in sub-paragraph (a)(iii) of that regulation which inserts paragraph 28 into Part 1 of Schedule 2 to the Administration Regulations, shall have effect from 22nd November 2012; and
- (j) the amendment contained in regulation 43(a)(iii) which inserts paragraph 27 into Part 1 of Schedule 2 to the Administration Regulations shall have effect from 1st April 2012.

#### **Amendment of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006**

2. The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006(4) are amended in accordance with regulation 3.

3. In regulation 2 (interpretation), in paragraph (1) in the definition of “employing authority” in sub-paragraph (c), for “regulation 8(1)(a) or (b) of the Administration Regulations” substitute “regulation 8(1) of the Administration Regulations”.

#### **Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007**

4. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(5) are amended in accordance with regulations 5 to 17.

5. In regulation 1 (citation, commencement, interpretation and application)(6), in paragraph (4) after the definition of “pensioner member”, insert—

““Scheme employer” means a body listed in Schedule 2 to the Administration Regulations (but see regulations 7(9) and 8 of those Regulations);”.

6. In regulation 2 (active members)(7)—

- (a) In paragraph (1) for “regulation 4(1) of” substitute “regulations 4(1) and 13 of”.
- (b) Omit paragraph (3).

7. For regulation 8(1) (final pay: general)(8), substitute—

“(1) Subject to regulations 9 to 11, on ceasing a period of active membership in an employment, a member’s final pay is that member’s pensionable pay for as much of the

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(4) S.I. 2006/2914, amended by S.I. 2009/3150.

(5) S.I. 2007/1166, amended by S.I. 2008/1083, S.I. 2008/2425, S.I. 2009/3150, S.I. 2010/528, S.I. 2010/2090 and S.I. 2011/561.

(6) Regulation 1 was amended by S.I. 2008/1083, S.I. 2008/2425, S.I. 2009/3150 and S.I. 2010/2090.

(7) Regulation 2 was amended by S.I. 2008/1083 and S.I. 2010/2090.

(8) Regulation 8 was amended by S.I. 2008/1083.

final pay period as the member is entitled to count as active membership, whether this was accrued with the current or a previous employing authority, but excluding pensionable pay from membership in a concurrent employment, or concurrent employments.”.

**8.** In regulation 14A (election to pay additional contributions: survivor benefits)(**9**), in paragraph (2) for “no later than 31st March 2011” substitute “no later than 31st March 2013 or 12 months from the date a declaration is first signed in respect of a particular named individual under regulation 25(2), whichever is the later”.

**9.** In regulation 18 (flexible retirement)(**10**), for paragraph (1) substitute—

“(1) A member who has attained the age of 55 and who, with his or her employer’s consent reduces the hours he or she works, or the grade in which he or she is employed may make a request in writing to the appropriate administering authority to receive —

(a) in the case of a member who has accrued benefits under the 1997 Scheme—

(i) all of the benefits from his or her current membership under that Scheme; and

(ii) all, part or none of his or her benefits accrued under these Regulations; and

(b) in any other case, all or part of his or her benefits accrued under these Regulations,

and such benefits may, with the member’s employer’s consent, be paid to the member notwithstanding that he or she has not retired from that employment.”.

**10.** In regulation 26 (meaning of “eligible child”)(**11**), in paragraph (6) for “the Disability Discrimination Act 1995” substitute “the Equality Act 2010 (**12**)”.

**11.** In regulation 28 (children’s pensions: active members) for paragraph (1), substitute—

“(1) Subject to sub-paragraph (a) and to any adjustment appropriate as a result of the provisions specified in sub-paragraph (b), the amount of the pension of an eligible child of a deceased active member is calculated in accordance with the method specified in paragraph (2) or paragraph (3) (as appropriate)—

(a) where, in the opinion of an IRMP the member was at the date of death, in part-time service wholly or partly as a result of the condition that caused or contributed to the member’s death, no account shall be taken of any reduction in membership due to such reduction in service as is attributable to that condition;

(b) the provisions mentioned above are—

(i) regulations 14 and 15 of these Regulations;

(ii) regulations 23 to 24 and 25 to 26 of the Administration Regulations.”.

**12.** In regulation 30 (choice of early payment of pension)(**13**)—

(a) for paragraph (2) substitute—

“(2) A choice made by a member aged less than 60 is ineffective without the consent of the member’s—

(a) employing authority;

(b) former employing authority where the member has no current employing authority; or

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(9) Regulation 14A was inserted by [S.I. 2009/3150](#) and amended by [S.I. 2010/2090](#).

(10) Regulation 18 was amended by [S.I. 2008/1083](#) and [S.I. 2010/2090](#).

(11) Regulation 26 was substituted by [S.I. 2008/1083](#).

(12) [2010 c. 15](#).

(13) Regulation 30 was amended by [S.I. 2008/1083](#) and [S.I. 2010/2090](#).

- (c) appropriate administering authority where the member has no current employing authority and the member’s former employing authority has ceased to be a Scheme employer.”;
- (b) in paragraph (5), for “A member’s employing authority” substitute “A member’s employing authority, former employing authority or, where any such authority has ceased to be a Scheme employer, the appropriate administering authority, as the case may be,”.
- 13.** In regulation 30A (choice of payment of pension: pensioner member with deferred benefits)(**14**)—
- (a) in paragraph (3) after “former employing authority” add “or appropriate administering authority where the member’s former employing authority has ceased to be a Scheme employer.”;
- (b) in paragraph (4) after “Subject to paragraph (5)” insert “and regulation 10 of the Transitional Regulations”; and
- (c) in paragraph (5), after “former employing authority” insert “or appropriate administering authority as the case may be,”.
- 14.** For regulation 31 (early payment of pension: ill-health)(**15**), substitute—
- “**31.**—(1) This regulation applies to—
- (a) a member who has left his or her employment before he or she is entitled to the immediate payment of retirement benefits (apart from this regulation), or
- (b) a member who has left his or her employment and is a pensioner member with deferred benefits under regulation 20(9).
- (2) Subject to paragraphs (3) and (4), if a member to whom paragraph (1)(a) applies becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body, the member may ask to receive payment of their retirement benefits whatever the member’s age.
- (3) A request under paragraph (2) must be made to the member’s former employing authority or appropriate administering authority where the member’s former employing authority has ceased to be a Scheme employer.
- (4) Before determining whether to agree to a request under paragraph (2), the member’s former employing authority or appropriate administering authority as the case may be, must obtain a certificate from an IRMP as to whether in the IRMP’s opinion the member is suffering from a condition that renders the member permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition the member has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal retirement age, or for at least three years, whichever is the sooner.
- (5) In the case of a member to whom paragraph (1)(b) applies, if the member becomes permanently incapable of undertaking any gainful employment, the member may ask to receive payment of their retirement benefits, whatever the member’s age.
- (6) A request under paragraph (5) must be made to the member’s former employing authority, or appropriate administering authority where the member’s former employing authority has ceased to be a Scheme employer.
- (7) Before determining whether to agree to a request under paragraph (5), the member’s former employing authority, or appropriate administering authority as the case may be,

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(14) Regulation 30A was inserted by [S.I. 2010/2090](#).

(15) Regulation 31 was substituted by [S.I. 2008/1083](#) and amended by [S.I. 2010/2090](#) and [S.I. 2011/561](#).

must obtain a certificate from an IRMP as to whether in the IRMP's opinion the member is suffering from a condition that renders the member permanently incapable of undertaking any gainful employment.

(8) In this regulation, "gainful employment", "IRMP" and "permanently incapable" have the same meaning as given to those expressions by regulation 20(14)."

- 15.** In regulation 33 (survivor benefits: deferred members)(**16**), for paragraph (2) substitute—
- (a) "(2) Subject to any adjustment appropriate as a result of the provisions listed in sub-paragraph (b), the pension is calculated by multiplying the member's total membership by his or her final pay and divided by 160;
  - (b) the provisions mentioned in paragraph (2)(a) are—
    - (i) regulations 20(4)(a) and 20A of the 1997 Regulations(**17**);
    - (ii) regulations 14, 14A and 15 of these Regulations; and
    - (iii) regulations 23 to 26 of the Administration Regulations."
- 16.** In regulation 34 (children's pensions: deferred members), for paragraph (1) substitute—
- "(1) Subject to any adjustment appropriate as a result of the provisions in regulations 14 and 15 of these Regulations and regulations 23 to 24 and 25 to 26 of the Administration Regulations, the amount of the pension of an eligible child of a deceased deferred member is calculated in accordance with the method specified in paragraph (2) or paragraph (3) (as appropriate)."
- 17.** In regulation 39 (commutation and small pensions)(**18**), for paragraph (1) substitute—
- "(1) Any authorised payments within the meaning of section 164 (authorised member payments) of the Finance Act 2004(**19**) ("the 2004 Act") listed in sub-paragraphs (a) to (c) may be paid in accordance with the rules relating to the payment of such benefits under that Act or relevant regulations under that Act—
- (a) a lump sum which is a trivial commutation lump sum within the meaning of section 166 (lump sum rule) of the 2004 Act;
  - (b) a trivial commutation lump sum death benefit within the meaning of section 168 (lump sum death benefit rule) of that Act; or
  - (c) a commutation payment under regulation 6 (payment after relevant accretion) of the Registered Pension Schemes (Authorised Payments) Regulations 2009(**20**)."

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

**18.** The Local Government Pension Scheme (Transitional Provisions) Regulations 2008(**21**) are amended in accordance with regulations 19 to 22.

**19.** In regulation 3 (membership accrued before 1st April 2008: active members)(**22**), for paragraph (2)(b) substitute—

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- (16) Regulation 33 was amended by [S.I. 2008/1083](#) and [2010/2090](#).
- (17) Regulation 20A was inserted by [S.I. 2000/3025](#). Both regulation 20(4)(a) and 20A remain in force by virtue of regulation 2 of, and Schedule 1 to, the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 ([S.I. 2008/238](#)).
- (18) Regulation 39 was amended by [S.I. 2008/1083](#).
- (19) [2004 c. 12](#); section 164 was amended by the Finance Act 2006 ([c. 25](#)), the Finance Act 2008 ([c. 9](#)), the Finance Act 2009 ([c. 10](#)) and the Finance Act 2011 ([c. 11](#)).
- (20) [S.I. 2008/238](#); section 164(1)(f) of the Finance Act 2004 provides that a description of authorised payments may be prescribed by regulations.
- (21) [S.I. 2008/238](#), amended by [S.I. 2008/1083](#), [S.I. 2008/2425](#), [S.I. 2009/3150](#) and [S.I. 2010/2090](#).
- (22) Regulation 3 was amended by [S.I. 2009/3150](#) and [S.I. 2010/2090](#).

“(b) the person’s benefits under the 1997 Scheme are payable immediately where benefits become payable without reduction under regulations 16, 17, 19, 20, 30A(1) and 31 of the Benefits Regulations, or with appropriate actuarial reduction in line with guidance produced by the Government Actuary, where benefits become payable under regulations 18, 30 or 30A(4) of the Benefits Regulations.”.

**20.** In regulation 10 (the 85 year rule)(**23**), for paragraph (1)(b) substitute—

“(b) in respect of whom retirement benefits are to be paid under regulation 18 (flexible retirement), regulation 30 (choice of early payment of pension) or regulation 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations.”.

**21.** In Schedule 1(**24**), in the list of provisions of the Local Government Pension Scheme Regulations 1997 which are saved from revocation omit “Regulation 122(6C) and (6D)”.

**22.** In Schedule 2(**25**)—

(a) for paragraph 1 substitute—

“**1.** Subject to paragraph 7, where a member—

- (a) makes a request to receive the immediate payment of retirement benefits under regulations 18(1), 30(1) or 30A(2) of the Benefits Regulations; and
- (b) satisfies the 85 year rule;

that part of the member’s retirement pension and grant which is calculated by reference to any period of membership before the relevant date shall not be reduced in accordance with regulations 18(2), 30(4) or 30A(4) of the Benefits Regulations.”.

(b) for paragraph 3(2) substitute—

“(2) But, in calculating the member’s total membership, no account is to be taken of—

- (a) any increase in membership awarded under regulations 12 or 12B of the Benefits Regulations, or
- (b) any membership credited after 1st October 2012 under regulation 84 of the Administration Regulations.”.

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

**23.** The Administration Regulations(**26**) are amended in accordance with regulations 24 to 45.

**24.** In regulation 6 (employees of non-Scheme employers: transferee admission bodies)—

(a) after paragraph (3), insert—

“(3A) Where a (2)(a) transferee admission body is exercising the functions of a Scheme employer in connection with more than one contract or other arrangement under paragraph (2)(a)(i), the administering authority and the admission body shall enter into a separate admission agreement in respect of each contract or arrangement.”;

(b) omit paragraphs (5) to (9);

(c) in paragraph (10), for “relevant requirements of this regulation and” substitute “relevant requirements of this regulation and regulation 7, and”; and

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(23) Regulation 10 was amended by [S.I. 2010/2090](#).

(24) There are amendments to Schedule 1 which are not relevant to these Regulations.

(25) Paragraph 3(2) of Schedule 2 was amended by [S.I. 2009/3150](#). There are other amendments to Schedule 2 which are not relevant to these Regulations.

(26) [S.I. 2008/239](#), amended by [S.I. 2008/1083](#), [S.I. 2008/2425](#), [S.I. 2008/2989](#), [S.I. 2008/3245](#), [S.I.2009/1025](#), [S.I. 2009/3150](#), [S.I. 2010/528](#) and [S.I. 2010/2090](#).



(d) in paragraph (12), for “regulation 7(1)” substitute “regulation 7(2)”.

25. For regulation 7 (admission agreements – further provisions)(27), substitute—

“7.—(1) An admission agreement with a community admission body or a transferee admission body shall make provision for the relevant matters set out in Schedule 3.

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

(3) An admission agreement shall require the admission body to carry out, to the satisfaction of the administering authority, an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up or liquidation of the admission body.

(4) Subject to paragraph (5), the admission agreement shall further provide that where the level of risk identified by the assessment is such as to require it, the admission body shall enter into an indemnity or bond in an approved form with—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(28) to accept deposits or to effect and carry out contracts of general insurance;
- (b) an EEA firm of the kind mentioned in paragraph (5)(b) and (d) of Schedule 3 to that Act(29), which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule)(30) 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.

(5) Where, for any reason it is not desirable for an admission body to enter into an indemnity or bond, the admission agreement shall provide that the admission body secures a guarantee in a form satisfactory to the administering authority from—

- (a) a person who funds the admission body in whole or in part;
- (b) a person who—
  - (i) owns, or
  - (ii) controls the exercise of the functions of, the admission body; or
- (c) the Secretary of State in the case of an admission body—
  - (i) which is established by or under any enactment, and
  - (ii) where that enactment enables the Secretary of State to make financial provision for that admission body.

(6) 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.

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

(27) Regulation 7 was amended by [S.I. 2010/2090](#).

(28) [2000 c.8](#).

(29) Paragraph 5(b) of Schedule 3 was amended by [S.I. 2006/3221](#), and paragraph 5(d) of that Schedule was amended by [S.I. 2004/3379](#).

(30) There are amendments to paragraphs 12 and 15 of the Schedule which are not relevant to these Regulations.

- (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.

(8) 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.

(9) 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.

(10) In this regulation and Schedule 3 "indemnity or bond in an approved form" means an indemnity or bond to meet a level of risk exposure arising on the insolvency, winding up or liquidation of the admission body, actuarially assessed to the satisfaction of the administering authority, and Scheme employer in the case of a (2)(a) transferee admission body."

**26.** After regulation 8A(31) (eligibility for membership: employees transferring from the Rent Service to HM Revenue and Customs) insert the following—

**“Eligibility for membership: employees of Newcastle International Airport Limited**

**8B.**—(1) The admission agreement entered into between Newcastle International Airport Limited and the Council of the Borough of South Tyneside on 22nd December 1992, with effect from 1st April 1987, as varied by a deed of variation dated 4th May 2001, shall continue to have effect and shall, subject to the provisions of that deed of variation and any further amendments agreed from time to time, be deemed to have had effect continuously since the commencement date.

(2) Until such date as that agreement ceases to have effect, or the date on which Newcastle International Airport Limited ceases to be a company under the control of a body listed in Part 1 of Schedule 2 to these regulations, whichever is the earlier, employees of Newcastle International Airport Limited designated in accordance with the agreement as eligible for membership of the Scheme, are members of the Scheme by virtue of the agreement.

(3) In this regulation “under the control” has the same meaning as in paragraph 5 of Part 2 of Schedule 2”.

**27.** In regulation 9 (eligibility in certain cases of persons who are not employees)—

- (a) in paragraph (1), omit the word “or” at the end of sub-paragraph (e) and after the word “Company” in sub-paragraph (f) insert—

“; or

- (g) a police and crime commissioner.”;

- (b) after paragraph (7) insert—

“(7A) If a police and crime commissioner is an active member, that commissioner must be treated as being in the employment of the police and crime commissioner but any decision by the commissioner in the capacity of employing authority which affects the benefits to which the commissioner or a former commissioner is or may be entitled, has effect only if confirmed in writing by the person who is head of the commissioner’s



staff appointed under paragraph 6(1)(a) of Schedule 1 to the Police Reform and Social Responsibility Act 2011(32).”.

**28.** In regulation 12 (further restrictions on eligibility)(33)—

- (a) in paragraph (3), for “regulation 7(1)” substitute “regulation 7(2)”; and
- (b) in paragraph (6)(a)(ii), for “section 75 of that Act” substitute “section 75 of that Act, or section 33 of the National Health Service (Wales) Act 2006(34)”.

**29.** For regulation 13 (joining the scheme)(35) substitute—

“13.—(1) Subject to paragraphs (3) and (4), an employee of a body listed in Part 1 of Schedule 2 who is eligible to be an active member of the Scheme, becomes an active member on the day that person’s employment begins or the day that person’s employer becomes a Scheme employer (if later).

(2) Subject to paragraphs (3) and (4) a person who is eligible to be an active member of the Scheme when designated as being eligible for membership by the employer pursuant to regulation 4(3), 7(2)(36) or 8(1), becomes an active member on the day the designation has effect.

(3) But a person who has given notice to his or her employer—

- (a) before that person’s employment commenced that he or she did not wish to become a member of the Scheme; or
- (b) under regulation 14 (ending of membership),

does not become a member of the Scheme by virtue of paragraph (1) or (2).

(4) A person who would, apart from this paragraph, be an active member of the Scheme by virtue of paragraph (1) or (2), who is employed under a contract of employment of less than 3 months does not become an active member of the Scheme unless that person applies to become a member.

(5) A person who is eligible to be an active member of the Scheme, but who is not an active member, may apply in writing to his or her employer to join the Scheme as an active member.

(6) A person who applies under paragraphs (4) or (5) becomes an active member of the Scheme on the first day of the payment period following the application.”.

**30.** In regulation 18 (contributions during child related leave)—

(a) in paragraph (5)—

(i) for sub-paragraph (a), substitute—

“(a) is on additional paternity leave, maternity leave or adoption leave (other than ordinary maternity leave or ordinary adoption leave)”; and

(ii) in sub-paragraph (b), after “maternity” insert “, paternity”;

(b) for paragraph (8), substitute—

“(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—

- (a) regulation 23 (additional regular contributions); or

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(32) 2011 c. 13.

(33) Regulation 12 was amended by S.I. 2009/447.

(34) 2006 c.42.

(35) Regulation 13 was amended by S.I. 2009/3150 and 2010/2090.

(36) Regulation 7 is substituted by regulation 25 of these Regulations.

- (b) regulation 24A (additional contributions: survivor benefits); or
- (c) regulation 55 (payments to increase total membership) of the 1997 Regulations, on the pay the member would have received during the period but for the leave.”; and
- (c) in paragraph (9)—
  - (i) after the definition of “paternity leave” insert—
    - ““additional paternity leave” means leave under the Additional Paternity Leave Regulations 2010(37);”;
  - (ii) in the definition of “period of maternity, paternity or adoption absence”, in sub-paragraph (c) for “and” substitute “or”; and
  - (iii) after sub-paragraph (c), insert—
    - “(d) additional paternity leave; and”.
- 31.** In regulation 19 (contributions during reserve forces service leave), in paragraphs (2) and (4) after “regulation 23” insert “or regulation 24A”.
- 32.** In regulation 20 (contributions during trade dispute absence), in paragraph (5), for sub-paragraph (b) substitute—
  - “(b) must continue to make any payments the member was making under—
    - (i) regulation 23 (additional regular contributions);
    - (ii) regulation 24A (additional contributions: survivor benefits); or
    - (iii) regulation 55 (payments to increase total membership) of the 1997 Regulations,
 on the pay the member would have received during the relevant contribution period but for the member’s absence.”.
- 33.** In regulation 21 (contributions during absences with permission)—
  - (a) in paragraph (2), for sub-paragraph (b) substitute—
    - “(b) any payments the member was making under—
      - (i) regulation 23 (additional regular contributions);
      - (ii) regulation 24A (additional contributions: survivor benefits); or
      - (iii) regulation 55 (payments to increase total membership) of the 1997 Regulations.”; and
    - (b) in paragraph (5), in sub-paragraph (b) after “regulation 23” insert “ or regulation 24A”.
  - 34.** In regulation 32 (admission agreement funds), for paragraph (5) substitute—
    - “(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 from an actuary appointed by the authority—
      - (a) a transfer statement; and
      - (b) a rates and adjustment certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for its main fund.”.
  - 35.** In regulation 38 (special circumstances where revised actuarial valuations and certificates must be obtained)(38)—

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(37) S.I. 2010/1055.

(38) Regulation 38 was amended by S.I. 2008/2989 and S.I. 2009/3150.

- (a) for paragraph (1), substitute—

“(1) Subject to paragraph (3A)(**39**), where an employing authority ceases to be a Scheme employer, unless it has already obtained a certificate under paragraph (4), the appropriate administering authority must obtain—

(a) an actuarial valuation, as at the date the employing authority ceases to be a Scheme employer, of the liabilities of the fund in respect of the employing authority’s current and former employees; and

(b) a revised rates and adjustment certificate showing the revised contributions due from that employing authority which specifies the percentage or amount by which, in the actuary’s opinion—

(i) the contribution at the common rate should be adjusted; or

(ii) 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 liabilities of the fund in respect of those employees.”;

- (b) omit paragraph (2);

(c) in paragraph (3), for “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” substitute “Where for any reason it is not possible to obtain revised contributions from a body which has ceased to be a Scheme employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of that body”;

(d) in paragraph (3A), for “Paragraph (2) does not apply” substitute “Paragraphs (1) and (4) do not apply”;

- (e) for paragraph (4), substitute—

“(4) Subject to paragraph (3A), where in the opinion of an administering authority there are circumstances which suggest that an employing authority is to cease being a Scheme employer at some point in the future, the administering authority may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary’s opinion—

(i) the contribution at the common rate should be adjusted; or

(ii) 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 employing authority is neither materially more nor materially less than the anticipated liabilities of the fund in respect of those employees at the date it appears to the administering authority that the employing authority will cease to be a Scheme employer.”.

**36.** In regulation 56 (first instance determinations: ill-health), in paragraph (1A)(**40**) after “regulation 20(7)” insert “, 20(11)(a) or regulation 31(7)”.

**37.** In regulation 66 (statements of policy about exercise of discretionary functions)—

(a) in paragraph (1), for “and 30 (choice of early payment of pension) of the Benefits Regulations” substitute “, 30 (choice of early payment of pension) and 30A (choice of payment of pension: pensioner member with deferred benefits) of the Benefits Regulations”; and

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**(39)** Paragraph (3A) was inserted by [SI 2008/2989](#).

**(40)** Paragraph (1A) was inserted by [S.I. 2010/2090](#).

(b) after paragraph (1) insert—

“(1A) Each employing authority must publish its statement under paragraph (1) in relation to its functions under regulation 30A of the Benefits Regulations on or before 31st March 2013.”.

**38.** In regulation 68 (annual benefit statements) for paragraph (2), substitute—

“(2) Subject to paragraph (2A), the first such statement must be issued before 1st April 2010 and subsequent statements must be issued no later than 6 months after the end of the tax year to which they relate.

(2A) A statement must be issued before the end of the 6 month period mentioned in paragraph (2), where a member makes a request in writing to the administering authority, unless that authority is unable to comply with the request because relevant data is not available.”.

**39.** After regulation 68, insert—

**“Joint liability in respect of annual allowance charge**

**68A.—(1)** This regulation applies where a member gives his or her appropriate administering authority notice of joint and several liability under section 237B (liability of scheme administrator) of the Finance Act 2004**(41)** (“the Act”) in respect of the member’s annual allowance charge.

(2) Where the joint liability amount specified in the notice is met by the pension fund, the appropriate administering authority shall reduce the value of the member’s rights accrued under the Scheme and the Earlier Regulations (if applicable), in accordance with guidance issued by the Secretary of State.

(3) In this regulation—

- (a) “annual allowance charge” has the meaning given to that expression by section 227 of the Act; and
- (b) “the joint liability amount” has the meaning given to that expression by section 237B(3) of the Act.”.

**40.** In regulation 83 (inward transfers of pension rights)**(42)**, in paragraph (2)(b), for “Pensions Schemes Act 2004” substitute “Pensions Act 2004**(43)**”.

**41.** In regulation 86 (changes of fund), in paragraph (4)(a), for “the President of the Institute of Actuaries” substitute “the President of the Institute and Faculty of Actuaries”.

**42.** In Schedule 1 (interpretation)**(44)**—

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

““Academy” means a school to which Academy arrangements relate, as to which see section 1 of the Academies Act 2010**(45)**”;

(b) in the definition of—

- (i) “Actuary”, for “Fellow of the Institute of Actuaries or of the Faculty of Actuaries” substitute “Fellow of the Institute and Faculty of Actuaries”; and
- (ii) “Scheme employer”, for “regulations 7(6)” substitute “regulations 7(9)”;

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**(41)** 2004 c. 12. Section 237B was inserted by Schedule 17 to the Finance Act 2011 (c. 11).

**(42)** Regulation 83 was amended by S.I. 2008/2425.

**(43)** 2004 c. 35.

**(44)** Schedule 1 was amended by S.I. 2008/2425, S.I. 2008/3245, S.I. 2009/3150, S.I. 2010/528, and S.I. 2010/1172.

**(45)** 2010 c.32.

- (c) after the definition of “passenger transport executive” insert—  
““payment period” means a period of service to which an employee’s wages or salary payments relate;” and
- (d) after the definition of “Pensioner member”, insert—  
““police and crime commissioner” has the same meaning as in the Police Reform and Social Responsibility Act 2011(46);”.
- 43.** In Schedule 2 (Scheme employers)(47)—
- (a) in Part 1—
- (i) for paragraph 6, substitute—  
“**6.** A police and crime commissioner”;
- (ii) omit paragraphs 19, 20 and 25; and
- (iii) after paragraph 26, add—  
“**27.** A Mayoral development corporation within the meaning of section 198 of the Localism Act 2011(48).  
**28.** A chief constable within the meaning of section 2 of the Police Reform and Social Responsibility Act 2011.”; and
- (b) in Part 2, omit paragraphs 9 and 10.
- 44.** In Schedule 3 (matters to be included in admission agreements with transferee admission bodies)—
- (a) in the heading—
- (i) omit the expression “Transferee”; and
- (ii) for “Regulation 6(9)” substitute “Regulation 7(1)”;
- (b) in each place where it occurs but not in paragraph 12, omit the expression “transferee”;
- (c) in paragraph 2—
- (i) for “regulation 6(7)” substitute “regulation 7(4)”;
- (ii) omit “in accordance with regulation 6(8)”;
- (d) after paragraph 2, insert—  
“**2A.** If required by regulation 7(5), a reference to the guarantee secured by the admission body and a warranty from that body that the guarantee is in place.”
- (e) in paragraph 9(a), for “regulation 7(2)” substitute “regulation 7(6)”;
- (f) in paragraph 12(c), for “regulation 6(5)” substitute “regulation 7(3)”.
- 45.** Part 1 of Schedule 4 (Appropriate funds)(49) is amended as follows—
- (a) for paragraph 2 substitute—  
“**2A.** This paragraph applies where an employing authority—  
(i) has members in respect of whom but for this paragraph, it would be required to contribute to more than one fund; or

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(46) 2011 c.13.

(47) Schedule 2 was amended by S.I. 2010/713, S.I. 2010/1172 and S.I. 2010/2090.

(48) 2011 c.20.

(49) Schedule 4 was amended by S.I. 2008/3245 and S.I. 2010/2090.

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- (ii) merges or amalgamates with another employing authority and in respect of which there is specified a different fund for the respective members of each employing authority; or
- (iii) moves its main place of business to a different geographical area.

**2B.** Where paragraph 2A applies, the Secretary of State may upon application by the employing authority, by direction substitute another fund (“the substituted fund”).”.

- (b) for paragraph 6 substitute—

“**6.** It may also contain provision as to the transfer of liabilities to the substituted fund, may require a revised rates and adjustment certificate in respect of each employing authority concerned, to take account of the effect of the direction, and may make provision for any other consequential or incidental matters.”.

- (c) In the Table(**50**), after paragraph 6 insert—

“**6A** Other than where the employee falls Fund maintained by the administering within the description in paragraph 6B of authority within whose local government this Table, an employee of a proprietor of area the relevant Academy is located. an Academy.

**6B** An employee of a proprietor of Fund maintained by the London Pensions an Academy where immediately before Fund authority.”  
the school achieved Academy status, the appropriate fund in relation to that school was the fund maintained by the London Pensions Fund Authority.

- (d) In the Table, in paragraph 7, for “paragraphs 1 to 6” substitute “paragraphs 1 to 6B”.

### Savings

**46.** The amendments made by regulations 24, 25 and 44 shall not affect any admission agreements made in accordance with the Administration Regulations before the date on which these Regulations come into force.

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

*Joan Hanham*  
Parliamentary Under Secretary of State  
Department for Communities and Local  
Government

27th July 2012

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(50) The Table was amended by [S.I. 2008/3245](#) by the substitution of paragraph 7; there are other amendments to the Table which are not relevant.

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## EXPLANATORY NOTE

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

These Regulations, which extend to England and Wales, amend four statutory instruments namely: The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (“the Discretionary Compensation Regulations”);

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

The Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (“the Transitional Regulations”); and

The Local Government Pension Scheme (Administration) Regulations 2008 (“the Administration Regulations”).

Section 12 of the Superannuation Act 1972 (“the 1972 Act”) provides that regulations made under section 7 may have effect from a date earlier than the making of the Regulations.

Regulation 1 provides that the Regulations come into force on 1st October 2012 but makes provision for various provisions to have effect from different dates.

Regulation 3 makes a corrective amendment to regulation 2 (interpretation) of the Discretionary Compensation Regulations so that all the employers listed in regulation 8(1) of the Administration Regulations are covered by the definition of “employing authority”.

Regulation 4 introduces the amendments set out in regulations 5 to 17 relating to the Benefits Regulations.

Regulation 5 amends regulation 1 (which provides for the definition of certain terms) by introducing a definition for the expression “Scheme employer”.

Regulation 6 makes amendments to regulation 2 (active members) which are consequential to other provisions in these Regulations, in particular those which move the provision stipulating that automatic membership of the Scheme does not apply to a person with an employment contract of less than three months.

Regulation 7 amends regulation 8 (final pay: general) to provide clarification as to the meaning of “that employment” in regulation 8(1) of the Benefits Regulations.

Regulation 8 amends regulation 14A (election to pay additional contributions: survivor benefits) to provide that an election to pay additional survivor benefits must be made within 12 months of making a declaration to nominate a cohabiting partner under regulation 25 of the Benefits Regulations.

Regulation 9 amends regulation 18 (flexible retirement) to clarify that where a member aged 55 or over has accrued benefits under the 1997 Local Government Pension Scheme in the current membership, the member shall receive payment of those benefits but also has the choice whether to request to receive payment of benefits accrued under the Benefits Regulations.

Regulation 10 amends regulation 26 (meaning of “eligible child”) to update a statutory reference.

Regulation 11 amends regulation 28 (children’s pensions: active members) to provide that the calculation of the pension takes into account any additional contributions made by the deceased member and that in the case of a member in part-time employment, no account is taken of any reduction in the member’s membership caused as a result of the condition that led to or contributed to the member’s death. Similar amendments are made in regulation 15 and 16 which amend



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regulation 33 (survivor benefits: deferred members) and regulation 34 (children's pensions: deferred members).

Regulations 12 and 13 respectively amend regulation 30 (choice of early payment of pension) and regulation 30A (choice of payment of pension: pensioner member with deferred benefits) to provide that the appropriate administering authority for a deferred member or pensioner member with deferred benefits may consent to the early payment of pension where the member's former employing authority has ceased to be a Scheme employer.

Regulation 14 amends regulation 31 (early payment of pension: ill-health) to enable a pensioner member with deferred benefits to access their retirement pension early provided an independent registered medical practitioner ("IRMP") certifies that the member's ill-health condition has deteriorated to the extent that the member is permanently incapable of working.

Regulation 17 amends regulation 39 (commutation and small pensions) to include an authorised commutation payment prescribed in Regulations made under section 164(1)(f) of the Finance Act 2004.

Regulation 18 introduces the amendments set out in regulations 19 to 22 relating to the Transitional Regulations.

Regulation 19 amends regulation 3 (membership accrued before 1st April 2008: active members) to insert a reference to regulation 30A(1) and (4) of the Benefits Regulations.

Regulation 20 amends regulation 10 to clarify that the rule of 85 transitional provisions apply to pensioner members with deferred benefits who meet the relevant conditions. Regulation 22 makes a corresponding amendment to paragraph 1 of Schedule 2 and provides for exclusion of certain credited periods from the calculation of the total period of membership.

Regulation 21 revokes certain saved provisions of the 1997 Regulations.

Regulation 23 introduces the amendments set out in regulations 24 to 45 relating to the Administration Regulations.

Regulation 24 amends regulation 6 (employees of non-Scheme employers: transferee admission bodies) by requiring a (2)(a) transferee admission body and an administering authority to enter into separate admission agreements where the admission body is performing the functions of a Scheme employer under more than one contract.

Regulation 25 substitutes regulation 7 (admission agreements – further provisions) with a new regulation 7 which consolidates some of the provisions formerly contained in regulation 6 relating to admission agreements for transferee admission bodies so that these now apply to all categories of admission bodies. The amendments also add new requirements to be contained in admission agreements.

Regulation 26 clarifies that employees of Newcastle International Airport Limited have remained members of the Scheme by virtue of the admission agreement which first admitted them to the previous local government pension scheme, and that no regulatory change has caused that agreement to terminate.

Regulation 27 provides for elected police and crime commissioners to become members of the Scheme. It provides that they are to be treated as employees of the police and crime commissioner, but that any decisions they make in the capacity of employing authority which affect the benefits they or their predecessors are entitled to must be confirmed by the commissioner's head of staff.

Regulation 28 amends regulation 12 (further restrictions on eligibility) to include employment with a NHS Scheme employer in Wales as a result of arrangements under section 33 of the National Health Service (Wales) Act 2006. A minor consequential amendment is also made relating to regulation 7 of the Administration Regulations.

Regulation 29 substitutes a new regulation 13 (joining the Scheme) providing for automatic enrolment of eligible members apart from those with employment contracts of less than 3 months, where application for membership is required.

Regulation 30 amends regulation 18 (contributions during child related leave) so that additional paternity leave is included within the provisions.

Regulations 31, 32 and 33 respectively amend regulation 19 (contributions during reserve forces service leave), regulation 20 (contributions during trade dispute absence) and regulation 21 (contributions during absences with permission) so that additional contributions made in respect of survivor benefits under regulation 24A must continue to be paid during periods of absence.

Regulation 34 amends regulation 32 (admission agreement funds) by inserting what was formerly sub-paragraph (1) of regulation 38 (revised actuarial valuations) into regulation 32 of the Administration Regulations so that all matters relating to admission agreement funds are marshalled together.

Regulation 35 amends regulation 38 (special circumstances where revised actuarial valuations and certificates must be obtained) to clarify that it applies to all employing authorities and enables administering authorities to obtain a revised certificate in a wider range of circumstances. There are also consequential amendments relating to Schedule 3.

Regulation 36 amends regulation 56 (first instance determinations: ill-health) to enable an IRMP who has previously been involved in an ill-health retirement case to advise on the same case if a request is made to issue a further certificate in consequence of regulation 20(11)(a) or regulation 31(7) of the Benefits Regulations.

Regulation 37 amends regulation 66 (statements of policy about exercise of discretionary functions) to provide that the exercise of functions under regulation 30A of the Benefits Regulations are included in the written statements of policy. The statement must be amended to include this provision by 31<sup>st</sup> March 2013.

Regulation 38 amends regulation 68 (annual benefit statements) to adjust the timescale for the issuing of annual benefit statements in accordance with the requirements of the Finance Act 2004 (as amended by the Finance Act 2011), and inserts a new provision to enable a member to request a benefit statement.

Regulation 39 inserts a new regulation 68A (joint liability in respect of annual allowance charge) to provide that where an administering authority has discharged a member's tax charge, the authority must reduce the value of the member's accrued rights in accordance with guidance issued by the Secretary of State.

Regulation 40 makes a minor corrective amendment to regulation 83 (inward transfers of pension rights).

Regulations 41 and 42 respectively amend regulation 86 (changes of fund) and Schedule 1 (interpretation) to reflect a change of title. Regulation 42 also introduces a definition of the term "Academy".

Regulation 43 amends Schedule 2 (Scheme employers) by updating the list of Scheme employers contained in Parts 1 and 2 of that Schedule.

Regulation 44 amends Schedule 3 (matters to be included in admission agreements with Transferee admission bodies) so that the matters to be contained in an admission agreement apply to all categories of admission body.

Regulation 45 amends Schedule 4 (appropriate funds) to allow greater flexibility in the use of directions by the Secretary of State. It also amends the Table in Part 1 of the Schedule by making provisions as to the appropriate fund for a member employed by a proprietor of an Academy.

Regulation 46 provides that the amendments made by regulations 24, 25 and 44 do not affect admission agreements entered into before the date that these Regulations come into force.

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