STATUTORY RULES OF NORTHERN IRELAND

2009 No. 34

LOCAL GOVERNMENT

Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009

Made - - - - 25th February 2009

Coming into operation 1st April 2009

The Department of the Environment makes these Regulations in exercise of the powers conferred by Articles 9 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972(**1**) and now vested in it(**2**).

In accordance with Article 9 of that Order the Department has consulted with the Northern Ireland Local Government Association, the Northern Ireland Local Government Officers' Superannuation Committee and such representatives of other persons likely to be affected by the Regulations as appeared to it to be appropriate.

Citation, commencement, interpretation and retrospection

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 and except as provided for in paragraph (2), shall come into operation on 1st April 2009.

(2) These Regulations shall come into operation as follows—

(a) regulation 8 on 1st February 2009;

(b) paragraphs (2) and (9) of Schedule 3 on 1st April 2007;

(c) paragraphs (3) and (4) of Schedule 3 on 6th April 2006;

(d) paragraph (5) of Schedule 3 on 1st April 2004; and

(e) paragraphs (6), (7) and (8) of Schedule 3 on 1st October 2006.

(3) In these Regulations—

"the 2002 Regulations" means the Local Government Pension Scheme Regulations (Northern Ireland) 2002(**3**);

(**1**) S.I. 1972/1073 (N.I. 10); Art. 9 was amended by Art. 34 S.I. 2005/1968 (N.I. 18); Art. 14 was amended by Art. 12 S.I. 1990/1509 (N.I. 13).

(**2**) S.R. & O (N.I.) 1973 No. 504 Article 7(1); S.I. 1976/424 (N.I. 6).

(**3**) S.R. 2002 No. 352 as amended by S.R. 2002 No. 353, S.R. 2004 No. 139, S.R. 2005 No. 206, S.R. 2005 No. 274, S.R. 2006 No. 6, S.R. 2006 No. 112, S.R. 2007 No. 152, S.R. 2007 No. 448 and S.R. 2007 No. 479.

"the 2002 Scheme" means the occupational pension scheme constituted by the 2002 Regulations, the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002(**4**) and the Local Government Pension Scheme Regulations (Northern Ireland) 2000(**5**) (so far as they continue to operate);

"active member" has the same meaning as in Article 121(1) of the Pension (Northern Ireland) Order 1995(**6**);

"the Administration Regulations" means the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009(**7**);

"the Benefits Regulations" means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009(**8**);

"the Committee" means the Northern Ireland Local Government Officers' Superannuation Committee established under section 1 of the Local Government (Superannuation) Act (Northern Ireland) 1950(**9**);

"contribution rate" means the appropriate contribution rate for a member as provided for in regulation 3 (contributions payable by active members) of the Benefits Regulations;

"deferred member" has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995 except as provided in regulation 12 (re-employed and rejoining deferred members) of the Administration Regulations;

"employee" includes a whole-time, part-time or variable time employee;

"employing authority" means a body employing an employee who is eligible to be a member or is a local authority as defined in Article 2 of the Superannuation (Northern Ireland) Order 1972(**10**) (but see regulation 6(6) (admission agreements – further provisions) of the Administration Regulations);

"employment" includes office;

"local government employment" means employment by virtue of which the person employed is or has been (or is or has been deemed to be) a member;

"member" has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995 but, except in regulation 64 (annual benefit statements) and in Part 11 (pension sharing) of the Administration Regulations, shall not include a pension credit member;

"nominated cohabiting partner" has the meaning given by regulation 25 (meaning of "nominated cohabiting partner") of the Benefits Regulations;

"occupational pension scheme" has the meaning given by section 150(5) of the Finance Act 2004(**11**);

"pension credit" means a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(**12**) or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999(**13**);

"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;

(**4**) S.R. 2002 No. 353; as amended by S.R. 2006 No. 6.
(**5**) S.R. 2000 No. 177; as amended S.R. 2001 No. 61, S.R. 2001 No. 63, S.R. 2001 No. 64, S.R. 2002 No. 115 and S.R. 2002 No. 353.
(**6**) S.I. 1995/3213 (N.I. 22).
(**7**) S.R. 2009 No. 33.
(**8**) S.R. 2009 No. 32.
(**9**) 1950 c. 10 (N.I.).
(**10**) As extended by The Housing (Northern Ireland) Order 1981 (S.I. 1981/156, Part 2, Article 5(3)).
(**11**) 2004 c. 12.
(**12**) S.I. 1999/3147 (N.I. 11).
(**13**) 1999 c. 30.

"pension credit member" means a person who has pension credit rights or benefits under the Scheme;

"pension credit rights" means rights to future benefits under the Scheme which are attributable to a pension credit;

"pensioner member" has the same meaning as in Article 121(1) of the Pensions (Northern Ireland) Order 1995;

"preserved benefits" means benefits to which a person—

(a) was entitled immediately before the commencement date and which are preserved by virtue of regulation 3(1) and 3(2)(a) (membership accrued before 1st April 2009: active members); and

(b) becomes entitled under the Benefits Regulations and Administration Regulations,

and which have not become payable and which have not had an election made in respect of them under regulation 12 (re-employed and rejoining deferred members) of the Administration Regulations;

"the Scheme" means the occupational pension scheme constituted by these Regulations, the Administration Regulations, the Benefits Regulations and the 2002 Regulations (so far as they continue to operate);

"service" means service or employment with an employing authority and service rendered by an employee of an employing authority whose services are placed at the disposal of a Minister of the Crown or a Government department in pursuance of any enactment is to be treated as service with an employing authority; and

"total membership" means the aggregate of periods of membership which count as such under regulation 6 (periods of membership) of the Benefits Regulations.

Revocation of Regulations

2.—(1) Except where these Regulations provide otherwise, in particular Schedule 5, the Regulations listed in Schedule 1 are revoked.

(2) Accordingly, no person may become a member of the 2002 Scheme after 31 March 2009 or accrue benefits in it in respect of any service after that date.

Membership accrued before 1st April 2009: active members

3.—(1) This regulation applies to a person who was an active member of the 2002 Scheme and becomes a member of the Scheme by virtue of regulation 2 (active members) of the Benefits Regulations.

(2) Notwithstanding the revocations effected by regulation 2, the Regulations listed in Schedule 1 continue to have effect, subject to regulation 4, so far as is necessary so that—

(a) the person's total membership accrued in the 2002 Scheme in respect of, or calculated by reference to, his service before 1st April 2009, and the pension rights accrued at that date, are preserved; and

(b) his benefits under the 2002 Scheme are payable immediately where benefits become payable without reduction under regulations 16 (normal retirement), 17 (retirement after normal retirement date), 19 (early leavers: business efficiency and redundancy) and 20 (early leavers: ill-health) of the Benefits Regulations, or with the appropriate actuarial reduction in line with guidance produced by the Government Actuary where benefits become payable under regulations 18 (flexible retirement) or 30 (choice of early payment of pension) of the Benefits Regulations.

(3) But his final pay, for the purposes of any calculation of benefits under paragraph (2), is calculated in accordance with regulations 8 (final pay: general) to 11 (final pay: fluctuating emoluments) of the Benefits Regulations.

(4) And, for the purposes of regulation 24 (survivor benefits: active members), 33 (survivor benefits: deferred members) or 36 (survivor benefits: pensioner members) of the Benefits Regulations as they apply to nominated cohabiting partners or civil partners, only periods of membership after 5th April 1988 are to be taken into account.

Membership accrued before 1st April 2009: deferred members

4.—(1) This regulation applies to a person—

(a) who was a deferred member of the 2002 Scheme;

(b) who becomes a member of the Scheme by virtue of regulation 9 (joining the scheme) of the Administration Regulations; and

(c) whose preserved benefits under the 2002 Scheme have not yet come into payment.

(2) He may choose, by notice in writing to the Committee within 12 months (or such longer period as the Committee may allow) of becoming a member of the Scheme under paragraph (1)(b), to be treated as if regulation 3 applied.

Membership accrued before 1st April 2009: concurrent employments

5. Where a member to whom regulation 3 applies has membership to which regulation 13 (concurrent employments) of the Administration Regulations also applies, the calculation of any period for the purposes of the latter provision is carried out separately in respect of periods of employment before 1st April 2009 as if regulation 35 of the 2002 Regulations still applied and in respect of periods of employment after 31st March 2009 in accordance with regulation 13 of the Administration Regulations.

Survivor benefits

6.—(1) Subject to paragraphs (2) and (3), any survivor benefits payable in respect of a person to whom regulation 3 or 4 applies are calculated as if the Benefits Regulations applied to all of his membership, whether it accrued before or after 1st April 2009.

(2) The survivor benefits payable in respect of a deferred member to whom regulation 4 does not apply are calculated as if his total membership before 1st April 2009 was a separate period of membership to which the conditions in force at the time he became a deferred member apply.

(3) Regulations 44 (reduction of some surviving spouses' pensions) and 44A (calculation of pension for surviving civil partner) of the 2002 Regulations continue to apply to a deferred or pensioner member who marries or enters a civil partnership after becoming such a member.

Deferred members: limit on death grant

7. Where a person to whom regulation 3 applies becomes a deferred member after 31st March 2009 and dies before his pension comes into payment, the death grant to which he is entitled under any provision of the Scheme or the 2002 Scheme as continued in effect by regulation 3, shall not exceed his retirement pension multiplied by 5.

Members' contributions: information

8. The employing authority of the person to whom regulation 2(3) (active members) of the Benefits Regulations applies shall inform him, before 1st April 2009, of the contribution rate

applicable to him in accordance with regulation 3(2) (contribution payable by active members) of those Regulations.

Members' contributions: lower rate rights

9.—(1) Subject to paragraph (4), the contribution rates set out in the table in regulation 3(2) (contribution payable by active members) of the Benefits Regulations ("the 2009 table") do not apply to a person to whom regulation 11(3) (members' contributions) of the 2002 Regulations, as continued in effect by regulation 3, applies.

(2) Instead, the contribution rate to be applied to such a member is calculated in accordance with the following table.

Table

Year commencing	*Contribution rates*
1st April 2009	5.25%
1st April 2010	5.5%
1st April 2011	6.5%

(3) But if the application of the table set out in paragraph (2) would result in a member's contribution rate being higher than if the 2009 table applied, his contribution shall be paid at the lower rate.

(4) After 31st March 2012, such a member makes contributions in accordance with the 2009 table.

Early leavers: ill-health

10. Where the benefits payable to a member in respect of whom the Committee makes a determination under regulation 20(1) of the Benefits Regulations before 1st October 2009 would place him in a worse position than he would otherwise be had the 2002 Regulations continued to apply, then those Regulations shall have effect in relation to him as if they were still in force.

The 85 year rule

11.—(1) This regulation applies to a person—

(a) to whom regulation 3 applies; and

(b) where—

(i) the Committee may pay benefits following a request under regulation 18 (flexible retirement) of the Benefits Regulations; or

(ii) the Committee may pay benefits following a request under regulation 30 (choice of early payment of pension) of those Regulations.

(2) Schedule 2 (which makes transitional provision relating to the so-called "85 year rule") has effect in relation to such a person.

Application of abatement policy in individual cases

12. Notwithstanding the revocation of regulation 113 (application of abatement policy in individual cases) of the 2002 Regulations, paragraph (4) of that regulation shall continue to apply to a person who was a member for the Local Government Pension Scheme constituted under the