

**2012 No. 183**

**LOCAL GOVERNMENT**

**Local Government Pension Scheme (Amendment) Regulations  
(Northern Ireland) 2012**

*Made* - - - - *3rd May 2012*

*Coming into operation* - *1st June 2012*

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(a) and now vested in it(b).

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 and retrospection**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2012 and except as provided for by paragraph (2), shall come into operation on 1st June 2012.

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

- (a) regulations 2 to 9, 13, 17, 18 and 20 from 1st April 2009; and
- (b) regulation 16 from 9th May 2011.

**Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009**

2. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009(c) shall be amended in accordance with regulations 3 to 16.

3. In regulation 3(9) (contributions payable by active members) for “after” substitute “on and after”.

4. For regulations 4(2)(f) and 4(2)(g) (meaning of “pensionable pay”) substitute—

- “(f) any payment to buy out an existing term or condition of employment;
- (g) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such a provision; or

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(a) 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).  
(b) S.R. & O (N.I.) 1973 No. 504 Article 7(1); S.I. 1976/424 (N.I. 6).  
(c) S.R. 2009 No. 32; the relevant amending Regulations are S.R. 2010 No. 410 and S.R. 2011 No. 117.

(h) any award of compensation (excluding any sum representing arrears of pay) for the purposes of achieving equal pay in relation to other employees.”.

**5.** In regulation 6 (periods of membership) for “These are” substitute “Subject to regulation 11 (periods of membership) of the Administration Regulations these are”.

**6.** In regulation 7(3) (calculation of length of periods of membership) for “Membership” substitute “Except for the purposes of regulation 5(1)(a), membership”.

**7.** In regulation 10 (final pay: reductions)—

(a) in paragraph (1) for “(3).” substitute “(3) by giving notice in writing to the Committee no later than one month prior to the date on which he ceases active membership or within such period as the Committee may determine.”;

(b) after paragraph (1) insert—

“(1A) Where a member to whom paragraph (1) applies dies without giving notice, the Committee may give notice on his behalf (whether or not the period within which he could have given notice has expired).”; and

(c) in paragraph (2) for sub-paragraphs (a) and (b) substitute—

“(a) commences before the beginning of the period of 10 years ending with his last day as a active member;

(b) immediately follows a period in which he occupies a post on a temporary basis; or

(c) is because he chooses to take flexible retirement under regulation 18 (flexible retirement).”.

**8.** In regulation 17(1) (retirement after normal retirement age) after “local government employment” insert “or who joins the Scheme”.

**9.** In regulation 18 (flexible retirement)—

(a) after paragraph 3 insert—

“(3A) If the payment of benefits referred to in paragraph (1) takes effect after the member’s 65th birthday, the benefits shall be enhanced in accordance with guidance issued by the Government Actuary.”; and

(b) in paragraph (7) after “calculation of his benefits under” insert “this regulation.”.

**10.** In regulation 20 (early leavers: ill-health)—

(a) in paragraphs (1)(b), (2), (3), (4)(a) and (4)(b) for “obtaining” substitute “being capable of undertaking”; and

(b) for paragraph (7) substitute—

“(7) But if, in the case of a person who is a member before 1st April 2009 and who—

(a) has attained the age of 45 before that date;

(b) has had continuous membership; and

(c) has not received any benefits in respect of that membership,

the period to be added under paragraph (2)(b) or (3)(b) is less than the period that would have been added had regulation 30 (amounts of ill-health pension and grant) of the 2002 Regulations applied, then his benefits are increased by adding the latter period.”.

**11.** In regulation 23 (death grants: active members)—

(a) in paragraph (4) for “But in calculating death grant” substitute “But, subject to paragraph (4A), in calculating death grant”; and

(b) after paragraph (4) insert—

“(4A) Where, in the opinion of the independent registered medical practitioner the member was, at the date of death, wholly or temporarily in part-time service as a result of

the condition that caused or contributed to the member's death, no account shall be taken of any reduction in pay due to such reduction in service as is attributable to that condition.”.

**12.** For regulation 24(2) (survivor benefits: active members) substitute—

“(2) Subject to the provisions listed in paragraph (2A), the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by his final pay and divided by 160.

(2A) The provisions mentioned in paragraph (2) are—

- (a) regulations 14 (election to pay additional regular contributions (ARCs)), 14A (election to pay additional contributions: survivor benefits) and 15 (elections to pay additional voluntary contributions (AVCs));
- (b) regulations 19 (payment of additional regular contributions), 20 (discontinuance of ARCs), 21 (additional voluntary contributions and shared cost additional voluntary contributions) and 22 (use of accumulated value of AVCs and SCAVCs) of the Administration Regulations; and
- (c) regulation 82 (pension debit member) of the Administration Regulations.

(2B) Where in the opinion of the independent registered medical practitioner the member was at the date of death, wholly or temporarily in part-time service as a result of the condition that caused or contributed to his death, no account shall be taken of any reduction in membership due to such reduction in service as is attributable to that condition.”.

**13.** In regulation 29(5) (calculation on leaving early), delete “, or any part of it,”.

**14.** In regulation 31(2) (early payment of pension: ill-health) for “obtaining” substitute “being capable of undertaking any”.

**15.** In regulation 39(1) (commutation: small pensions) for “a trivial commutation lump sum within the meaning of section” substitute “a trivial commutation lump sum within the meaning of sections 164(1)(f) or”.

**16.** In the Schedule (councillor members) at Part 2 (benefits), in paragraph 6, in regulation 20(2) for “the duties of that office” substitute “any gainful employment”.

### **Amendments to the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009**

**17.** The Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009(a) shall be amended in accordance with regulations 18 to 21.

**18.** After regulation 11(5) (periods of membership) insert—

“(6) A period of membership as a—

- (a) qualifying member between 1st January 1995 and 30th November 2007; and
- (b) newly qualifying member between 1st January 1995 and 6th February 2009,

shall be calculated for the purposes of these Regulations and the Benefits Regulations, in accordance with regulations 10 (length of period of membership: calculation of benefit) and 19 (calculations) of the 2002 Regulations(b).

(7) In this regulation—

“qualifying member” means a member who is party to the Agreement;

“newly qualifying member” means a member who is employed as a classroom assistant by a voluntary grammar school or a grant maintained integrated school within the meaning of the Education Reform (Northern Ireland) Order 1989; and

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(a) S.R. 2009 No. 33; the relevant amending Regulations are S.R. 2010 No. 410.

(b) S.R. 2002 No. 352; the relevant amending Regulations are S.R. 2010 No. 164.

“the Agreement” means the Collective Agreement for the Joint Negotiating Council of the Education and Library Boards dated 30th November 2007.”.

**19.** For regulation 13(1) (concurrent employments) substitute—

“**13.**—(1) Where a person ceases to be an active member in one employment (“the first employment”)—

- (a) in respect of which he has at least three months’ total membership; or
- (b) in respect of which he has an entitlement to benefits under regulation 5 (benefits of the Benefits Regulations, and

continues as an active member in another employment which was held concurrently with the first employment, the person may elect to have the former membership in respect of the first employment aggregated with membership in that other employment.”.

**20.** In regulation 22 (use of accumulated value of AVCs and SCAVCs)—

(a) in paragraph (2), for “paragraph (1)(a)(i) must notify his employing authority” substitute “paragraph (1)(a)(i) or (b) must notify the Committee”;

(b) in paragraph (4) for “paragraph (1)(a)(ii) or (1)(c)” substitute “paragraph (1)(a)(i), (1)(a)(ii) or (1)(c)”;

(c) for paragraph (7) substitute—

“(7) In the case of a person mentioned in paragraph (1)(b) the employing authority must, as soon as possible, inform the Committee that the person has stopped being an active member.”;

(d) in paragraph (8), delete “or with paragraph (7)(b)”;

(e) after paragraph (8) insert—

“(9) In the event that a member dies before the policy is entered into, the accumulated value is payable to his personal representatives.

(10) If the Committee has not made payments under paragraph (9) equalling in aggregate the accumulated value before the expiry of 2 years—

- (a) beginning with the date of his death; or
- (b) beginning with the date on which the Committee could reasonably be expected to have become aware of the member’s death,

it must pay an amount equal to the shortfall to the member’s personal representatives.”.

**21.** After regulation 47 (payments due in respect of deceased persons), insert—

**“Payments for persons incapable of managing their affairs**

**47A.**—(1) Where it appears to the Committee that a person other than an eligible child is entitled to the payment of benefits under the Scheme but is, by reason of mental disorder or otherwise, incapable of managing his affairs—

- (a) the Committee may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the Committee may determine, to be applied for the benefit of the person entitled as the Committee may direct; and
- (b) in so far as the Committee does not pay the benefits in that manner, the Committee may apply them in such manner as the Committee may determine, for the benefit of the person entitled or his beneficiaries.

(2) In this regulation, “eligible child” shall be construed in accordance with regulation 26 (meaning of “eligible child”) of the Benefits Regulations.”.

Sealed with the Official Seal of the Department of the Environment on 3rd May 2012.



*Linda MacHugh*  
A senior officer of the Department of the Environment

## EXPLANATORY NOTE

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

These Regulations contain amendments to the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009 (the Benefits Regulations) and the Local Government Pension Scheme (Administration) Regulations (NI) 2009 (the Administration Regulations) which came into operation on 1st April 2009. The Benefits Regulations and Administration Regulations form part of the regulatory framework governing the Local Government Pension Scheme in Northern Ireland (the Scheme).

The Northern Ireland Local Government Officers' Superannuation Committee (the Committee) administers the Scheme.

Article 14 of the Superannuation Order (NI) 1972 confers express powers to make regulations retrospective in effect. These Regulations are retrospective.

Regulation 2 introduces the amendments set out in regulations 3 to 16 relating to the Benefits Regulations.

Regulation 3 precludes the possibility of members making contributions from the day before their 75th birthday.

Regulation 4 amends the meaning of "pensionable pay" by excluding any award of compensation for the purposes of achieving equal pay in relation to other employees, whilst ensuring that any arrears of pay remain within the definition of "pensionable pay".

Regulation 5 inserts a cross reference to regulation 11 (periods of membership) of the Administration Regulations into regulation 6 (periods of membership) of the Benefits Regulations.

Regulation 6 amends regulation 7 (calculation of length of periods of membership) to ensure that when determining whether a part-time member has total membership of at least three months, entitling the member to benefit, the calendar period should be used and not pro-rata time.

Regulation 7 amends regulation 10 (final pay: reductions) to give the Committee the discretion to give notice on behalf of a deceased member who meets the qualifying conditions, to have the member's final pay calculated in accordance with this regulation, whether or not the period of notice has expired. The regulation has also been amended to clarify that this regulation does not apply to a member who has opted to take flexible retirement under regulation 18.

Regulation 8 amends regulation 17 (retirement after normal retirement age) to make it clear that a member who joins the Scheme after age 65 is entitled to a pension.

Regulation 9 amends regulation 18 (flexible retirement) to clarify that benefits taken after age 65 are actuarially enhanced.

Regulation 10 amends regulation 20 (early leavers: ill-health) to clarify that the independent medical practitioner assesses the member's ability to undertake gainful work. The transitional protection for a person who was a member before 1st April 2009 and was aged 45 (or more) before that date only applies to member with continuous membership before 1st April 2009.

Regulation 11 amends regulation 23 (death grants: active members) to disregard the reduction in final pay, where a member was in part-time employment as a result of a medical condition and that condition subsequently leads to the death of the member, in the calculation of the death grant.

Regulation 12 amends regulation 24 (survivor benefits: active members) to clarify the provisions under which a survivor's pension is calculated and ensures that any reduction in final pay because a member was in part-time employment as a result of a medical condition and that condition subsequently leads to the death of the member, is ignored in the calculation of survivor benefits.

Regulation 13 amends regulation 29 (calculation on leaving early) to make it clear that early leavers cannot choose to take part of their deferred benefits at age 65.

Regulation 14 amends regulation 31 (early payment of pension: ill-health) to clarify that the independent medical practitioner assesses the deferred member's ability to undertake gainful work.

Regulation 15 amends regulation 39 (commutation: small pensions) to include a flexibility under section 164(1)(f) of the Finance Act 2004 which enables the commutation of benefits not in excess of £2,000 in one scheme. This brings the Benefits Regulations into line with the Registered Pension Schemes (Authorised Payments) Regulations 2009.

Regulation 16 amends paragraph (6) of the Schedule (councillor members) which sets out the ill-health provisions for councillor members, to make it clear that the original policy intention was that the independent registered medical practitioner assesses the councillor's ability to undertake any gainful employment.

Regulation 17 introduces amendments set out in regulations 18 to 21 relating to the Administration Regulations.

Regulation 18 amends regulation 11 (periods of membership) to ensure the continued protection of classroom assistants' pensions, where a member decides to aggregate a period or periods of protected membership with another period of membership or where a member has concurrent employments and is a member of the Scheme in both employments, if one employment ends and the member decides to join the periods or periods of protected membership from the terminated employment with the period of membership in the current employment.

Regulation 19 amends regulation 13 (concurrent employments) to enable members, subject to certain conditions, to aggregate periods of membership in concurrent employments.

Regulation 20 amends regulation 22 (use of accumulated value of Additional Voluntary Contributions (AVCs) and Shared Cost Additional Voluntary Contributions (SCAVCs)) to include two new paragraphs. The first of which will give the Committee the discretion to pay the accumulated value to a member's personal representatives in the event of his or her death. This discretion was included in the Local Government Pension Scheme Regulations (NI) 2002 but was not carried forward to the current Administration Regulations. The second new paragraph will require the Committee to make the payment of the total accumulated value within two years of the member's death, to his or her personal representatives.

Regulation 21 inserts a new regulation, regulation 47A (payments for persons incapable of managing their affairs) enables the Committee to determine how and to whom benefits may be paid for the benefit of a person who is incapable of managing their own affairs.

A regulatory impact assessment has not been produced for these Regulations as it has a negligible impact on the cost of businesses, charities, social economy enterprises or the voluntary sector and does not have a significant financial impact on public bodies.

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