
STATUTORY INSTRUMENTS

1997 No. 1612

PENSIONS

The Local Government Pension Scheme Regulations 1997

<i>Made</i>	- - - -	<i>30th June 1997</i>
<i>Laid before Parliament</i>		<i>3rd July 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1998</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(1) and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned, the local authorities with whom consultation appeared to him to be desirable and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate, hereby makes the following Regulations:—

PART I

PRELIMINARY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Local Government Pension Scheme Regulations 1997 and shall come into force on 1st April 1998.

Interpretation

2.—(1) Schedule 1 contains definitions of expressions used in these Regulations which apply for their interpretation unless the context indicates that they have a different meaning.

(2) Unless that is so, references to members and membership generally refer to active members and active membership respectively.

Application to Isles of Scilly

3. These Regulations apply to the Isles of Scilly as if they were a district in the county of Cornwall and the council of the Isles of Scilly were a council of that district.

(1) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

PART II
PRIMARY PROVISIONS
CHAPTER I
MEMBERSHIP

Eligibility for active membership

General eligibility for membership: employees of Scheme employers etc.

4.—(1) A person may only be an active member if this regulation, regulation 5 or Chapter I of Part V enables him to be one and he is not prevented by regulation 6.

(2) A person may be a member if he is employed by a Scheme employer.

(3) A Scheme employer is a body which is listed in Schedule 2 or is a resolution body.

(4) But a person who is employed by a resolution body may only be a member if he is covered by a relevant resolution.

(5) A relevant resolution is a statutory resolution by a resolution body stating that a specified employee or a class of employees to which he belongs may be a member.

(6) These are resolution bodies—

(a) the Board of Governors of the Museum of London;

(b) any other body which is a precepting authority, a levying body or a section 75 body;

(c) a passenger transport executive;

(d) a designated institution which immediately before designation was assisted or maintained by a local education authority;

(e) the governing body of a grant-maintained school or a grant-maintained special school (other than a school within Schedule 2);

(f) a company under the control of a body listed in that Schedule.

Agreements to enable employees of non-Scheme employers to be members (“admission agreements”)

5.—(1) An administering authority may make an admission agreement with any admission body.

(2) An admission agreement is an agreement that all or any specified class of the admission body’s employees may be members.

(3) An admission agreement may provide that a period of employment by the admission body before the date of the agreement counts as membership of the Scheme (or does so for some purposes).

(4) An admission agreement must terminate if the admission body ceases to be such a body.

(5) An admission agreement may make such other provision about its termination as the parties consider appropriate.

(6) When an administering authority make an admission agreement, they must immediately inform the Secretary of State of the admission body’s name and the date the agreement takes effect.

(7) An administering authority and an admission body may make an admission agreement despite the fact that they do not exercise their functions in areas which overlap or adjoin each other.

(8) These are admission bodies—

- (a) a body which provides a public service in the United Kingdom otherwise than for the purposes of gain;
- (b) a body to the funds of which any local authority contribute;
- (c) a body to which any grant is made out of money provided by Parliament;
- (d) a body representative—
 - (i) of local authorities, or
 - (ii) of local authorities and officers of local authorities, or
 - (iii) of officers of local authorities,
- (e) the Housing Corporation;
- (f) Housing for Wales;
- (g) the Commission for the New Towns.

(9) But the governors or managers of a voluntary school do not count as a body within paragraph (8)(a) to (c) and a body only falls within paragraph (8)(d)(iii) if it is formed for the purpose of consultation as to the common interests of local authorities and the discussion of matters relating to local government.

(10) These Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the body were a Scheme employer.

Further restrictions on eligibility

6.—(1) If a person's employment entitles him to belong to another statutory pension scheme, that employment does not entitle him to be a member, unless that other scheme was made under section 7 of the Superannuation Act 1972(2).

(2) A statutory pension scheme is an occupational pension scheme provided by or under an enactment (including a local Act).

- (3) A person may not become a member after his 65th birthday unless—
- (a) his total membership does not exceed his permitted maximum; and
 - (b) he is a permitted late member.

(4) The permitted maximum for a Class A member is 40 years.

(5) The permitted maximum for a Class B member or a Class C member is the sum of—

- (a) his total membership before he attained 60 or, if less, 40 years, and
- (b) his total membership since he attained 60,

or, if less, 45 years.

(6) A permitted late member is a person to whom—

- (a) a pension which must be the subject of a policy formulated under regulation 109 (statements of policy concerning abatement of retirement pensions in new employment),
- (b) an ill-health grant under regulation 27(3) or an ill-health retirement grant under regulation D8 of the 1995 regulations, regulation E4 of the 1986 regulations or regulation E20 of the 1974 regulations, or
- (c) a short service grant under the Benefits regulations,

has become payable, or who is entitled to or has received relevant compensation.

(7) Relevant compensation is compensation which—

(2) 1972 c. 11.

- (a) is payable under any enactment for loss of employment or loss or reduction of employment benefits attributable to an enactment, and
 - (b) is liable to be reduced or suspended by reason of the person to whom it is payable entering employment with a Scheme employer, in the same way as it would have been if he had remained eligible to belong to the occupational pension scheme to which he belonged or was eligible to belong immediately before suffering the loss.
- (8) If a person has been entitled to an ill-health pension calculated by reference to an enhanced membership period, that period is counted as part of his total membership for paragraphs (3) and (5).
- (9) Part-time employment as a member of a fire brigade maintained in pursuance of the Fire Services Act 1947(3) on terms under which the employee is or may be required to engage in fire fighting does not entitle the employee to be a member of the Scheme.

Joining and leaving the Scheme

Joining the Scheme

- 7.—(1) A person who wishes to become an active member must apply in writing to his employer or future employer.
- (2) An eligible person who applies before he begins his employment becomes a member when his employment begins unless he applies to join later.
- (3) An eligible employee who applies becomes a member on the first day of the first payment period following the application.
- (4) A payment period is a period of service to which the employee's wages or salary payment relate.
- (5) An employee is deemed to have applied to become a member, unless he notified his employer in writing that he did not wish to do so—
- (a) before his employment began, or
 - (b) if he only became eligible to be a member later, before the date he became eligible.
- (6) But paragraph (5) does not apply—
- (a) to employees of admission bodies,
 - (b) to casual employees, or
 - (c) to former members who opted to leave the Scheme by a notification under regulation 8.
- (7) An application for membership may be withdrawn before membership begins.
- (8) A former active member may reapply for such membership.
- (9) But a person who has given more than one notification under regulation 8 may only reapply again if—
- (a) his employer or future employer consents; or
 - (b) he is beginning a new employment with a new employing authority and he reapplies before he has been employed for three months.

Leaving the Scheme

- 8.—(1) A person may leave the Scheme if he wishes and stops being a member if he stops being eligible for membership.

- (2) A person who wishes to leave the Scheme must notify his employer in writing.
- (3) A member who gives such a notification stops being a member from the date the notification specifies.
- (4) But, if a date earlier than the notification or no date is specified, he stops being a member at the end of the payment period during which the notification is given.
- (5) Where notification is given by a person before he has been a member for three months, he must be treated as not having been a member in that period.

CHAPTER II

COUNTING MEMBERSHIP FOR THE SCHEME

Periods of membership: “total membership”

- 9.—(1) These are the periods which count as periods of membership—
- (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 12, 17 or 18;
 - (b) any period during which a member is away from work because of illness or injury;
 - (c) any period which a member is entitled to count as membership under—
 - (i) Chapter II or III of Part III, or
 - (ii) regulation 122(1) (periods credited on payment of transfer values);
 - (d) in the case of a member who belonged to the Scheme before the commencement date, any period he is entitled to count under the Transitional Regulations.
- (2) For most purposes a member's “total membership” is the total of the periods he is entitled to count under paragraph (1), disregarding any period which would otherwise count twice (but see regulations 10, 11 and 32 and the Transitional Regulations).
- (3) A person may not count any period of membership if his contributions for that period have been returned to him and, if all his contributions to the appropriate fund are returned to him, he may not count any period of membership credited to him on the receipt of a transfer value.
- (4) A person may not count any period of membership if his rights in respect of it have been transferred to a non-local government scheme, a personal pension scheme, a self-employed pension arrangement, a retirement annuity contract or an appropriate policy by payment of a transfer value.
- (5) Where a person pays contributions under regulation 18(3) (trade disputes) for any period, that period counts as a period within paragraph (1)(a) even if his contract of employment did not subsist throughout that period.
- (6) Paragraph (1)(a) includes any period for which a member is treated as having paid contributions under regulation 87(4) (concurrent employments).

Excluded membership

- 10.—(1) Superannuable membership does not count towards the membership period required before a person is entitled to any benefit.
- (2) Superannuable membership is—
 - (a) any period of added years, and
 - (b) any additional period of membership which counts as such by virtue of Chapter III of Part III.
 - (3) The Table in Schedule 3 sets out other sorts of membership which do not count for some purposes.

(4) The first column of that Table describes the membership and the second column specifies the purposes for which such membership does not count.

(5) That Table has effect subject to the notes at the end.

Length of period of membership: calculation of benefit

11.—(1) In calculating the amount of any benefit, fractions of years of membership count.

(2) The numerator of such fractions is the number of complete days of membership and 365 is the denominator.

(3) Membership in part-time service is counted as the appropriate fraction of the duration of membership.

(4) The numerator of that fraction is the number of contractual hours during the part-time service and its denominator is the number of contractual hours of that employment if it were on a whole-time basis.

(5) Paragraph (3) does not apply in determining a member's total membership for regulation 28(1) (entitlement to ill-health enhancement) (and see regulation 28(5) to (7) as to the determination of the enhanced membership period in such cases).

CHAPTER III

CONTRIBUTIONS

Members' contributions

12.—(1) Each member shall make contributions to the Scheme at the standard contribution rate on his pay in each employment in which he is an active member (but see regulation 15).

(2) The standard contribution rate for a member is six per cent., unless he is a member with lower rate rights.

(3) The standard contribution rate for a member with lower rate rights is five per cent.

(4) A person who is an active member in more than one employment must make contributions for each of those employments.

(5) His appropriate administering authority may decide the intervals at which the contributions are made.

(6) For this regulation any reduction in pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work shall be disregarded.

(7) Regulations 16 to 18 affect this regulation.

Meaning of “pay”

13.—(1) An employee's pay is the total of—

(a) all the salary, wages, fees and other payments paid to him for his own use in respect of his employment;

(b) the money value of any benefits provided for him by reason of his employment; and

(c) any other payment or benefit specified in his contract of employment as being a pensionable emolument.

(2) But an employee's pay does not include—

(a) payments for non-contractual overtime;

(b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;

- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate his contract of employment;
- (e) any payment as an inducement not to terminate his employment before the payment is made;
- (f) any amount representing the money value of the provision of a motor vehicle (but see paragraphs (8) and (9)); or
- (g) in the case of an employee or former employee of the Commission for the New Towns, any payment made under any scheme relating to the termination of the employment of employees by the Commission in respect of the completion before a specified date of specified functions.

(3) For regulation 12, the pay of a part-time employee for any period is the pay he would have received if during that period he had worked the contractual hours.

(4) But paragraph (3) does not apply to periods during which the employee was away from work by reason of illness or injury with reduced or no pay.

(5) If a Scheme employer agrees with the bodies or persons representative of any description of employees the method for determining the whole or a specified part of the pay of employees of that description for the period during which the agreement applies, the pay of a member who is such an employee is the amount so determined.

(6) A Scheme employer must notify in writing every member affected by such an agreement.

(7) That notification must include a conspicuous statement as to the place where he may obtain information about details of the agreement.

(8) Where—

- (a) a member's contribution under regulation C2 or C3 of the 1986 regulations for a period including 31st December 1992 was based on pay which for the 1986 regulations as then in force included an amount representing the money value to him of the provision of a motor vehicle, and
- (b) immediately before the commencement date his remuneration for the 1995 regulations included such an amount,

then his pay includes such an amount.

(9) But paragraph (8) shall cease to apply if—

- (a) he leaves employment with the employing authority who were employing him on 31st December 1992 (otherwise than as a result of a transfer to another Scheme employer which is beyond his control); or
- (b) he is neither provided with a motor vehicle nor receives an amount representing the money value to him of the provision of such a vehicle.

(10) No sum may be taken into account in calculating pay unless income tax liability has been determined on it.

Members with lower rate rights

14.—(1) A member has lower rate rights for regulation 12 if he falls within paragraph (2) or (3).

(2) A member falls within this paragraph if—

- (a) immediately before the commencement date he was entitled to contribute to the Scheme at the rate of five per cent., and
- (b) since that date either—
 - (i) he has remained in continuous employment in the same capacity and a member, or

- (ii) he has been continuously employed in local government employment.
- (3) A member falls within this paragraph if he is—
- (a) a continuously-employed manual worker who immediately before the commencement date was in a local government employment in which he was entitled to contribute to the Scheme at the rate of five per cent. by reason of being a manual worker (as defined in regulation C4 of the 1995 regulations), or
 - (b) a statutory transferee who was so entitled immediately before he left the Scheme on statutory transfer and has applied to his employing authority to continue to be so entitled before the expiry of the period of 30 days beginning with the date he rejoins the Scheme or such longer period as they may allow, or
 - (c) a continuously-employed local Act member.
- (4) A continuously-employed manual worker is a person—
- (a) who on or after the commencement date has been transferred from the employment he held immediately before that date to another local government employment which is described by his employer as a manual employment, or
 - (b) who on or after that date has been transferred more than once and all of whose employments since that date have been local government employments which are so described.
- (5) A statutory transferee is a person who—
- (a) left the Scheme by reason of his employment being transferred by virtue of an enactment to a person who was not a Scheme employer; and
 - (b) has rejoined the Scheme on a further transfer by virtue of an enactment to a person who is a Scheme employer and for whom he is employed in the same capacity as that in which he was employed immediately before he left the Scheme.
- (6) A continuously-employed local Act member is a person who has remained since before the commencement date continuously in employment which has entitled him to contribute to the Scheme at the rate of five per cent. by reason of rights under a local Act scheme.
- (7) For this regulation whether a person's employment is continuous must be determined in accordance with Chapter I of Part XIV of the Employment Rights Act 1996(4), but any period not exceeding one month and one day when he is not employed may be disregarded.

Employer's discretion to reduce member's contribution rate

15.—(1) The employing authority of a person who is an active member in their employment and has a total membership in local government employment of at least 40 years may by resolution determine that he should not be liable to make contributions to the Scheme on his pay in their employment or should only be liable to make them at a rate less than the standard contribution rate.

(2) The member's liability is reduced or, as the case may be, extinguished in accordance with the resolution at the expiry of the period of one month beginning with the date it is passed.

(3) But for these Regulations the member shall continue to be treated as paying the contributions under regulation 12 for which he would otherwise be liable.

(4) For paragraph (1) membership counts as membership in local government employment unless—

- (a) it is a credited period counted under regulation 122 (periods credited on inward transfer), or

- (b) the member was entitled to count it under any corresponding earlier provision and he is entitled to count it under regulation 9(1)(d).

Inland Revenue limits on contributions

16.—(1) A Class A member may not pay contributions on any pay exceeding the Revenue permitted maximum.

(2) The total contributions to the Scheme and any other approved occupational pension scheme or approved personal pension scheme by a person in any tax year in respect of any employment in which he is a member must not exceed 15 per cent. of his pay for that year in that employment.

(3) An occupational pension scheme or personal pension scheme is approved if it has been approved by the Commissioners of Inland Revenue under Part XIV of the Taxes Act.

Obligatory contributions during absences

17.—(1) If a member—

- (a) is away from his employment with permission (otherwise than because of illness or injury) for a continuous period of less than 31 days or away on jury service for any period, and
- (b) is receiving reduced pay or no pay,

he must make contributions at the standard contribution rate on the pay he would have received during that period but for his absence.

(2) If a person who is a member or has applied to be a member goes on maternity leave, she must make contributions at the standard contribution rate, as respects any part of her period of maternity absence for which she is a member and entitled to receive pay (including any statutory maternity pay payable to her under the Social Security Contributions and Benefits Act 1992(5)), on that pay.

(3) That pay includes any such statutory pay but not any amount by which her actual pay is reduced on account of her possible entitlement to such statutory pay.

(4) If a person who is a member or has applied to be a member goes on reserve forces service leave, he must pay contributions under regulation 12 and any payments under Chapter III of Part III which he was paying immediately before his relevant reserve forces service began, if (and only if) during that service his reserve forces pay equals or exceeds the pay he would have received if he had continued to be employed in his former employment.

(5) Those contributions continue to be payable to the appropriate fund at the same rates on that pay.

(6) If he is not obliged to pay contributions under paragraph (4), for these Regulations he is treated as if he had paid them and also any payments under Chapter III of Part III which he would have been liable to pay if he had continued to be employed in his former employment.

(7) If a person who is a member or has applied to be a member goes on reserve forces service leave—

- (a) he may continue to pay any contributions under Chapter IV of Part III (AVCs and SCAVCs) which he was paying immediately before his leave began,
- (b) he may opt to discontinue payment under that Chapter, and
- (c) unless he has opted, the appropriate administering authority must continue throughout the period of his relevant reserve forces service leave to pay any such contributions which were to be used to provide benefits for him on his death.

(8) If a person who is a member or has applied to be a member goes on reserve forces service leave—

- (a) his relevant reserve forces service counts as a period of membership in his former employment; and
- (b) if during that service, he dies, attains his normal retirement age or becomes incapable for health reasons of working efficiently in local government employment, he shall be treated as if he were in that employment at that time.

Optional contributions during absences

18.—(1) If a member—

- (a) is away from his employment with permission (otherwise than because of illness or injury) for a continuous period of more than 30 days, and
- (b) is receiving reduced or no pay,

he may make contributions under regulation 17 at the standard contribution rate for the whole period of his absence or, if it exceeds 36 months, for 36 months, on the pay he would have received but for his absence.

(2) If—

- (a) a person who is a member or has applied to be a member goes on maternity leave, and
- (b) for the whole or part of the period of her maternity absence (“the unpaid period”) she is not entitled to receive pay (including any statutory maternity pay payable to her under the Social Security Contributions and Benefits Act 1992⁽⁶⁾) but is a member,

she may make contributions under regulation 17 at the standard contribution rate as respects the unpaid period, as if her pay in the employment were equal to the pay she was entitled to receive immediately before the unpaid period began (including any such statutory pay, but not any amount by which her actual pay is reduced on account of her possible entitlement to such statutory pay).

(3) If a person—

- (a) is away from work without permission for a period of one or more days during and because of a trade dispute (“a trade dispute absence”), and
- (b) was a member immediately before that period (or, where two or more periods of absence have occurred because of one such dispute, the first such period),

he may make a contribution under regulation 17 for the relevant contribution period at the rate of 16 per cent. on his lost pay for that period.

(4) A person’s lost pay is the difference between—

- (a) his actual pay (if any), and
- (b) the pay he would have received but for any trade dispute absence,

(disregarding any guarantee payments under Part III of the Employment Rights Act 1996⁽⁷⁾).

(5) A period is a person’s relevant contribution period if—

- (a) it is coextensive with one of the intervals at which he was required under regulation 12 to make standard contributions, and
- (b) it includes all or part of his trade dispute absence.

⁽⁶⁾ 1992 c. 4.

⁽⁷⁾ 1996 c. 18.

(6) To make contributions under this regulation a person must apply to the employing authority in writing before the expiry of the period of 30 days beginning with the day on which he returns to work or such longer period as the authority may allow.

(7) But if he ceases to be employed by that authority without returning to work, he may apply under paragraph (6) before the expiry of the period of 30 days beginning with the day he so ceases or such longer period as they may allow.

(8) An application under paragraph (6) or (7) may be made by the person's personal representatives if he has died without giving notice.

(9) The termination of a person's contract of employment because of a trade dispute does not prevent this regulation applying to him if he again becomes an employee of the same Scheme employer and a member not later than the day after the dispute ends.

CHAPTER IV

BENEFITS

Preliminary

General qualification for benefits

19.—(1) Membership of the Scheme only entitles the member to benefits under this Chapter if—

- (a) his total membership is at least two years, or
- (b) a transfer value is credited to him.

(2) But paragraph (1) does not apply—

- (a) to a benefit under regulation 25 (normal retirement) in a case where the member's normal retirement date is his 65th birthday or under regulation 27(3) (ill-health grants); or
- (b) to benefits in respect of a member under regulation 38 (death grants), regulation 40 (surviving spouse's short-term pension), regulation 45 (children's short-term pensions) or regulation 46 (children's long-term pensions).

Calculations

20.—(1) The amount of any benefit payable as a result of a person's membership is generally calculated by multiplying his final pay by the appropriate multiplier.

(2) Unless another multiplier is indicated, the appropriate multiplier for a pension is—

$$\frac{\text{the member's total membership}}{80}$$

(3) Unless another multiplier is indicated, the appropriate multiplier for a retirement grant is—

$$\frac{3 \times \text{the member's total membership}}{80}$$

(4) But benefits payable on or after the death of a pensioner member are calculated by multiplying the amount of his former retirement pension by the multiplier specified for the benefit in question.

(5) Unless otherwise indicated, references to the amounts of pensions are to their annual rate.

(6) The amount of a deceased person's former retirement pension is the amount of the pension he would have received immediately before his death, but for—

- (a) regulation 29 (re-employed pensioners),
- (b) regulation 33 (surrenders),

- (c) regulation 50 (commutation in cases of exceptional ill-health),
 - (d) regulation 54 (effect of increases under Chapter II of Part III for older members),
 - (e) regulation 57 (effect of increases under Chapter III of Part III for older members), or
 - (f) regulation 110 (application of abatement policy in individual cases).
- (7) Periods are measured in years and fractions of a year (calculated as specified in regulation 11).
- (8) A pensioner member includes a person who would have been entitled to a pension but for regulation 110 (application of abatement policy in individual cases).
- (9) But paragraph (8) does not stop a person to whom it applies from also being an active member.

Final pay

21.—(1) A member's final pay for an employment is his pay for as much of the final pay period as he is entitled to count as active membership in local government employment (but see paragraphs (3) to (10), regulations 22 and 23(2) and Schedule 4).

(2) A member's final pay period is the year ending with the day on which he stops being an active member (but see paragraph (9) and regulations 22 and 23).

(3) In the case of part-time employment, the final pay is the pay which would have been paid for a single comparable whole-time employment.

(4) But in calculating death grant or the rate of surviving spouse's or children's short-term pension payable on the death of an active member, actual pay in part-time employment is to be used.

(5) Any reduction or suspension of a member's pay during the final pay period because of his absence from work owing to illness or injury must be disregarded for this Chapter.

(6) If a member's final pay period includes reserve forces service leave, his final pay is—

- (a) in a case where he has paid contributions by virtue of regulation 17(4), the amount it would have been if his reserve forces pay were pay received in his former local government employment, or
- (b) otherwise, the amount it would have been if he had continued to be employed in his former employment during the period of that leave.

(7) If a member is absent from work for any other reason during his final pay period, he is only to be treated for this Chapter as having received the pay he would otherwise have received if he has made the appropriate contributions under Chapter III for the period he is absent.

(8) If in any case where regulation 13(5) (collective pay agreements) applies to a member's pay during any part of the final pay period—

- (a) his average weekly earnings from his local government employment in that period (other than payments for overtime and bonuses)—
 - (i) exceed by more than 50 per cent. the lower earnings limit at the end of that period, and
 - (ii) do not exceed the upper earnings limit at the end of that period, and
- (b) his final pay would be greater if determined using those earnings,

it is to be determined using them.

(9) If a member is only entitled to count part of the year specified in paragraph (2) as a period of active membership in relation to the employment which he ceases to hold, his final pay is his pay during that part multiplied by 365 and divided by the number of days in that part.

(10) Final pay does not include any pension in payment.

Other final pay periods

22.—(1) Where the whole or part of a member's pay consists of fees, his final pay period for them is not the period specified in regulation 21(2) but—

- (a) the period of three years ending with the last day he was an active member; or
- (b) any other period he may with the consent of his employing authority elect, being a period of not less than three nor more than five years—
 - (i) ending with a day which is that last day or of which that last day is the anniversary, and
 - (ii) falling within the period of 13 years ending with that last day.

(2) But if he was only entitled to receive fees during part of the period mentioned in paragraph (1) (a), that part is substituted for the period referred to in that paragraph.

(3) If a member has been absent from work during any part of the year specified in regulation 21(2), his final pay period is the last 365 days he is entitled to count as a period of active membership.

(4) A member may elect that instead of his final pay period being determined under regulation 21(2) or paragraph (1), (2) or (3) above, it should instead be—

- (a) as respects so much of his pay as does not consist of fees, a year ending with a day—
 - (i) falling within the period of three years ending with the last day he was an active member, and
 - (ii) of which that last day is the anniversary; and
- (b) as respects so much of his pay as consists of fees, that period of three years.

(5) Where paragraph (1) or (2) applies or a member elects for the period specified in paragraph (4) (b), as respects so much of his pay as consists of fees his final pay is the annual average of his fees during his final pay period.

(6) An election under this regulation by a member must be made by notice in writing given to the appropriate administering authority before the expiry of the period of one month beginning with the day he is notified of his entitlement to a benefit.

(7) Where a member has died without having made an election under this regulation, the appropriate administering authority may make an election on his behalf (whether or not the period within which he could have elected has expired).

Permanent reductions in pay: certificates of protection of pension benefits

23.—(1) Where a certificate has been issued as respects a member's pay under paragraph (3) or (4) and the date of reduction or, as the case may be, restriction specified in the certificate is not more than 10 years before the date on which he ceases to be an active member, he may elect that his final pay period should be—

- (a) a year ending with a day—
 - (i) falling within the period of five years ending with the last day he was an active member, and
 - (ii) of which that last day is the anniversary; or
- (b) any three consecutive years—
 - (i) falling within the period of 13 years ending with the last day he was an active member, and
 - (ii) ending with a day of which that last day is the anniversary.

(2) Where a member elects for the period specified in paragraph (1)(b), his final pay is the annual average of his pay during that period.

(3) If, otherwise than by virtue of a member's own circumstances—

(a) his rate of pay is reduced, or

(b) the rate at which it may be increased is restricted in such a way that it is likely that the rate of his retirement pension will be adversely affected,

he is entitled to be issued with a certificate to that effect by the employing authority (but see paragraph (4)).

(4) The employing authority may issue a certificate without an application from the member, but need not issue a certificate if he does not apply for one within 12 months after the date of reduction or restriction.

(5) A certificate issued under this regulation must specify the date of the reduction or restriction.

(6) The employing authority must send a copy of the certificate to the member's appropriate administering authority.

(7) The employing authority must keep a record of the certificate including such information as would be necessary for applying paragraph (1) for the period of 10 years beginning with the date of reduction or restriction specified in it.

(8) An election under this regulation by a member must be made by notice in writing given to the appropriate administering authority before the expiry of the period of one month beginning with the date on which he is notified of his entitlement to a benefit.

(9) Where a member has died without having made an election under this regulation, the appropriate administering authority may make an election on his behalf (whether or not the period within which he could have elected has expired).

Revenue limits

24. Schedule 4 contains restrictions on the amounts of benefits which a member is entitled to under the Scheme.

Retirement benefits

Normal retirement

25.—(1) If a member who has attained his normal retirement age retires from a local government employment, he is entitled to a pension and retirement grant.

(2) The pension and grant are payable immediately.

(3) The normal retirement date (“NRD”) of a member who was not a member immediately before the commencement date is his 65th birthday.

(4) The NRD of a member who was a member immediately before the commencement date is—

(a) if on the day before his 60th birthday he has total membership of at least 25 years, that birthday;

(b) if the date when he first has such total membership is on or after his 60th birthday but before his 65th birthday, the day after that date; and

(c) otherwise, his 65th birthday.

(5) A member's normal retirement age is his age on his NRD.

(6) If a member's NRD or normal retirement age needs to be determined before he attains that age, it must be assumed that his local government employment and membership will be continuous.

Redundancy etc.

26.—(1) If—

- (a) a member who is aged 50 or more retires from a local government employment; and
- (b) his employing authority certify the reason for his retirement was his redundancy,

he is entitled to a pension and retirement grant.

(2) The pension and grant are payable immediately.

(3) But a person who is notified under regulation 15 of the Local Government (Compensation for Redundancy) Regulations 1994⁽⁸⁾ about compensation due because regulation 9 of those Regulations applies to his retirement may waive his right to immediate payment by notice in writing to his employing authority.

(4) In paragraph (1) “redundancy” includes retirement in the interests of efficiency, or because the member held a joint appointment which has been ended because the other holder has left it.

Ill-health

27.—(1) Where a member leaves a local government employment by reason of being permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body, he is entitled to an ill-health pension and grant.

(2) The pension and grant are payable immediately.

(3) A member—

- (a) whose total membership is at least one year, but less than two years, and
- (b) to whom no transfer value is credited,

is entitled to an ill-health grant (but not a pension), unless paragraph (4) applies to him.

(4) This paragraph applies to a member if—

- (a) he is entitled to any payment out of the appropriate fund (other than an injury allowance under regulation 7 of the Benefit Regulations or a return of contributions),
- (b) he has received any payment under Part VI of the Local Government (Discretionary Payments) Regulations 1996⁽⁹⁾, or
- (c) he would receive at least as much as the grant if his contributions were returned to him.

Amounts of ill-health pension and grant

28.—(1) Where the member's total membership is at least 5 years, the multiplier for an ill-health pension or grant is by reference to the member's enhanced membership period instead of his total membership.

(2) A member's enhanced membership period is—

- (a) if his total membership is less than 10 years, twice his total membership;
- (b) if his total membership is at least 10 years, but not more than 13 122/365 years, 20 years; and
- (c) otherwise, his total membership plus 6 243/365 years.

(3) But the enhanced membership period must not exceed 40 years or the total membership the member would have had if he had continued as an active member until he was 65, whichever is the shorter.

⁽⁸⁾ S.I. 1994/3025; amended by S.I. 1996/456.

⁽⁹⁾ S.I. 1996/1680.

(4) If the member became entitled to ill-health benefits under the Scheme before he was in the employment from which he has retired, his enhanced membership period must be calculated—

- (a) by including in his total membership his total in the previous employment, and
- (b) deducting from his total membership the period by which his membership period for that employment was increased for calculating those benefits.

(5) Where membership includes membership in part-time employment, the enhanced membership period must be calculated by first working out what it would be if the employment were all whole-time, and then reducing the resulting period by the appropriate fraction (but see paragraph (8)).

(6) The appropriate fraction is the fraction of which the numerator is the member's total membership and the denominator is the period which would be his total membership if his employment had all been whole-time.

(7) In the case of a member in part-time employment with non-cyclical fluctuating contractual hours, that fraction must be determined by making separate calculations for each period over which averaging of the member's hours occurs in calculating his contractual hours.

(8) If the member's total membership includes a period of at least 13 122/365 years in whole-time employment, paragraph (5) does not apply.

(9) If a member is entitled under regulation 27(3) to an ill-health grant (but not a pension), the multiplier for the grant is—

$$\frac{\text{the member's total membership.}}{12}$$

Re-employed pensioners

29.—(1) Where a member is entitled to two retirement pensions because of having been a member in two employments which were not concurrent, he may elect for a single new pension.

(2) If he elects, he becomes entitled to a single retirement pension and retirement grant, each calculated by reference to the augmented period (but see paragraph (7)).

(3) The augmented period is the member's total membership in the later employment, increased by the period which would have been aggregated if he had made an election under regulation 32(1) as respects his earlier employment when he became an active member in his later employment.

(4) But if the retirement pension from the earlier employment was calculated using a longer period of membership than the period which is the augmented period under paragraph (3), the longer period is the augmented period for paragraph (2).

(5) No election may be made if the pension for the earlier employment—

- (a) is paid under regulation 31 and subject to a reduction, or
- (b) is an EPB pension.

(6) The member must set off any retirement grant he received because of his membership in the earlier employment (“the first grant”) against the retirement grant under this regulation and, if it was greater, repay the difference between the grants to the new authority.

(7) Any additional period which did not count in the calculation of the first grant because of regulation 54(3), does not count in calculating the retirement grant under this regulation either.

(8) Any surrender of the pension from the earlier employment operates to the same extent on the single pension, but the surrendered pension is payable by the new authority.

(9) Where the later retirement is one to which regulation 27 (ill-health) applies and the member does not become entitled to a single pension—

- (a) if his earlier pension is also payable under that regulation and he gave notice under paragraph 4 of Schedule 9 to the 1986 Regulations when he left the earlier employment, regulation 28(1) does not apply (and so his total membership without enhancement is used for the multiplier for the later pension); but
- (b) if his earlier pension is not payable under that regulation, the membership enhancement period is $6 \frac{243}{365}$ years more than his total membership.

Further provisions about elections under regulation 29

30.—(1) An election under regulation 29 must be made by giving notice in writing to the new authority.

(2) The new authority is the appropriate administering authority for the pension from the later employment.

(3) The election must be made before the expiry of the period of three months beginning with the date the member becomes entitled to the pension for the later employment and has effect from that date.

(4) If a member does not repay any amount due under paragraph (6) of regulation 29 before the expiry of the period of three months beginning with the date he elects, his election is void (and so he is not entitled to the single pension).

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

31.—(1) If a member leaves a local government employment (or is treated for these regulations as if he had done so) before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he is aged 50 or more he may elect to receive payment of them immediately.

(2) An election made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6)).

(3) If the member elects, he is entitled to a pension and retirement grant payable immediately.

(4) If the sum—

- (a) of the member's age in whole years on the date his local government employment ends or the date he elects, if later,
- (b) of his total membership in whole years, and
- (c) in a case where he elects after his local government employment ends, of the period beginning with the end of that employment and ending with the date he elects,

is less than 85 years, his retirement pension and grant must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary (but see paragraphs (5) and (6) and regulation 36(5) (GMPs)).

(5) A member's appropriate employing authority may determine on compassionate grounds that his retirement pension and grant should not be reduced under paragraph (4).

(6) If a member who has left a local government employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body—

- (a) he may elect under paragraph (1) before attaining the age of 50, and
- (b) paragraphs (2) and (4) do not apply.

(7) If a member does not elect for immediate payment under this regulation, he is entitled to receive a pension and grant payable from his NRD without reduction.

(8) An election under paragraph (1) must be made by notice in writing to the member's Scheme employer.

Re-employed and rejoining deferred members

32.—(1) Where a deferred member becomes an active member again before becoming entitled to the immediate payment of retirement benefits in respect of his former membership, he may elect to have his former membership aggregated with his membership on or after the date he becomes an active member again.

(2) But an election may only be made by a Class B member as respects former Class B membership or Class C membership and an election may only be made by a Class C member as respects former Class C membership.

(3) Where a member elects under paragraph (1)—

- (a) he ceases to be entitled to rights under the Scheme in respect of his former membership (except in so far as he is entitled by virtue of having become an active member again to rights in respect of the aggregated total membership); and
- (b) he ceases to count as a deferred member for these Regulations as respects his former membership (unless he becomes a deferred member again after ceasing to be an active member).

(4) Where an election under paragraph (1) is made by a member who has ceased to be an active member more than once, the election may be made as respects his total membership at each of the times he so ceased or only as respects such of those periods of membership as are specified in the election.

(5) Where a member who may elect under paragraph (1) does not do so or does not elect as respects all periods of his membership—

- (a) in applying regulations 19(1), 20(2) and (3), 27(3), 28(1) and (2) and 31(4) as respects any later membership, his total membership excludes unaggregated periods, and
- (b) as respects each unaggregated period of his former membership—
 - (i) paragraph (3) does not apply,
 - (ii) he shall continue to be treated as a deferred member or, as the case may be, as a pensioner member (and not as an active member), and
 - (iii) he shall be entitled to the same rights as if he were not also an active member (but subject to regulation 34 and, in the case of a pensioner member, to regulation 29);
 and references in these provisions to his appropriate administering authority or appropriate fund shall be construed accordingly.

(6) For this regulation a period of membership is an unaggregated period if—

- (a) no previous election has been made under this regulation for its aggregation, and
- (b) in the case of a period as respects which the member was entitled to elect under regulation D12(1)(c) of the 1995 regulations (elections to remain entitled to preserved benefits) or any previous corresponding provision of the Scheme, such an election was made.

(7) An election under paragraph (1) must be made by notice in writing to the member's appropriate administering authority in the employment in which he becomes an active member again whilst he is an active member in that employment.

(8) If the appropriate fund for membership in the new employment is different from that for any former employment as respects which the member is making the election, the notice under paragraph (7) must also be given to his appropriate administering authority in that former employment.

(9) References in this regulation to former membership include all membership which the member was entitled to count as total membership immediately before he ceased his former active membership (but excluding any unaggregated period).

(10) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment with a different Scheme employer, for paragraph (1) of this regulation he shall be treated as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

Surrenders of pension

33.—(1) A member may apply to the appropriate administering authority to surrender part of the retirement pension which is or may become payable to him, so that, if he is survived by his spouse or a dependant of his (“the beneficiary”), the equivalent value of that part is paid instead to the beneficiary under this regulation.

(2) The application must be made in the period of one month ending with or one month beginning with the date on which the member retires.

(3) The authority must allow the application if they think the member is in good health.

(4) The surrender must not result in a pension being paid to the beneficiary of less than such amount as is specified in guidance issued for this paragraph by the Government Actuary.

(5) The aggregate amount surrendered must not—

- (a) result in the reduction of the retirement pension to less than the pension which would become payable to the beneficiary, or
- (b) exceed one third of the retirement pension.

(6) On the death of the member the beneficiary becomes entitled to a pension at a rate equivalent to the value of the surrender in the beneficiary’s favour at the time when the surrender was made.

(7) The equivalent rate is such rate as is indicated in guidance issued by the Government Actuary.

(8) If the surrender is allowed, it has effect from the date the member retires from his employment.

(9) But it does not take effect if the beneficiary or member dies before that date, and it ceases to have effect if the beneficiary dies before the member.

No double entitlement

34.—(1) Where (apart from this regulation) any member would be entitled to a pension or retirement grant under two or more regulations by reason of the same period of membership—

- (a) he may elect under which provision he is to be paid those benefits; and
- (b) if he does not elect, the employing authority may notify him in writing of the provision.

(2) An election by a member must be by notice in writing, given to the employing authority before the expiry of the period of three months beginning with the day on which he becomes entitled to elect.

(3) Paragraph (1) does not affect the member's rights under the Pension Schemes Act 1993⁽¹⁰⁾.

Requirements as to time of payment

35.—(1) Retirement benefits under this Chapter may not be paid to a person before he has retired from the employment in which he was a member.

(10) 1993 c. 48.

(2) But they must begin to be paid not later than the member's 75th birthday even if he has not retired (and see also regulation 36(3)).

Guaranteed minimum pensions etc.

36.—(1) Where a member's local government employment is contracted-out employment and he has a guaranteed minimum in relation to service before 6th April 1997, from the date he attains state pensionable age he is entitled to a pension at a weekly rate equal to not less than that guaranteed minimum.

(2) But if the member attains state pensionable age while in local government employment, he is not so entitled until he leaves that employment, unless paragraph (3) applies.

(3) If the member—

- (a) continues in the same employment for a further period of five years after attaining state pensionable age; and
- (b) does not then leave it,

he is entitled from the end of that period to so much of his retirement pension as equals that guaranteed minimum (unless he consents to a postponement of the entitlement).

(4) For paragraph (1), a person has a guaranteed minimum if he has such a minimum under section 14 of the Pension Schemes Act 1993 in relation to benefits under these Regulations.

(5) A person's retirement pension is not to be reduced under regulation 31(4) to less than the aggregate of—

- (a) any minimum rate of equivalent pension benefits applicable under the Insurance Acts, and
- (b) one eightieth of his final pay (expressed as an annual rate), multiplied by the length in years of the whole period of his membership in contracted-out employment during the period beginning with the relevant date and ending with 30th April 1995.

(6) In paragraph (5) "the relevant date" means—

- (a) in the case of a man, 17th May 1990; and
- (b) in the case of a woman, 6th April 1978.

(7) Where a person's local government employment is or was contracted-out employment, a surrender under regulation 33 (together with any previous surrenders) must not result in the annual rate of the retirement pension being less than one eightieth of his final pay multiplied by the length in years of the whole period of his membership in contracted-out employment beginning with the relevant date and ending with 30th April 1995.

(8) Where a person making a surrender under regulation 33 has a guaranteed minimum, the surrender (together with any previous surrenders) must not result in the weekly rate of the retirement pension being less than the guaranteed minimum.

(9) Where a person making a surrender under regulation 33—

- (a) is in local government employment,
- (b) has attained normal retirement age, and
- (c) has total membership of at least two years or a transfer value credited to him,

references in paragraphs (7) and (8) to the retirement pension are references to the retirement pension which would become payable if he ceased to hold his employment on the day the surrender takes effect.

(10) This regulation overrides any provision in these Regulations to the extent to which it conflicts with it, except—

- (a) regulation 49 (commutation);

- (b) regulation 110 (application of abatement policy in individual cases);
- (c) regulation 111 (forfeiture); and
- (d) regulation 112 (interim payments directions).

Revaluation of guaranteed minimum

37.—(1) Where the guaranteed minimum of a person who has ceased to be an active member is appropriately secured, his earnings factors for the purposes of section 14(2) of the Pension Schemes Act 1993 must be determined—

- (a) by reference to the last order under section 21 of the Social Security Pensions Act 1975⁽¹¹⁾ or section 148 of the Social Security Administration Act 1992⁽¹²⁾ (revaluation orders) to come into force before the end of the tax year in which he ceased to be an active member; and
- (b) without reference to the last such order to come into force before the end of the final relevant year.

(2) For such a person the weekly equivalent mentioned in section 14(2) of the Pension Schemes Act 1993 is to be increased—

- (a) by at least the prescribed percentage for each relevant year after the end of the tax year in which he ceased to be an active member, and
- (b) in accordance with such additional requirements as may be prescribed for the purposes of section 16(3) of the Pension Schemes Act 1993⁽¹³⁾.

(3) In this regulation—

“appropriately secured” has the meaning given in section 19 of the Pension Schemes Act 1993⁽¹⁴⁾;

“final relevant year” has the meaning given in section 16(5) of that Act;

“relevant year” has the meaning given in section 14(8) of that Act⁽¹⁵⁾; and

“prescribed percentage” has the meaning given in regulation 62 of the Occupational Pension Schemes (Contracting-out) Regulations 1996⁽¹⁶⁾.

Death grants

Death grants

38.—(1) If a member dies, the administering authority may make payments to or for the benefit of the member's nominee or any person appearing to the authority to have been his relative or dependant at any time.

- (2) The aggregate amount paid under paragraph (1) must not exceed the member's death grant.
- (3) The multiplier for an active member's death grant is 2.
- (4) The multiplier for a deferred member's death grant is the same as for his retirement grant.

⁽¹¹⁾ 1975 c. 60.

⁽¹²⁾ 1992 c. 4.

⁽¹³⁾ Section 16(3) of the Pension Schemes Act 1993 (c. 48) was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 28.

⁽¹⁴⁾ Section 16(5) of the Pension Schemes Act 1993 (c. 48) was amended by the Pensions Act 1995 c. 26, Schedule 5, paragraph 28(b).

⁽¹⁵⁾ Section 14(8) of the Pension Schemes Act 1993 was amended by the Pensions Act 1995, Schedule 5, paragraph 27.

⁽¹⁶⁾ S.I. 1996/1172.

(5) The multiplier for a pensioner member's death grant is 5, but the amount so calculated is reduced by the amounts of any retirement pension paid to him.

(6) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of the period of 2 years beginning with his death, they must pay an amount equal to the shortfall to the member's personal representatives.

(7) For these Regulations, any payments made under paragraph (1) must be treated as payments made by way of death grant.

Reduction of death grants: re-employed pensioners

39.—(1) If—

- (a) after the deceased became entitled to a pension under the Scheme (“the previous pension”) he entered further local government employment,
- (b) on leaving the further employment he became entitled to a pension (“the additional pension”) but not to a single pension by making an election under regulation 29, and
- (c) his entitlement to the previous or additional pension was by virtue of an election under regulation 31,

the death grant payable because of his membership in the further employment must be reduced (or extinguished) to the extent necessary to prevent his total pension benefits exceeding (or further exceeding) his relevant final pay.

(2) A person’s total pension benefits are the total of—

- (a) every death grant and all pension payments made as respects his previous pension (including increases under the Pensions Increase Act 1971⁽¹⁷⁾ and the Pensions Increase Act 1974⁽¹⁸⁾), and
- (b) all pension payments made as respects his additional pension (including such increases).

(3) A person’s relevant final pay is the greater of—

- (a) the final pay used for calculating his previous pension (adjusted for inflation), and
- (b) the final pay used for calculating his additional pension.

(4) The pay for an employment must be adjusted for inflation by calculating the amount to which it would have increased if it were an official pension becoming payable from the end of that employment.

Surviving spouses’ pensions

Surviving spouse’s short-term pension

40.—(1) If an active or pensioner member dies leaving a surviving spouse, the spouse is entitled to a short-term pension.

- (2) It is payable for three months after the member's death.
- (3) But if there are eligible children in the spouse’s care, it is payable for a further three months.
- (4) Where the deceased was an active member, the short-term pension is equal to the deceased’s final pay.

(5) Where the deceased was a pensioner member, the short-term pension is equal to his retirement pension immediately before the death (but see regulation 42).

⁽¹⁷⁾ 1971 c. 56.

⁽¹⁸⁾ 1974 c. 9.

(6) In this regulation “pensioner member” includes a person whose retirement pension has been commuted under regulation 50 (exceptional ill-health).

(7) If there is more than one surviving spouse, they become jointly entitled under paragraph (1).

Surviving spouse’s long-term pension

41.—(1) If a member dies leaving a surviving spouse, the spouse is entitled to a spouse’s long-term pension.

(2) If the deceased was an active or pensioner member, the long-term pension is payable from the end of the period for which the short-term pension is payable.

(3) The long-term pension payable on a deferred member's death is payable from the death.

(4) If the deceased was an active member with a total membership of at least two years, the long-term pension is equal to half the ill-health pension to which the deceased would have been entitled under regulation 27 if he had become entitled to a pension under that regulation on the date he died.

(5) If the deceased was an active member with a total membership of less than two years or a deferred member, the multiplier for the long-term pension is—

$$\frac{\text{the deceased's total membership}}{160}$$

(but see regulation 42).

(6) If the deceased was a pensioner member, the long-term pension is equal to half his retirement pension immediately before the date of death (but see regulation 42).

(7) If there is more than one surviving spouse, they become jointly entitled under paragraph (1).

Reduction of some surviving spouses’ pensions

42.—(1) Where a male pensioner member or deferred member marries and dies, the pension to which his widow is entitled under regulation 40 or 41 is calculated as if his retirement pension were only so much of his actual pension as is attributable to the period of his membership in contracted-out employment after 5th April 1978.

(2) Except in the case of a short term pension payable to the widower of an active member, the pension to which a widower is entitled under regulation 40 or 41 is calculated as if the member's retirement pension were only so much of her actual pension as is attributable to her membership after 5th April 1988.

(3) But relevant additional membership also counts as membership after that date.

(4) Relevant additional membership is membership—

(a) forming the enhanced element of a member's total period of membership by virtue of a retirement to which regulation 28 applied after 5th April 1988,

(b) added by virtue of a resolution under Chapter II of Part III or regulation 143 of these regulations or under the Transitional Regulations after that date,

(c) counted by reason of a payment made under Chapter III of Part III or paragraph 7 of Schedule 4 after that date (or treated by the Transitional Regulations as so made),

(d) treated as membership after that date by virtue of the Transitional Regulations, or

(e) attributable to a transfer value accepted by the Scheme after that date.

Surviving spouse's guaranteed minimum pension

43.—(1) If the GMP rule applies, the pension to which a person is entitled under regulation 40 or 41 must be not less than the surviving spouse's guaranteed minimum.

- (2) The GMP rule applies if—
- (a) the employment in which the deceased was a member was contracted-out employment; and
 - (b) he had a guaranteed minimum in relation to benefits under these Regulations.
- (3) Paragraph (1) overrides any contrary provision in these Regulations except—
- (a) regulation 49 (commutation of small pensions);
 - (b) regulation 111 (forfeiture); and
 - (c) regulation 112 (interim payments directions).

Children's pensions

Meaning of "eligible child"

- 44.**—(1) The eligible child of a deceased member is—
- (a) the deceased's legitimate or adopted child, or
 - (b) a child who was wholly or mainly dependent on the deceased at the time of his death.
- (2) A person only counts as a child if—
- (a) he is aged under 17,
 - (b) since he became 17 he has been engaged continuously in full-time education or in training for a trade, profession or vocation, or
 - (c) he is physically or mentally incapacitated and became so whilst a child within paragraph (a) or (b).
- (3) If an appropriate administering authority wish, they may treat education or training as continuous despite a break.

Children's short-term pensions

- 45.**—(1) If an active or pensioner member dies leaving one or more eligible children, they are entitled to a children's short-term pension.
- (2) If a short-term pension is payable to a surviving spouse under regulation 40, the children's short-term pension is payable only for three months after the death.
- (3) Otherwise, it is payable for six months after the death.
- (4) Where the deceased was an active member, the pension is equal to the deceased's final pay.
- (5) Where the deceased was a pensioner member, the pension is equal to his retirement pension immediately before the death.
- (6) If a short-term pension is payable to a surviving spouse under regulation 40, the child's short-term pension is reduced by that pension.
- (7) Where, if a children's long-term pension and a surviving spouse's long-term pension were payable instead of short-term pensions, that would result in a greater aggregate pension, long-term pensions shall be payable instead of short-term pensions.
- (8) Where—

- (a) a children's short-term pension is payable for a child who is not in the care of a person to whom a short-term pension is payable (or would be payable apart from paragraph (7)), and
 - (b) a children's long-term pension would be greater,
- the long-term pension shall be payable instead of the short-term pension.

(9) In this regulation "pensioner member" includes a person whose retirement pension has been commuted under regulation 50 (exceptional ill-health).

Children's long-term pensions

46.—(1) If a member dies leaving one or more eligible children, they are entitled to a children's long-term pension.

(2) If the deceased was an active or pensioner member, it is payable from the end of the period for which the short-term pension is payable.

(3) The pension payable on a deferred member's death is payable from the death.

(4) An eligible child ceases to be entitled to a long-term pension when he ceases to be a child within regulation 44(2).

(5) If the deceased was an active member, the pension is the appropriate fraction of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 27(1) (ill-health).

(6) If the deceased was a deferred member, the pension is the appropriate fraction of the amount of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 25 (normal retirement).

(7) If the deceased was a pensioner member, the pension is the appropriate fraction of his retirement pension.

(8) If, apart from this paragraph, the calculation of the long-term pension would be based on a member's retirement pension calculated on the basis of membership of less than—

- (a) 10 years, or
- (b) the period he would have been entitled to count if his active membership had continued until his 65th birthday,

(whichever is the shorter), then that period should be used instead in calculating it.

(9) The appropriate fractions are—

- (a) where there is one eligible child—
 - (i) if a surviving spouse's long-term pension is payable and the child is in the care of the spouse, one quarter,
 - (ii) otherwise one-third;
- (b) where there is more than one eligible child—
 - (i) if a surviving spouse's long-term pension is payable, one half,
 - (ii) otherwise two-thirds.

(10) If a child in full-time training for a trade, profession or vocation is receiving pay at an annual rate exceeding the training rate—

- (a) the pension is reduced by the excess, but
- (b) if the pension would be greater without the child, he need not be counted.

(11) In paragraph (10) "the training rate" means the current annual rate of an official pension which began to be paid on 1st April 1994 at an annual rate of £1,450.

Discretions as to payment of children's pensions

47.—(1) If a children's pension is payable for more than one eligible child, the appropriate administering authority may apportion it amongst the children as they think fit.

(2) The appropriate administering authority may pay the whole or part of a children's pension to a person other than an eligible child, to be applied for the benefit of one or more eligible children as the authority direct.

Dependants of re-employed pensioners

48.—(1) If—

- (a) after a member became entitled to an unreduced retirement pension, he entered further local government employment in which he died, and
- (b) assuming that immediately before he died he had retired from the further employment, he would have been entitled to elect under regulation 29 for a single pension,

the benefits payable under the Scheme on his death (except short-term pensions) and any surrendered benefits must be calculated in the case of each beneficiary using whichever of assumptions A and B gives that beneficiary the most favourable benefits.

(2) Assumption A is that the deceased did so retire and assumption B is that he did so retire and so elect.

(3) An unreduced retirement pension is a pension which is not reduced under regulation 31(4) (early leavers).

(4) If after a member became entitled to a relevant pension, he entered further local government employment in which he died, the benefits payable under the Scheme on his death (except short-term pensions) must be calculated on assumption A.

(5) A relevant pension is a superannuation allowance under Part 1 of the Act of 1937 or a pension under the former regulations, a local Act scheme, or a retirement pension under the 1974 regulations, the 1986 regulations, the 1995 regulations or these Regulations, which was reduced or suspended on account of the further employment.

(6) Where—

- (a) a member dies in a new employment, and
- (b) assuming he had retired from it on the date he died, he would have been entitled to a retirement pension under this Chapter (whether payable immediately or not),

the short-term pension under regulation 40 is the sum of—

- (i) his final pay in the new employment, and
- (ii) the rate at which his retirement pension from his former employment is payable (after taking into account any reduction under regulation 110 (application of abatement policy in individual cases)).

(7) Where a member dies in a new employment, the long-term pension under regulation 41 is the greater of amount A or amount B.

(8) Amount A is half the sum of—

- (a) the member's retirement pension, and
- (b) the retirement pension to which he would have been entitled if on the date of death he had become entitled to a pension under regulation 27(1) (ill-health) from the new employment.

(9) Amount B is half the retirement pension to which the member would have been entitled if on the date of death he had become entitled under regulation 27(1) and had elected under regulation 29 for a single pension.

(10) Amount A and amount B are both to be calculated on the basis that the retirement pensions have not been—

- (a) reduced by virtue of a surrender under regulation 33; or
- (b) increased under regulation 54 (effect of increases under Chapter II of Part III for older members).

Commutation

Commutation: small pensions

49.—(1) If the annual rate of the retirement pension which a member who has attained state pensionable age is entitled to be paid is not more than £195, the appropriate administering authority may pay him a lump sum representing the capital value of the pension.

(2) The appropriate administering authority may also pay a lump sum representing the capital value of a long-term pension which is payable to any surviving spouse or to or in respect of an eligible child or children, if the annual rate does not exceed £260.

(3) If a member is entitled to more than one retirement pension under the Scheme or more than one long-term pension is payable under the Scheme following a deceased member's death, a lump sum is only payable if the aggregate amount payable to that member or following that death is less than £195 or, as the case may be, £260.

(4) Any increase payable under the Pensions (Increase) Act 1971⁽¹⁹⁾ in respect of a pension must be included in its annual rate.

(5) The capital value of a pension must be calculated as shown in guidance issued by the Government Actuary.

(6) Where a payment is made in respect of a retirement pension, a payment representing the capital value of any long-term pension, which would be payable to the member's spouse if that spouse survived the member, must also be made.

(7) The payment of a lump sum in respect of a pension discharges the appropriate administering authority from their liability for it and, where the payment is made to a member, for any short-term or long-term pensions which may become payable on his death.

(8) The appropriate administering authority must deduct from any payment under this regulation any tax to which they may become chargeable under section 599 of the Taxes Act⁽²⁰⁾.

Commutation: exceptional ill-health

50.—(1) If, when a retirement pension first becomes payable to a member, the appropriate administering authority are satisfied that his life expectancy is less than one year, they may pay him a lump sum equal to five times the amount by which the annual rate of the retirement pension exceeds his guaranteed minimum.

(2) Such a payment discharges the authority's liability for that pension (except the guaranteed minimum) and for any lump sum death grant calculated by reference to that pension under the Scheme.

(3) The authority must deduct from any such payment any tax to which they may become chargeable under section 599 of the Taxes Act.

⁽¹⁹⁾ 1971 c. 56.

⁽²⁰⁾ Section 599 was amended by the Finance Act 1989 (c. 26), Schedule 6, paragraphs 11, 18.

PART III
OPTIONAL ADDITIONAL BENEFITS
CHAPTER I
PRELIMINARY

Scope of Part III: limits on benefits

51.—(1) This Part makes provision for benefits to be paid to or in respect of members which are additional to those set out in Part II.

(2) No arrangements may be made under this Part as a result of which—

- (a) the contributions payable by members,
- (b) the years of membership which a member may count, or
- (c) the benefits payable to or in respect of members,

exceed the amounts specified in Schedule 4.

CHAPTER II
INCREASE OF MEMBERSHIP BY EMPLOYING AUTHORITY

Power of employing authority to increase total membership of members leaving employment at or after 50

52.—(1) An employing authority may resolve to increase the total membership of a member who leaves his employment on or after his 50th birthday.

(2) The additional period of membership must not exceed—

- (a) the member's total membership on the date he leaves his employment (“the relevant date”);
- (b) the period by which that period falls short of 40 years;
- (c) the period by which that period would have been increased if he had continued as an active member until he was 65; or
- (d) 6 243/365 years,

whichever is the shortest.

(3) A resolution under paragraph (1) may only be passed during the period—

- (a) beginning one month before the relevant date, and
- (b) ending 6 months after that date.

(4) If such a resolution is passed before the relevant date it is conditional on the satisfaction on that date of the conditions for its making.

(5) The death of the member after the relevant date does not affect his former employing authority’s power under this regulation.

(6) The relevant additional period may only be counted as a period of membership if—

- (a) the administering authority and the employing authority agree before the expiry of the relevant period that the employing authority will pay increased contributions under regulation 79 to meet the cost of the increase in membership, or
- (b) the employing authority make the payment required by regulation 80(1) by reason of the resolution within that period.

(7) The relevant period is the period of one month beginning—

- (a) with the date the resolution was passed, or
 - (b) if by virtue of paragraph (4) the resolution was conditional, with the date on which the member leaves his employment.
- (8) If neither paragraph (6)(a) nor (6)(b) applies, the resolution shall cease to have effect.
- (9) If a person has been credited with a period of service under regulation 8 of the Local Government (Discretionary Payments) Regulations 1996(21) in respect of a cessation of employment, no resolution may be passed under this regulation by reason of that cessation.
- (10) If a person becomes entitled on leaving an employment to an ill-health pension under regulation 27 calculated by reference to an enhanced membership period, no resolution may be passed under this regulation by reason of his leaving that employment.

Power of employing authority to increase total membership of new members

- 53.**—(1) An employing authority may resolve to increase a member's total membership.
- (2) Such a resolution may only be passed before the expiry of the period of six months beginning with the day on which he becomes a member.
- (3) The member must be aged less than 59 when he becomes a member.
- (4) The resolution must specify the additional period of membership.
- (5) That period must not exceed the maximum addition under Schedule 4.
- (6) Where the employing authority have passed a resolution under paragraph (1) the additional period may be counted as part of the member's total membership.
- (7) But if when the member leaves his employment with the employing authority no person becomes immediately entitled to a pension in respect of his membership the additional period may not be so counted.

Effect of increases under this Chapter for older members

- 54.**—(1) This regulation applies where a member—
- (a) is entitled under this Chapter to count an additional period as a period of membership, and
 - (b) was aged at least 45 on the first day of the earliest period of membership he is entitled to count.
- (2) Where this regulation applies the retirement pension—
- (a) to which the member would otherwise be entitled under regulation 25, or
 - (b) to which he would otherwise be entitled under regulation 31 (before applying any reduction under paragraph (4) of that regulation),
- is increased by multiplying his final pay by the length in years of the additional period and dividing the resulting amount by 240.
- (3) The additional period does not count in the calculation of the standard retirement grant.

CHAPTER III MEMBERS' OPTIONS TO INCREASE PENSIONS

Purchase of added years

Payments to increase total membership

55.—(1) An active member may elect to make additional contributions to the Scheme to increase his total membership by an additional period.

(2) That period must not exceed the maximum addition under Schedule 4.

(3) The election must be made by giving notice in writing to the appropriate administering authority earlier than the member's 64th birthday.

(4) If—

(a) the member's appropriate administering authority pass a resolution requiring him to satisfy them that he is in reasonably good health by producing to them a report by a registered medical practitioner of the results of a medical examination undertaken at the member's own expense, but

(b) they are not so satisfied,

the election is void.

(5) A resolution under paragraph (4)(a) may only be passed before the expiry of the period of one month beginning with the date of the election.

(6) The amounts of the additional contributions must be such percentage of the member's pay for the time being as is shown as appropriate in guidance issued by the Government Actuary.

(7) A member's pay for the time being is the pay received by him for the interval at the end of which the additional contribution falls to be paid.

(8) Where a member is away from work (otherwise than because of illness or injury) with reduced or no pay, for paragraph (7) he is treated as having received the pay he would have received if he had not been away (unless his contract of employment has ceased).

(9) For paragraph (7) any reduction in pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period he is away from work (other than a period of maternity absence) shall be disregarded.

(10) If a member continues paying the additional contributions until his last birthday before his NRD (or if his NRD is his birthday, that date), the whole of the additional period may be counted as part of his total membership.

(11) Otherwise, the part of that period which may be so counted must be calculated as specified in regulation 83 (discontinuance of additional contributions).

(12) The additional contributions are payable from the member's next birthday after his election.

Part-time employees

56.—(1) If a person in a part-time employment elects under regulation 55, the periods mentioned in that regulation must be reduced in the proportion his contractual hours bear to the number of contractual hours of a single comparable whole-time employment.

(2) But the amounts of his additional contributions must be calculated as a percentage of his actual pay (subject to paragraphs (8) and (9) of regulation 55).

(3) Where any person has made such an election, if—

- (a) his employment ceases to be part-time and becomes whole-time employment,
- (b) his employment ceases to be whole-time and becomes part-time employment, or
- (c) his contractual hours in the part-time employment alter,

his additional contributions continue to be payable at the same percentage of his pay, but the additional period counted by reason of contributions paid after the change must be calculated as if the change had occurred immediately before the election.

(4) Paragraphs (1) to (3) do not apply to old elections.

(5) But the member may elect for paragraph (2) to apply to an old election and, if he does so, the additional period counted by reason of contributions paid after that election must be calculated as if paragraphs (1) to (3) had always applied as respects his old election.

(6) A member's election under paragraph (5) must be made by giving notice in writing to the appropriate administering authority not later than one year before his NRD.

(7) Old elections are elections made before 2nd May 1995.

Effect of increases under this Chapter for older members

57. Regulation 54 applies as respects additional periods counted under the previous provisions of this Chapter as it applies as respects additional periods counted under Chapter II.

Conversion between lump sums and pensions

Election for pension in lieu of retirement grant

58.—(1) Where a member has attained the age of 50 and has become entitled to the immediate payment of a pension under Part II, he may make an election under this regulation for the whole or part of the retirement grant or, in the case where the entitlement to pension is under regulation 27, of the ill-health grant to be used instead by the Scheme to provide pension for him.

(2) The election must be made by notice in writing to the appropriate administering authority given not more than three months before the date on which the member becomes so entitled.

(3) The election must specify the amount of the grant which the member wishes to be used for the provision of pension (expressed in round hundreds of pounds).

(4) Where a member makes such an election, he becomes entitled to such additional pension as is shown as appropriate in guidance issued by the Government Actuary.

(5) The additional pension is payable immediately.

(6) Where a member makes such an election, for these Regulations the amount of his pension includes the amount of any additional pension payable under this regulation.

(7) No person who has elected under regulation 59 may also elect under this regulation.

Election for lump sum in lieu of pension

59.—(1) Where—

- (a) a Class C member has become entitled to the immediate payment of a pension under Part II, and
- (b) the retirement grant to which he is entitled (apart from any election made under this regulation) is less than his permitted maximum,

he may make an election under this regulation for that grant to be increased to his permitted maximum.

- (2) The election must be made by notice in writing to the appropriate administering authority given not more than three months before the date on which the member retires.
- (3) Where a member elects under this regulation—
 - (a) the retirement grant to which he is entitled is increased in accordance with the election,
 - (b) the retirement pension to which he is entitled and any other benefits payable to or in respect of him are to be calculated by reference to such reduced period of membership as appears to the appropriate administering authority to be appropriate by virtue of that increase.
- (4) That reduced period must be calculated by the appropriate administering authority on the advice of an actuary appointed by them.
- (5) A member's permitted maximum for this regulation is the maximum lump sum to which he is entitled in accordance with Schedule 4 and (so far as relevant) any restrictions imposed under—
 - (a) section 12C of the Pension Schemes Act 1993⁽²²⁾ (transfer, commutation etc.);
 - (b) section 19 of that Act (discharge of liability);
 - (c) section 21 of that Act (commutation, surrender and forfeiture);
 - (d) section 77 of that Act (assignment, surrender and commutation of benefit).
- (6) No person who has elected under regulation 58 may also elect under this regulation.

CHAPTER IV

ADDITIONAL VOLUNTARY CONTRIBUTIONS

Members only AVC schemes

Elections to pay AVCs

- 60.**—(1) An active member may elect to pay contributions under this regulation (“AVCs”) in addition to any other contributions he may pay under this Part.
- (2) The election must specify the percentage of his pay he wishes to pay or the amount he wishes to pay on his usual pay days.
 - (3) It must also specify whether he wishes any of his AVCs to be used to provide benefits payable on his death (“death benefits”).
 - (4) If he does, he must specify the proportion to be so used.
 - (5) The appropriate administering authority may require the amount of the AVCs to be at least the specified minimum.
 - (6) They may not do so after AVCs are first paid under the election.
 - (7) The specified minimum is the amount specified in regulation 2(8) of the Pension Schemes (Voluntary Contributions Requirements and Voluntary and Compulsory Membership) Regulations 1987⁽²³⁾.
 - (8) A member may elect to vary the amount of his AVCs or the proportion of them to be used to provide death benefits.
 - (9) A member may elect to stop paying AVCs.
 - (10) An election under this regulation must be made by notice in writing to the member's employing authority.

⁽²²⁾ 1993 c. 48.

⁽²³⁾ S.I. 1987/1108.

Payment of AVCs

61.—(1) AVCs must normally be payable by an active member on his usual pay day.

(2) No contributions may be paid to cover any period during which the person contributing is not an active member.

(3) A person may not pay AVCs after he leaves his employment with the employer who was his employing authority when he elected under regulation 60(1) to pay them.

(4) But he may do so if his last usual pay day with that employer falls after that time (or if he makes a fresh election in relation to another employment).

Functions of employing and administering authorities

62.—(1) An employing authority must send any notice of election to pay AVCs to the appropriate administering authority as soon as possible.

(2) The appropriate administering authority must make the arrangements necessary so as to enable a member to begin paying AVCs before the expiry of the period of six months beginning with the date he elects to pay them.

(3) The appropriate administering authority must make the arrangements necessary to enable a member who has elected to vary his AVCs or to stop paying them to do so before the expiry of the period of three months beginning with the date he so elects.

Death benefits

63.—(1) If a member elects for any of his AVCs to be used to provide death benefits, the appropriate administering authority must make arrangements for those benefits to be provided under a pension policy with an AVC insurance company.

(2) The policy must provide for the appropriate administering authority to pay the company the same amounts as the AVCs to be so used within one month after the member's usual pay day.

(3) The policy must reflect the restrictions on AVCs and the provisions which apply under these Regulations.

(4) In entering into the pension policy the administering authority must give effect to the member's wishes about the benefits it provides, so far as is practicable.

(5) But the benefits must be money purchase benefits and their value reasonable considering the contributions paid.

Retirement benefits

64.—(1) The administering authority must invest any AVCs which are not to be used to provide death benefits with an approved AVC body.

(2) When a member who has paid AVCs during his employment leaves his employment with the employer who was his employing authority when he elected under regulation 60(1) to pay them, the appropriate administering authority must use the accumulated value of the contributions invested under paragraph (1) for the provision of additional pension benefits under a pension policy as soon as reasonably practicable (but see regulations 65 and 66).

(3) But if the member dies before the policy is entered into, the accumulated value is payable to his personal representatives.

(4) In entering into the pension policy the administering authority must give effect to the member's wishes about the benefits it provides, so far as is practicable.

(5) The benefits must be money purchase benefits and their value reasonable considering the accumulated value.

(6) The AVCs may only be used to provide benefits in the form of a lump sum if—

- (a) all the pension benefits payable to or in respect of the member under the Scheme are being commuted under regulation 49 (commutation of small pensions), and
- (b) the annual rate referred to in that regulation is not exceeded by aggregating with them the additional pension benefits provided by the pension policy entered into under paragraph (2).

Changes of employment in which membership is continued

65.—(1) If a member who is paying AVCs leaves his employment with the employer who was his employing authority when he elected under regulation 60(1) to pay them and enters a new employment in which he is also a member, he may elect that that election should continue to have effect.

(2) But he may only do so if he enters the new employment before the expiry of the period of one month and one day beginning with the date he left the former employment.

(3) The election must be made by notice given in writing to the member's new employing authority before the expiry of the period of one month beginning with the date the new employment begins (or such longer period as that authority may allow).

(4) The new employing authority must send the notice of election to the appropriate administering authority in relation to the new employment.

(5) The member may continue paying AVCs under his existing election with effect from his next pay day in his new employment after his election to continue.

(6) But he may not pay any AVCs to cover any period falling between the employments.

(7) If the same authority are the member's appropriate administering authority in both employments, they must continue to apply any AVCs to be used for death benefits towards the pension policy mentioned in regulation 63 and continue to invest all other AVCs paid by him as specified in regulation 64(1).

(8) If those authorities are different, the former authority must transfer to the new authority a sum equal to the accumulated value of his additional contributions invested under regulation 64(1).

(9) They must also assign to the new authority their rights under any pension policy under regulation 63 in respect of him which are assignable.

(10) The new authority must apply and invest the sum received and payments of additional contributions as mentioned in paragraph (7).

(11) Regulation 64(2), this regulation and regulation 66 apply to changes in the new employment as if the election under regulation 60(1) had been given in that employment (and so on).

Elections as to use of accumulated value of AVCs

66.—(1) This regulation applies where a person—

- (a) leaves his employment with the employer who was his employing authority when he made an election under regulation 60(1);
- (b) stops being an active member without leaving that employment;
- (c) becomes entitled to an ill-health pension under regulation 27; or
- (d) elects under regulation 60(9) to stop paying AVCs but continues to be an active member and attains the age of 50.

(2) Where paragraph (1)(a) or (c) applies to a person, he must elect to have the accumulated value of the invested additional contributions specified in regulation 64(2) used in one or more of the permissible ways and he may so elect where paragraph (1)(b) or (d) applies to him.

(3) Where paragraph (1)(a) applies, the permissible ways are—

- (a) to subscribe to an occupational pension scheme (other than the Scheme);
- (b) to subscribe to a personal pension scheme (including an additional voluntary contributions scheme, other than a FSAVC scheme);
- (c) to subscribe to a self-employed pension arrangement;
- (d) to purchase an appropriate policy from one or more AVC insurance companies.

(4) Where paragraph (1)(b) applies, the only permissible way is that mentioned in paragraph (3)(b).

(5) Where paragraph (1)(c) or (d) applies, the only permissible way is to acquire transfer credits in the Scheme.

(6) Those credits are calculated on the same basis as if a transfer value were being accepted for the member under regulation 121.

(7) But where paragraph (1)(d) applies and the member becomes entitled to the payment of retirement benefits by virtue of an election under regulation 31 (early payment), those transfer credits shall be reduced to such percentage of the credits to which he would otherwise be entitled as is shown as appropriate in guidance issued by the Government Actuary.

(8) Transfer credits acquired under paragraph (5) must not entitle the member to benefits in the form of a lump sum payable at retirement (and accordingly the period of membership with which he is credited for other purposes shall be adjusted appropriately in accordance with such guidance as may be issued by the Government Actuary).

(9) Where paragraph (1)(c) or (d) applies, the election under paragraph (2) may only be made—

- (a) while the member remains an active member, or
- (b) not later than 30 days after he stops being an active member or such later date as the employing authority may agree.

(10) But the employing authority may not agree under paragraph (9)(b) to the election being made later than—

- (a) one year before the member's NRD, or
- (b) the expiry of the period of six months beginning with the date he stops being an active member,

whichever is later.

(11) Where a person who has stopped being employed by an employing authority or being a member receives—

- (a) an ill-health grant under regulation 27,
- (b) a repayment of contributions under regulation 87, or
- (c) a payment under regulation 88(2),

he must immediately be paid the accumulated value of the invested additional contributions mentioned in regulation 64(2).

Shared cost schemes (SCAVCs)

Establishment of shared cost AVC schemes (SCAVCs)

67.—(1) An employing authority may resolve to establish and maintain arrangements under this Chapter for the purpose of enabling contributions (“SCAVCs”) to be paid by and for active members under this regulation, in addition to the others which may be paid under this Part.

(2) The resolution must specify whether all active members in employment under the Scheme with the employing authority are eligible to take part in the arrangements and, if not, the conditions for eligibility.

(3) It must also specify whether SCAVCs may be used to provide benefits payable on the death of active members (“death benefits”).

(4) If they may, it must specify whether the whole or a proportion is to be so used, and, if a proportion, specify it.

(5) It must also specify the amount of the contributions which the authority will pay under the arrangements for members who are themselves paying contributions under them.

Applications to pay SCAVCs

68.—(1) If an active member whose employing authority has established arrangements for SCAVCs under regulation 67 wishes to pay SCAVCs he must apply to them in writing.

(2) The employing authority must notify the member in writing before the expiry of the period of three months beginning with their receipt of his application whether they have accepted or rejected it.

(3) A notification of acceptance must specify the percentage of the member's pay which the authority will pay in contributions under the arrangements.

(4) It must also specify whether any and, if so, what proportion of the contributions is to be used to provide death benefits and the nature of any such benefits.

(5) A member may elect to stop paying SCAVCs.

(6) The election must be made by notice in writing to his employing authority.

Functions of employing and administering authorities

69.—(1) Where an employing authority accept an application under regulation 68 they must send a copy of the notification of acceptance to the appropriate administering authority.

(2) The appropriate administering authority must make the arrangements necessary so as to enable a member whose application to pay SCAVCs has been accepted to begin paying them before the expiry of the period of six months beginning with the date he applies to pay them.

(3) The appropriate administering authority must make the arrangements necessary to enable a member who has elected to stop paying SCAVCs to do so before the expiry of the period of three months beginning with the date he so elects.

Application and investment of SCAVCs

70.—(1) Where the arrangements established by an employing authority provide for any of the SCAVCs to be used to provide death benefits, the appropriate administering authority must make such arrangements for the provision of those benefits as are specified in regulation 63(1).

(2) The administering authority must invest any SCAVCs which are not to be used to provide death benefits with an approved AVC body.

(3) Regulations 63(2) to (5) and 64(2) to (6) apply as respects SCAVCs as they apply as respects AVCs.

Changes of employment in which membership is continued

71.—(1) If a member who is paying SCAVCs leaves his employment and enters a new employment in which he is also a member, he may elect to have the accumulated value of the invested additional contributions specified in regulation 64(2) (as it applies by virtue of regulation 70(3)) used—

- (a) to make a contribution to the arrangements the new employing authority have made under this Chapter for AVCs, or
- (b) if—
 - (i) his new employing authority have established arrangements under this Chapter for the payment of SCAVCs, and
 - (ii) he has made an application to contribute under those arrangements which has been accepted,

to make a contribution to the new employer's SCAVCs arrangements.

(2) Such an election must be made by notice in writing to the member's new employing authority and may only be made if the member enters the new employment before the expiry of the period of one month and one day beginning with the date he left the former employment.

(3) The new employing authority must send a copy of any election under this regulation to the appropriate administering authority.

(4) Where an election is made under paragraph (1)(a), it must specify—

- (a) whether the member wishes the election to be treated as an election under regulation 60(1) in respect of the member's new employment, and
- (b) if he does, the matters which require to be specified in such an election.

(5) Where an election is made under paragraph (1) and different authorities are the member's appropriate administering authority in the two employments, the former appropriate administering authority must transfer to the new authority a sum equal to the accumulated value of the member's invested additional contributions.

(6) Where the election is made under paragraph (1)(a), the new appropriate administering authority must apply and invest the sum received as mentioned in regulation 64, together with any additional contributions falling to be so invested under that regulation by virtue of contributions made in respect of the new employment by virtue of any election which is treated as made under paragraph (4).

(7) Where the election is made under paragraph (1)(b)—

- (a) if the new authority consent, the former authority must assign to them their rights under any pension policy under regulation 70(1) in respect of the member which are assignable; and
- (b) the new appropriate administering authority must apply and invest the sum received in the same manner as any SCAVCs made in respect of the new employment (other than those used to provide death benefits).

Termination

72.—(1) Where a member who is paying SCAVCs—

- (a) leaves his employment and does not enter new employment in which he is an active member, or

(b) stops being an active member without leaving that employment, regulation 66 applies as respects the elections he must or may make for the use of the accumulated value of the invested additional contributions specified in regulation 64(2) (as it applies by virtue of regulation 70(3)) as it would apply to a person in his circumstances as respects the accumulated value mentioned in regulation 66.

(2) Where neither paragraph (1)(a) nor (b) applies and an employing authority or a member stops paying SCAVCs (otherwise than by reason of the member having left his employment and entered new employment in which he is a member), the employing authority must give notice to the appropriate administering authority.

PART IV

ADMINISTRATION

CHAPTER I

PENSION FUNDS AND EMPLOYERS' PAYMENTS

Pension funds

The pension funds

73. The bodies responsible for maintaining pension funds for the Scheme immediately before the commencement date must continue to maintain them unless the fund is vested in a different body by or under any enactment.

Appropriate funds

74.—(1) The appropriate fund for a member or a person who is entitled to any benefit in respect of a person who has been a member is—

- (a) in the case of an active member, the fund specified for a member of his description in accordance with Schedule 5;
- (b) in the case of—
 - (i) a deferred or a pensioner member who was an active member on the commencement date or has been an active member since that date, or
 - (ii) a member in respect of whom another person has rights under the 1995 regulations and these Regulations,the fund so specified for a member of his description when he ceased to be an active member; and
- (c) in the case of any other deferred or a pensioner member, the fund specified for him by virtue of regulation 19 of the Transitional Regulations.

(2) Where these Regulations refer to payments being made without referring to the fund to which or from which they are to be made, the reference is to payments being made to or from the fund which is the appropriate fund for the member in question.

(3) Paragraph (2) does not apply where the payments are made under Chapter IV of Part III (AVCs and SCAVCs).

Admission agreement funds

75.—(1) An administering authority who have made an admission agreement may establish a further pension fund (an “admission agreement fund”) in addition to the fund maintained under regulation 73 (“the main fund”).

(2) Immediately after an authority establish an admission agreement fund they must give the Secretary of State notice in writing that they have done so.

(3) The notice must specify the admission bodies whose employees are eligible for benefits from the admission agreement fund (“the transferred bodies”).

(4) Where an admission agreement fund is established, assets of such value as an actuary appointed by the appropriate administering authority determines to be appropriate must be transferred from the main fund to the admission agreement fund.

(5) When valuations under regulation 77 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 a transfer statement from an actuary appointed by them.

(6) The transfer statement must specify whether in the actuary’s opinion there is a need for further assets to be transferred from the main fund to the admission agreement fund, and, if so, the value of those assets.

(7) Where the transfer statement specifies that assets of a specified value need to be transferred, the administering authority must arrange for assets of that value to be transferred as soon as is reasonably practicable.

(8) Where an admission agreement fund is established, the liabilities of the main fund as respects membership in employment with the transferred bodies become liabilities of the admission agreement fund.

Accounts and audit

76. After any audit of any pension fund of theirs an administering authority shall immediately send copies—

- (a) of the revenue account and balance sheet of the fund, and
- (b) of any report by the auditor,

to each body whose employees are active members.

Actuarial valuations and certificates

77.—(1) Each administering authority must obtain—

- (a) an actuarial valuation of the assets and liabilities of each of their pension funds as at 31st March in 1998 and in every third year afterwards,
- (b) a report by an actuary, and
- (c) a rates and adjustments certificate.

(2) Each of those documents must be obtained before the first anniversary of the date (“the valuation date”) as at which the valuation is made or such later date as the Secretary of State may agree.

(3) A rates and adjustments certificate is a certificate specifying—

- (a) the common rate of employer’s contribution, and
- (b) any individual adjustments,

for each year of the period of three years beginning with 1st April in the year following that in which the valuation date falls.

(4) The common rate of employer's contribution is the amount which in the actuary's opinion should be paid to the fund by all bodies whose employees contribute to it so as to secure its solvency, expressed as a percentage of the pay of their employees who are active members.

(5) The actuary must have regard—

- (a) to the existing and prospective liabilities of the fund arising from circumstances common to all those bodies, and
- (b) to the desirability of maintaining as nearly constant a rate as possible.

(6) An individual adjustment is any percentage or amount by which in the actuary's opinion contributions at the common rate should in the case of a particular body be increased or reduced by reason of any circumstances peculiar to that body.

(7) A rates and adjustments certificate must contain a statement as to the assumptions on which the certificate is given as respects—

- (a) the number of members who will become entitled to payment of pensions under provisions of the Scheme, and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(8) A report under paragraph (1)(b) must contain a statement as to the demographic assumptions used in making the valuation, showing how they relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(9) The authority must provide the actuary preparing a valuation or a rates and adjustment certificate with the consolidated revenue account of the fund and such other information as he requests.

(10) The authority must send copies of any valuation, report or certificate under this regulation or revision under regulation 78—

- (a) to the Secretary of State,
- (b) to each body with employees who contribute to the fund in question, and
- (c) to any other body which is or may become liable to make payments to that fund.

(11) They must also send the Secretary of State—

- (a) a copy of the consolidated revenue account with which the actuary was provided under paragraph (9), and
- (b) a summary of the assets of the fund at the valuation date (unless such a summary is contained in the report).

Special circumstances where revised actuarial valuations and certificates must be obtained

78.—(1) When obtaining a transfer statement under regulation 75(5) an administering authority must also obtain from the actuary a rates and adjustments certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for their main fund.

(2) Where an admission agreement ceases to have effect, the administering authority who made it must obtain—

- (a) an actuarial valuation as at the date it ceases of the liabilities of each admission body, and
- (b) a revision of any rates and adjustments certificate for any fund which is affected, showing the revised contributions due from each admission body.

- (3) This paragraph applies where—
- (a) an administering authority agree with an employing authority under regulation 52(6)(a) that the employing authority will pay increased contributions under regulation 79, or
 - (b) it appears to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with an employing authority exceeds the amount specified in, or likely as a result of, the assumptions stated for that authority in a rates and adjustments certificate by virtue of regulation 77(7).
- (4) Where paragraph (3) applies, the administering authority must obtain a revision of the rates and adjustments certificate affected, showing the resulting changes as respects that employing authority.

Employers' liability to make payments

Employer's contributions

79.—(1) An employing authority must contribute to the appropriate fund in each year covered by a rates and adjustments certificate under regulation 77 or 78 the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).

(2) During each of those years an employing authority must make payments to the appropriate fund on account of the amount required for the whole year.

(3) Those payments on account must—

- (a) be paid at the end of the intervals determined under regulation 81(1), and
- (b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.

(4) An employer's contribution for any year is the common percentage for that year of the pay on which contributions have during that year been paid to the fund under Part II by employees who are active members (other than contributions under regulation 18(3)), increased or reduced by any individual adjustment specified for that employer for that year in the rates and adjustments certificate.

(5) The common percentage is the common rate of employer's contribution specified in that certificate, expressed as a percentage.

Employer's further payments

80.—(1) Where an authority pass a resolution under regulation 52 they must pay the appropriate sum to the appropriate fund before the expiry of the relevant period (as defined in paragraph (7) of that regulation) unless before the end of that period they have agreed as mentioned in paragraph (6) (a) of that regulation.

(2) Where an authority pass a resolution under regulation 143 in a case where paragraph (4)(a) of that regulation does not apply, they must pay the appropriate sum to the appropriate fund before the expiry of the period of one month beginning with the date the resolution is passed.

(3) The appropriate sum for a member is such sum as is shown as appropriate in guidance issued by the Government Actuary.

(4) Any extra charge on the appropriate fund resulting from—

- (a) a resolution under regulation 15, 52, 53 or 143 of these Regulations, or
- (b) a member's becoming entitled to an ill-health pension calculated under regulation 28 by reference to an enhanced membership period,

must be repaid to the fund by the employing authority concerned (but, in the case of resolutions under regulations 52 and 143, only so far as not paid under paragraph (1) or, as the case may be, paragraph (2)).

Payments by employing authorities to appropriate administering authorities

81.—(1) Every employing authority must pay to the appropriate administering authority, on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine (but in the case of the amounts mentioned in sub-paragraph (a) not later than the time required under section 49(8) of the Pensions Act 1995⁽²⁴⁾)—

- (a) all amounts from time to time deducted from the pay of their employees under these Regulations;
- (b) any amount received by them under regulation 18, (by deduction or otherwise) during the interval;
- (c) any extra charge payable under regulation 80 of which they have been notified by the administering authority during the interval; and
- (d) a contribution towards the cost of the administration of the fund.

(2) Paragraph (1)(d) does not apply where the cost is paid out of the fund under regulation L4(3) of the 1995 regulations.

(3) If the annual amount payable under paragraph (1)(d) cannot be settled by agreement, it must be determined by the Secretary of State.

(4) Every payment under paragraph (1)(a) is to be accompanied by a statement showing—

- (a) the name and pay of each of the employing authority's employees who is an active member;
- (b) which employees are paying voluntary contributions;
- (c) the amounts which represent deductions from the pay of each of the employees and the periods covered by the deductions, distinguishing amounts representing deductions for voluntary contributions.

(5) An administering authority may direct the information mentioned in paragraph (4) to be given to them instead in such form and at such intervals (not exceeding 12 months) as they specify in the direction.

(6) Paragraphs (1) and (4) do not apply to an employing authority which is an administering authority.

(7) Voluntary contributions are contributions other than those under Part II.

Interest

Interest

82.—(1) An administering authority may require an authority from which payment of any amount due under regulation 79, 80, 81, 91, 125 or 126 is overdue by more than one month to pay interest on that amount.

(2) Interest under paragraph (1) or under regulation 94(1) must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

(24) 1995 c. 26.

(3) Interest under regulation 87(1) or 89(5) must be calculated at nine per cent. per annum compounded with yearly rests on 31st March.

CHAPTER II

MEMBERS' CONTRIBUTIONS

Discontinuance of additional contributions

83.—(1) A member paying additional contributions under regulation 55 may elect to stop payment and must do so if he ceases to be an active member.

(2) Such an election must be made by notice in writing to the administering authority and the employing authority.

(3) If a member stops paying such contributions before his NRD on leaving his employment because of such permanent incapacity as mentioned in regulation 27(1) or on his death, he is to be treated as having completed payment of those contributions.

(4) If a member stops paying such contributions before his NRD on leaving his employment by reason of redundancy at least 12 months after he elected to pay them, he may elect to make a lump sum payment to the appropriate fund.

(5) Such an election must be made by notice in writing to the administering authority given not later than the expiry of the period of three months beginning on the day after he leaves his employment (or such longer period as they allow).

(6) The amount of that payment must be calculated by an actuary appointed by the appropriate administering authority as representing the capital value of the unpaid contributions.

(7) If the member duly makes that payment before the expiry of the period of one month beginning with the date on which he is notified of its amount, he must be treated as having completed paying his additional contributions under regulation 55.

(8) If a member stops paying such contributions before his NRD and neither paragraph (3) nor (4) applies, such proportion of the original additional period covered by the election may be counted as part of his total membership as the length of the period during which he paid such contributions bears to the length of the full period during which they were to have been paid.

(9) If a member—

- (a) stops paying such contributions before his NRD on leaving his employment,
- (b) has not become entitled to the payment of any benefit under the Scheme for that employment and has not made an election under regulation 29,
- (c) is not treated under this regulation as having completed paying his contributions, and
- (d) within 12 months after leaving that employment again enters local government employment, without having received any payment under regulation 87 or 88,

he may pay his employing authority in his new employment an amount equal to the additional contributions that would have been payable if he had not stopped contributing.

(10) If he pays that amount within three months after re-entering local government employment the election under regulation 55 continues in effect and the break in payments must be disregarded.

(11) This regulation does not apply if the member who stops paying contributions receives a return of contributions which includes additional contributions under regulation 55.

(12) In paragraph (4) “redundancy” includes retirement in the interests of efficiency or because the member held a joint appointment which has been ended because the other holder has left it.

Separate treatment of AVCs and SCAVCs from other contributions

84.—(1) Regulations 87 and 88 (return of contributions) do not apply to AVCs or SCAVCs payable under (or interest on late payments which relate to AVCs or SCAVCs under) Chapter IV of Part III or under any agreement made for the payment of AVCs before the commencement date.

(2) The regulations mentioned in paragraph (3) do not apply in relation to benefits under such a policy or agreement.

(3) Those regulations are—

- (a) regulation 97 (first instance decisions),
- (b) regulation 111 (forfeiture),
- (c) regulation 112 (interim payments directions), and
- (d) regulation 113 (recovery and retention in cases of misconduct).

Over-provision: calculation and return of surplus AVC and SCAVC funds

85.—(1) The appropriate administering authority for any member who makes AVCs or SCAVCs must comply with the requirements of regulation 5 of the AVC Regulations.

(2) If the Scheme is the leading scheme in relation to a member, they must also comply with the requirements of regulation 6 of those Regulations, so far as they concern main schemes.

(3) Where surplus funds fall to be repaid under that regulation because of over-provision relating to death benefits, the administering authority must repay the member (or, if he has died, his personal representatives) out of the accumulated value of the payments made by the administering authority with respect to the pension policy under regulation 63 or 70(1).

(4) Where any other benefit is abated, the repayment must be made out of the accumulated value of the additional contributions mentioned in regulation 64(2).

(5) In this regulation—

“AVC Regulations” are the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(25);

“leading scheme” and “main schemes” have the meanings given in regulation 2 of those Regulations; and

“surplus funds” has the meaning given in regulation 6 of those Regulations.

Cost of calculations for transfer of AVCs or SCAVCs into the Scheme where no transfer is requested

86. Where—

(a) at a member's request an administering authority give him information concerning the amount payable if he elects under regulation 66(2) (including that regulation as applied by regulation 72(1)) for the accumulated value of his invested additional contributions to be used to acquire transfer credits in the Scheme, but

(b) he does not make such an election before the expiry of the period of three months beginning with the date they give him the information,

they may deduct the cost of calculating the transfer value from the accumulated value of the additional contributions mentioned in regulation 64(2).

Rights to return of contributions

87.—(1) If a member with less than 2 years' total membership—

- (a) ceases to be employed by a Scheme employer or to be an active member without becoming entitled to a retirement pension, or
- (b) ceases to be an active member by reason of a notification under regulation 8(2),

he is entitled to be repaid his contributions from the appropriate fund and, if repayment has not been made before the expiry of the period of one year beginning with the date when active membership ceases, is entitled to interest from that expiry.

(2) But a person is not entitled to interest on his contributions if he ceased to be a member on leaving his employment by reason of his resignation or dismissal because of inefficiency, an offence of a fraudulent character or misconduct.

(3) A person who is entitled to a repayment of contributions under paragraph (1) may waive his entitlement for any period and, if he becomes an active member again before the expiry of that period, he shall cease to be so entitled (but without prejudice to any entitlement arising later under that paragraph in respect of those contributions).

(4) A person who continues as an active member in another employment he held concurrently with the employment in which he has ceased to be an active member may elect for an amount equal to the repayment to be treated as contributions to the Scheme as respects his membership in that concurrent employment, entitling him to such period of membership as is appropriate in accordance with guidance issued by the Government Actuary.

(5) A person who elects under paragraph (4) ceases to be entitled to that repayment (but without prejudice to any entitlement arising later in respect of the concurrent employment).

(6) The administering authority must deduct from any repayment under this regulation any tax to which they may become chargeable under section 598 of the Taxes Act (charge to tax on repayment of employee's contributions).

(7) The contributions which must be repaid under paragraph (1) are any contributions or payments paid by the member to any pension fund under Part II or Chapter III of Part III or by way of additional contributory payments or added period payments, or paid under any of the relevant old provisions (unless already returned and not repaid), which are attributable to a period of membership which might have counted under these Regulations in relation to the employment in which he has ceased to be a member, but not to any earlier period of membership in respect of which a benefit or transfer value has been paid.

(8) The relevant old provisions are regulations C4, C5, C6, C7, C13 and C14 of the 1995 regulations and regulations C2, C3, C3A, C4, C6A, C7, C7A, C8 and C8A of the 1986 regulations.

(9) Added period payments are payments made for the purposes of regulation C9 of the 1995 regulations, regulation C5 or C6 of the 1986 regulations, regulation D10 of the 1974 regulations, or section 2(1) of the Act of 1953 or any similar provision contained in a local Act scheme.

(10) "Additional contributory payments" has the meaning given in Schedule A1 to the 1995 regulations.

Exclusion of rights to return of contributions

88.—(1) A person is not entitled to a repayment under regulation 87(1) if—

- (a) he becomes a member again within one month and one day (otherwise than in employment he held concurrently with the employment in which he was previously a member),
- (b) he left his employment because of—
 - (i) an offence of a fraudulent character, or

- (ii) grave misconduct,
in connection with this employment, or
- (c) regulation 117(2) applies.

(2) But where paragraph (1)(b) applies the employing authority may direct the payment out of the appropriate fund to him or, in a case of grave misconduct, to him or to his spouse or any dependant of his, of a sum equal to all or part of his contributions.

(3) A person is not entitled to a repayment under regulation 87(1) if—

- (a) he is for the time being entitled to be paid, or has been paid, a benefit under regulation 27(3) (ill-health grant) or an ill-health retirement grant under regulation D8 of the 1995 regulations;
- (b) a transfer value from the trustees or managers of a personal pension scheme or self-employed pension arrangement has been and remains credited to the appropriate fund for him.

(4) A person who is entitled to a repayment under regulation 87(1)(a) ceases to be entitled to it if he returns to local government employment before receiving it.

Deduction and recovery of member's contributions

89.—(1) An employing authority may deduct from a person's pay any contributions payable by him under these Regulations.

(2) Sums payable under regulation 17(4) or (7)(c) (reserve forces) may be deducted by the member's former employer from any payment made to him under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(26), to the extent that they are payable in respect of the same period.

(3) The appropriate administering authority may recover any such sum remaining due and not deducted under paragraph (1) or (2)—

- (a) as a simple contract debt in any court of competent jurisdiction, or
- (b) by deducting it from any payment by way of benefits to or in respect of the person in question under these Regulations.

(4) But the sums mentioned in paragraph (2) are only recoverable under paragraph (3) if unpaid for 12 months after the person ceases to perform relevant reserve forces service.

(5) If—

- (a) an employing authority deduct any amount from a person's pay or any other sum due to him in respect of contributions which, by virtue of his having left without any rights under the Scheme, should be repaid to him, and
- (b) they have not repaid it to him before the expiry of the period of one year and one month beginning with the date of deduction,

they must pay him interest on that amount for the period beginning one month after that date and ending with the date of repayment.

CHAPTER III

PAYMENT OF BENEFITS ETC.

Pension increases and cash equivalents under the Pension Schemes Act 1993

90. Any increase in a pension required by reason of Chapter III of Part IV of the Pension Schemes Act 1993(27) (protection of increases in guaranteed minimum pensions: anti-franking) must be paid from the appropriate fund.

Pension increases under the Pensions (Increase) Acts

91.—(1) Where a pension to which the Pensions (Increase) Act 1971(28) (“the 1971 Act”) applies is payable out of an appropriate fund, any increase under that Act or the Pensions (Increase) Act 1974(29) (“the 1974 Act”), must be paid from that fund.

(2) But Schedule 3 to the 1971 Act only has effect in relation to any such increase where—

- (a) the last employing authority is not a body required by regulation 79 to contribute to that fund nor a Water Act Company; or
- (b) the last employing authority is such a body or Company and the increase was payable before 1st April 1990.

(3) In a case where the last employing authority ceases after 31st March 1990 to be such a body, Schedule 3 to the 1971 Act has effect only so far as the cost of the increase has not, in the opinion of an actuary appointed by the administering authority of the fund, already been provided for by contributions under regulation 79.

(4) Where the last employing authority is a Water Act Company, the Environment Agency must reimburse the appropriate administering authority the cost of any increase payable under the 1971 Act or the 1974 Act on or after 1st April 1990 from the Closed Water Authorities Fund.

(5) The Closed Water Authorities Fund is the Closed Fund vested in the Environment Agency by regulation 2(1) of the Local Government Pension Scheme (Environment Agency) Regulations 1996(30).

(6) The amounts due under paragraph (4) or under Schedule 3 to the 1971 Act must be paid on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine.

(7) The administering authority shall credit to the appropriate fund any amounts paid to them under paragraph (4) or Schedule 3 to the 1971 Act and any interest paid on them.

(8) The last employing authority has the same meaning as in paragraph 1(2) of Schedule 3 to the 1971 Act, except that if the pension became payable by reason of service with a relevant body, it means that body.

(9) Relevant bodies are—

- (a) an admission body which has made an admission agreement,
- (b) a body employing persons deemed to be in employment by regulation 129 or 130, or
- (c) a company under the control of a Scheme employer listed in Schedule 2.

(10) A Water Act Company is—

(27) 1993 c. 48.

(28) 1971 c. 56.

(29) 1974 c. 9.

(30) S.I. 1996/711.

- (a) a company nominated in accordance with section 4 of the Water Act 1989⁽³¹⁾ as the successor company of a water authority, or
- (b) a company nominated by order under section 83(1) of that Act.

Contributions equivalent premiums

92.—(1) Where a Scheme employer pays a contributions equivalent premium under section 55 of the Pension Schemes Act 1993⁽³²⁾ in respect of a member, that employer may recover or, if an administering authority, retain from the appropriate fund a sum not exceeding the premium.

(2) But if the Scheme employer may recover or retain any sum under section 61 of that Act in respect of the premium, then only the balance may be recovered or retained under paragraph (1).

(3) Where a contributions equivalent premium is refunded under regulation 54(1)(c) of the Occupational Pension Schemes (Contracting-out) Regulations 1996⁽³³⁾ (re-entry into employment which is contracted-out by reference to the same scheme), the authority to whom it is refunded must pay to the appropriate fund a sum equal to the amount of the premium.

Commencement of pensions

93.—(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable begins with the day after the date with which his employment ends.

(2) The first period for which any retirement pension under regulation 31 is payable begins—

- (a) in a case where he elects under paragraph (1) of that regulation, with the day on which he elects, and
- (b) otherwise, with his NRD.

(3) Any short-term pension payable on the death of a member is payable in respect of a period beginning with the day after the date on which he dies.

(4) The first period for which any long-term pension is payable on the death of a member in a case where no short-term pension is payable begins with the day after the date on which he dies.

Interest on late payment of certain benefits

94.—(1) Where all or part of a pension or lump sum payment due under these Regulations or the 1995 regulations is not paid within the relevant period after the due date, the appropriate administering authority must pay interest on the unpaid amount to the person to whom it is payable—

- (a) in the case of a pension from one year after the due date, and
- (b) otherwise, from one month after the due date.

(2) In the case of a pension the due date is one month after the amount becomes payable.

(3) In the case of a death grant, the due date is the date on which—

- (a) probate or letters of administration are produced to the administering authority, or
- (b) the authority become satisfied that the grant may be paid as provided in regulation 95.

⁽³¹⁾ 1989 c. 15.

⁽³²⁾ 1993 c. 26; section 55 was amended by section 141 of the Pensions Act 1995 (c. 26).

⁽³³⁾ S.I. 1996/1172.

Payments due in respect of deceased persons

95.—(1) If when a person dies the total amount due to his personal representatives under the Scheme (including anything due to him at his death) (“the amount due”) does not exceed the small payments amount, the appropriate administering authority may pay the whole or part of the amount due from their pension fund—

- (a) to his personal representatives, or
- (b) to the person, or to or among any one or more of any persons, appearing to the authority to be beneficially entitled to the estate,

without the production of probate or letters of administration of his estate.

(2) The small payments amount is the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965⁽³⁴⁾ and applying in relation to his death.

(3) Such a payment discharges the appropriate administering authority from accounting for the amount paid.

Non-assignability

96.—(1) Every benefit to which a person is entitled under the Scheme is payable to or in trust for him.

(2) No such benefit is assignable or chargeable with his or any other person’s debts or other liabilities.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with an income payments order under section 310 of the Insolvency Act 1986⁽³⁵⁾.

CHAPTER IV

DETERMINATIONS, INFORMATION AND RECORDS

Initial determinations of questions

First instance decisions

97.—(1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) Any question whether a person is entitled to a benefit under the Scheme must be decided by the Scheme employer who last employed him.

(3) That decision must be made as soon as is reasonably practicable after the employment ends.

(4) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount.

(5) That decision must be made as soon as is reasonably practicable after the event by virtue of which the entitlement arises or may arise.

(6) In relation to any employment in which a person is a member or prospective member, the appropriate administering authority must decide—

- (a) any questions concerning his previous service or employment;

⁽³⁴⁾ 1965 c. 32.

⁽³⁵⁾ 1986 c. 45.

- (b) what rate of contribution he is liable to pay to the appropriate fund;
- (c) any questions about counting added years or additional periods as membership; and
- (d) whether he is a Class A member, a Class B member or a Class C member.

(7) Those decisions must be made as soon as is reasonably practicable after the person becomes a member in the employment.

(8) Other questions in relation to any member or prospective member must be decided by his employer as soon as is reasonably practicable after he becomes a member or a material change affects his employment.

(9) Before making a decision as to whether a member may be entitled under regulation 27 or under regulation 31 on the ground of ill-health, the Scheme employer must obtain a certificate from an independent registered medical practitioner as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body.

(10) If the Scheme employer is not the member's appropriate administering authority, before referring any question to any particular registered medical practitioner under paragraph (9) the Scheme employer must obtain that authority's approval.

(11) In paragraphs (2) and (4) "benefit" includes a return of contributions.

(12) In paragraph (4) benefit includes a benefit specified in regulation F6(12) or (16) of the 1986 regulations.

(13) For this Chapter, references to the Scheme employer or the appropriate administering authority of a prospective member are references to the body that would be his employer or appropriate administering authority if he were to become an active member in the employment by virtue of which he would be eligible to join the Scheme.

Notification of decisions under regulation 97

98.—(1) Every person whose rights or liabilities are affected by a decision under regulation 97 must be notified of it in writing by the body who made it as soon as is reasonably practicable.

(2) A notification of a decision that the person is not entitled to a benefit must include the grounds for the decision.

(3) A notification of a decision as to the amount of a benefit must include a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

- (a) refer to the rights available under regulations 100 and 102,
- (b) specify the time limits within which the rights under those regulations may be exercised, and
- (c) specify the name and the address of the appointed person and the appropriate administering authority to whom applications under regulation 100 may be made.

Resolution of disputes

Appointment of persons to resolve disputes

99.—(1) Each administering authority must appoint a panel of persons they consider to be suitably qualified for the purpose of resolving disagreements in respect of which an application is made under regulation 100 in cases where they are the appropriate administering authority.

(2) For this Chapter an administering authority are the appropriate administering authority as respects such a disagreement if—

- (a) where the person making the application is a member or prospective member, they are or were his last appropriate administering authority for the other purposes of these Regulations, and
- (b) where the person making the application is the widow, widower or surviving dependant of a deceased member, they were his appropriate administering authority.

(2) For this Chapter the persons appointed under paragraph (1) are “appointed persons”.

(3) An application under regulation 100 may be decided by one or more appointed persons (and references to “the appropriate appointed person”, in relation to any application, are to the appointed person or persons to whom the application in question is referred).

(4) An application must not be referred to a person who has previously been involved in the subject matter of the disagreement.

(5) An appointed person shall hold and vacate office under the terms of his appointment.

(6) But he may resign by notice in writing to the administering authority.

(7) Each administering authority shall determine—

- (a) the procedure to be followed by the persons appointed by them when exercising their functions as appointed persons, and
- (b) the manner in which those functions are to be exercised.

Right to apply for an appointed person to decide a disagreement

100.—(1) Where there is a disagreement about a matter in relation to the Scheme between a member or an alternative applicant and a Scheme employer, the member or, as the case may be, the alternative applicant (“the complainant”) may—

- (a) apply directly to the appropriate appointed person to decide the disagreement, or
- (b) apply to the appropriate administering authority for them to refer the disagreement to an appointed person for decision.

(2) These persons are alternative applicants—

- (a) a widow, widower or surviving dependant of a deceased member or any other person to whom benefits in respect of him may be paid;
- (b) a prospective member;
- (c) a person who ceased to be a member or to fall within sub-paragraph (a) or (b) during the period of six months ending with the date of the application; and
- (d) in the case of a disagreement relating to the question whether a person claiming to be a member or to fall within sub-paragraph (a), (b) or (c) does so, the claimant.

(3) The application for a decision must set out particulars of the disagreement, including a statement as to its nature with sufficient details to show why the applicant is aggrieved.

(4) An application by—

- (a) a member or prospective member,
 - (b) a person who ceased to be such a person during the period of six months ending with the date of the application, or
 - (c) a person claiming to be a person within paragraph (a) or (b),
- must set out his full name, address, date of birth, his national insurance number (if any) and the name of his employing authority.
- (5) An application by any other person must set out—
 - (a) his full name, address and date of birth,
 - (b) his relationship to the member, and
 - (c) the member's full name, address, date of birth and national insurance number and the name of his employing authority.
 - (6) The application must be signed by or on behalf of the applicant.
 - (7) The application must be accompanied by a copy of any written notification issued under regulation 98.
 - (8) The application must be made before the end of the period of six months beginning with the relevant date or such further period as the appropriate appointed person considers reasonable (but see regulation 105(6)).
 - (9) Where the disagreement relates to a decision under regulation 97, the relevant date is the date notification of it is given under regulation 98.
 - (10) Otherwise, the relevant date is the date of the act or omission which is the cause of the disagreement or, if there is more than one, the last of them.

Notice of decisions by appointed persons under regulation 100

- 101.**—(1) A decision on the matters raised by an application under regulation 100 must be issued by the appropriate appointed person—
- (a) to the applicant,
 - (b) to the Scheme employer, and
 - (c) if the Scheme employer is not the appropriate administering authority, to that authority,
- by notice in writing before the expiry of the period of two months beginning with the date the application was received.
- (2) But, if no such notice is issued before the expiry of that period, an interim reply must immediately be sent to those persons, setting out the reasons for the delay and an expected date for issuing the decision.
- (3) A notice under paragraph (1) must include—
- (a) a statement of the decision;
 - (b) a reference to any legislation or provisions of the Scheme relied upon;
 - (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion; and
 - (d) a reference to the rights of the applicant and the Scheme employer's right to refer the disagreement for reconsideration by the Secretary of State under regulation 102, specifying the time within which they may do so.

Reference of disagreement to the Secretary of State

102.—(1) Where an application about a disagreement has been made under regulation 100, an application may be made to the Secretary of State to reconsider the disagreement by the person who applied under regulation 100 or the Scheme employer in question.

(2) The application must set out particulars of the grounds on which it is made, including a statement that the applicant under this regulation wishes the disagreement to be reconsidered by the Secretary of State.

(3) An application made by the person who applied under regulation 100 must set out the matters required by paragraph (4) or, as the case may be, paragraph (5) of that regulation to be included in his application.

(4) The application must be accompanied by a copy of any written notification issued under regulation 98.

(5) Where notice of a decision on the application under regulation 100 has been issued, the application under this regulation must state why the applicant is dissatisfied with that decision and be accompanied by a copy of that notice.

(6) The application must be signed by or on behalf of the person making it.

(7) An application for reconsideration may only be made before the expiry of the period of six months beginning with the relevant date.

(8) Where notice of a decision on the matters raised by the application under regulation 100 has been issued, the relevant date is the date of that notice.

(9) Where—

(a) an interim reply has been sent under regulation 101(2), but

(b) no notice of decision has been issued before the expiry of the period of one month beginning with the date specified in the reply as the expected date for issuing the decision,

the relevant date is the date with which that period expires.

(10) Where no notice of decision has been issued or interim reply has been sent before the expiry of the period of three months beginning with the date the application under regulation 100 was made, the relevant date is the date with which that period expires.

Notice of decisions by the Secretary of State under regulation 102

103.—(1) The Secretary of State must issue his decision on the matters raised by an application under regulation 102 to the parties to the disagreement by notice in writing before the expiry of the period of two months beginning with the date the application was received (but see paragraph (2)).

(2) If no such notice is issued before the expiry of that period, an interim reply must be sent immediately to those parties, setting out the reasons for the delay and an expected date for issuing the decision.

(3) A notice under paragraph (1) must include—

(a) a statement of the decision;

(b) in a case where there has been a decision made under section 100, an explanation as to whether and, if so, to what extent that decision is confirmed or replaced;

(c) a reference to any legislation or provisions of the Scheme relied upon;

(d) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;

- (e) a statement that OPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with difficulties which they have failed to resolve with the Secretary of State and of the address at which it may be contacted; and
- (f) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes Act 1993⁽³⁶⁾ and of the address at which he may be contacted.

Rights of representation

104.—(1) An application under regulation 100 or 102 may be made or continued on behalf of the applicant by a representative nominated by him.

(2) Where a person who has the right to make or has made such an application dies, the application may be made or continued on his behalf by his personal representative.

(3) Where such a person is a minor or is or becomes otherwise incapable of acting for himself, the application may be made or continued on his behalf by a member of his family or some other person suitable to represent him.

(4) Where a representative is nominated before an application is made, the application must specify his full name and address and whether that is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used, he must be sent a copy of a notification under 101(1) or 103(1) or an interim reply under 101(2) or 103(2).

Appeals by administering authorities

105.—(1) Where—

- (a) a Scheme employer has decided or failed to decide any question falling to be decided by that employer under regulation 97 (otherwise than in the exercise of a discretion), and
- (b) the Scheme employer is not an administering authority,

the administering authority maintaining the pension fund to which the Scheme employer pays contributions may appeal to the Secretary of State to decide that question.

(2) Such an appeal must be made by notice in writing given before the end of the period of six months beginning with the relevant date or such further period as the Secretary of State considers reasonable.

(3) Where the appeal relates to a decision notified under regulation 98(1), the relevant date is the date of the notification of that decision.

(4) Where the appeal relates to a failure to decide any question, the relevant date is the date of that failure.

(5) For paragraph (4) an employer is to be taken to have failed to decide a question at the expiry of the period of three months beginning with the date on which the administering authority have requested a decision by notice in writing.

(6) Where an appeal has been made under paragraph (1), the period within which an application may be made under regulation 100 may not be extended under regulation 100(8).

(7) The Secretary of State must issue his decision on the appeal by notice in writing to the appellant authority and to any other persons appearing to him to be affected by it.

(8) Where an appeal is made by an authority under this regulation and any other person—

- (a) has made an application under regulation 100 or regulation 102 which has not been determined in respect of any of the matters which are the subject of the appeal, or
- (b) makes such an application contemporaneously with the appeal or after it and before the appeal is determined,

the appeal shall be stayed pending notification of a decision under regulation 100 or, as the case may be, regulation 102 or until the application is withdrawn.

Information and records

Statements of policy concerning exercise of discretionary functions

106.—(1) Each administering authority and Scheme employer must formulate and keep under review their policy concerning the exercise of their functions under regulation 31 (early leavers) and under Part III.

(2) Before formulating that policy an administering authority must consult the authorities who employ active members for whom they are the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with the commencement date—

- (a) each Scheme employer shall send each relevant administering authority, and
- (b) each administering authority shall send each relevant Scheme employer,

a written statement as to the policy which is being applied by that employer or, as the case may be, authority in the exercise of its functions on or after that date.

(4) Where, as a result of a review under paragraph (1), a Scheme employer or administering authority determine to amend their policy, they must send a copy of the statement of the amended policy to each relevant administering authority or, as the case may be, relevant Scheme employer before the expiry of the period of one month beginning with the date on which they so determine.

(5) A relevant administering authority, in relation to a Scheme employer, are any authority who are an appropriate administering authority for that employer's employees, and a relevant Scheme employer, in relation to an administering authority, is any Scheme employer for whose employees they are the appropriate administering authority.

(6) In formulating their policy under paragraph (1), an administering authority or Scheme employer must have regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service.

Information to be supplied by employees

107.—(1) Before the expiry of the period of three months beginning with the date a person becomes a member, the Scheme employer must ask him in writing for the documents specified in paragraph (2).

(2) Those documents are—

- (a) a statement in writing listing all the person's previous periods of employment, and
- (b) copies of all notifications previously given to him under these Regulations or the old regulations.

(3) They must also ask for those documents before the expiry of the period of three months beginning with the occurrence of any change as respects his employment which is material for the Scheme.

(4) A request under paragraph (1) or (3) must include a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining his rights under the Scheme.

(5) The Scheme employer need not request any documents if satisfied that they or the appropriate administering authority (if different) already have all material information.

(6) The old regulations are the 1995 regulations, the 1986 regulations, the 1974 regulations, the Local Government Superannuation (Administration) Regulations 1954⁽³⁷⁾ and the Local Government Superannuation (Administration) Regulations 1938⁽³⁸⁾.

Exchange of information by authorities

108.—(1) A Scheme employer which is not an administering authority must inform the appropriate administering authority of all decisions made by the employer under this Chapter concerning members and give that authority such other information as they require for discharging their functions under the Scheme.

(2) If—

- (a) an administering authority make any decision under this Chapter about a person for whom they are not the Scheme employer, and
- (b) information about the decision is required by his Scheme employer for discharging that employer's functions under the Scheme,

that authority must give that employer that information.

CHAPTER V

SPECIAL ADJUSTMENTS

Abatement during new employment

Statements of policy concerning abatement of retirement pensions in new employment

109.—(1) Each administering authority must formulate and keep under review their policy concerning abatement (that is, the extent, if any, to which the amount of retirement pension payable to a member from any pension fund maintained by them under the Scheme should be reduced (or whether it should be extinguished) where the member has entered a new employment with a Scheme the employer, other than one in which he is eligible to belong to a teachers scheme).

(2) Before formulating that policy an administering authority must consult with the authorities who employ active members for whom they are the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with the commencement date, each authority shall publish a statement as to the policy which is being applied by them where a member who is so entitled enters such a new employment on or after that date.

(4) Where, as a result of reviewing their policy concerning abatement, an administering authority determine to amend it, they must publish a statement of the amended policy before the expiry of the period of one month beginning with the date they determine to do so.

(5) In formulating their policy concerning abatement, an administering authority must have regard—

- (a) to the level of potential financial gain at which they wish abatement to apply,
- (b) to the administrative costs which are likely to be incurred as a result of abatement in the different circumstances in which it may occur, and
- (c) to the extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.

(37) S.I. 1954/1192.

(38) S.R. & O. 1938/574.

(6) In paragraph (5)(a) the reference to financial gain is a reference to the financial gain which it appears to the administering authority may be obtained by a member as a result of his entitlement both to a pension and to pay under the new employment.

Application of abatement policy in individual cases

110.—(1) Where a member who is entitled to the payment of a retirement pension proposes to enter a new employment with a Scheme employer, he must inform the employer about that entitlement.

(2) If such a member enters such a new employment he must immediately notify in writing the body from whom he has become entitled to receive the pension.

(3) Paragraphs (1) and (2) do not apply where the new employment is employment in which the person is eligible to belong to a teachers scheme.

(4) The authority which is the member's appropriate administering authority as respects the retirement pension to which he is entitled—

(a) must apply the policy published by them under regulation 109 to the member, and

(b) they may reduce the annual rate of that pension or, as the case may be, may cease to pay it, during the period while he holds the new employment, in accordance with that policy.

(5) But no reduction under paragraph (4) of the pension of a person who was a member immediately before the commencement date may exceed the reduction which would have applied under the 1995 regulations if those regulations had applied when the member entered his new employment.

Misconduct

Forfeiture of pension rights after conviction of employment-related offences

111.—(1) If a member is convicted of a relevant offence, the Secretary of State may issue a forfeiture certificate.

(2) Where a forfeiture certificate is issued the member's former employing authority may direct that any of the rights in respect of him under these Regulations or the 1995 Regulations as respects his previous membership are forfeited.

(3) A relevant offence is an offence, committed in connection with an employment in which the person convicted is a member, and because of which he has left that employment.

(4) A forfeiture certificate is a certificate that the offence—

(a) was gravely injurious to the State, or

(b) is liable to lead to serious loss of confidence in the public service.

(5) If the former employing authority incurred loss as a direct consequence of the relevant offence, they may only give a direction under paragraph (2) if they are unable to recover their loss under regulation 113 or 115 or otherwise, except after an unreasonable time or at disproportionate cost.

(6) A direction under paragraph (2) may only be given before the expiry of the period of three months beginning with the date of the conviction.

(7) Where a former employing authority apply for a forfeiture certificate, they must at the same time send the convicted person and the appropriate administering authority a copy of the application.

Interim payments directions

112.—(1) If—

(a) a person leaves an employment in which he was a member, because of an offence in connection with that employment, and

(b) a forfeiture certificate has been issued under regulation 111(1) in respect of that offence, his former employing authority may give an interim payments direction to the appropriate administering authority.

(2) But they may not give such a direction if they have—

(a) notified him of a decision under regulation 97 on any question as to entitlement to benefit, or

(b) given any direction under regulation 111(2) (“a forfeiture direction”).

(3) An interim payments direction is a direction to make interim payments to any person who appears to the former employing authority to be a person who would be entitled to receive payment of a benefit under the Scheme if no forfeiture direction were given.

(4) The person to whom payments must be made and the amounts must be specified in the direction.

(5) The amounts must not exceed the amounts which the person specified would be entitled to be paid if no forfeiture direction were given.

(6) An interim payments direction is not a decision under regulation 97 as to any person’s entitlement to a benefit.

(7) Payments in accordance with an interim payments direction shall be deemed to be payments in respect of a benefit to which the recipient was entitled (regardless of any contrary forfeiture direction or decision under regulation 97).

Recovery or retention where former member has misconduct obligation

113.—(1) This regulation applies where a person—

(a) has left an employment, in which he was or had at some time been a member, in consequence of a criminal, negligent or fraudulent act or omission on his part in connection with that employment;

(b) has incurred some monetary obligation, arising out of that act or omission, to the body who were his employing authority in that employment; and

(c) is entitled to benefits under Part II.

(2) The former employing authority may recover or retain out of the appropriate fund—

(a) the amount of the monetary obligation, or

(b) the value at the time of the recovery or retention of all rights in respect of the former employee under the Scheme with respect to his previous membership (as determined by an actuary),

whichever is less.

(3) The rights specified in paragraph (2)(b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of regulation 66(5) (including that regulation as it applies by virtue of regulation 72).

(4) The former employing authority must give the former employee—

(a) not less than three months’ notice of the amount to be recovered or retained under paragraph (2); and

(b) a certificate showing the amount recovered or retained, how it is calculated, and the effect on his benefits or prospective benefits.

(5) If there is any dispute over the amount of the monetary obligation specified in paragraph (1) (b), the former employing authority may not recover or retain any amount under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbitrator.

Protection of GMP rights

114.—(1) The power—

- (a) to give directions under regulation 111(2), or
- (b) to recover or retain amounts under regulation 113(2),

may not be exercised so as to deprive a person of his guaranteed minimum pension or any widow's or widower's guaranteed minimum pension.

(2) But such a power may be so exercised if the person left his employment—

- (a) because of the offence of treason, or
- (b) because of one or more offences under the Official Secrets Acts 1911 to 1989 for which the former member has been sentenced on the same occasion—
 - (i) to a term of imprisonment of at least 10 years, or
 - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years.

Transfer of sums from the pension fund to compensate for former member's misconduct

115.—(1) This regulation applies where—

- (a) a person has left an employment in which he was a member because of—
 - (i) an offence involving fraud, or
 - (ii) grave misconduct,in connection with that employment;
- (b) his former employing authority in that employment have suffered direct financial loss by reason of the offence or misconduct, and
- (c) either—
 - (i) the former employee became entitled to benefits under Part II or the 1995 Regulations and a direction has been given under regulation 111(2), or
 - (ii) he did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 87 (whether or not he has waived his right).

(2) If the former employing authority are an administering authority, they may transfer an appropriate amount from their pension fund to the appropriate fund or account.

(3) Otherwise, the appropriate administering authority must pay the former employing authority an appropriate amount out of the pension fund, if requested to do so.

(4) But if a payment in lieu of contributions is due or has been made in respect of the former employee, the administering authority may reduce a payment under paragraph (3) by half the amount of the payment in lieu of contributions.

(5) An appropriate amount is an amount not exceeding—

- (a) the amount of the direct financial loss, or
- (b) the amount of any contributions which could have been returned to the former employee, or paid to his spouse or a dependant, under regulation 88(2) above or regulation C21(4) of the 1995 regulations, less the amount of any which have been so returned or paid,

whichever is the less.

(6) If after making a payment under paragraph (3) the appropriate administering authority are required to make any transfer payment under Chapter IV of Part IV of the Pension Schemes Act 1993⁽³⁹⁾ or under regulation 119 or to make a payment under regulation 125 for a former employee, the former employing authority must repay it, if requested to do so.

CHAPTER VI TRANSFERS

Transfers out

Application of Chapter IV of Part IV of the Pension Schemes Act 1993

116.—(1) For sections 12C (requirements as to transfer, commutation etc. for contracting-out), 19 (discharge of liability) and 20 (transfer of accrued rights) and Chapter IV of Part IV (transfer values) of the Pension Schemes Act 1993⁽⁴⁰⁾ and any regulations made under any of those sections or that Chapter, the managers of the Scheme in relation to a member are the fund authority.

(2) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996⁽⁴¹⁾ (pre-1986 leavers), Chapter IV of Part IV of the Pension Schemes Act 1993 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service.

(3) The references in regulation 4 of those regulations to regulation 3 of those regulations include a reference to regulation K7(2) of the 1995 regulations and any corresponding earlier provisions.

(4) Regulation 5 of those regulations (treatment of a number of employments as a single employment) only applies if the employments are treated as a single employment for the purposes of the Scheme.

(5) Sub-paragraph (a) of regulation 10(2) of those regulations (interest on late payment of cash equivalents) does not apply where the member has required the cash equivalent to be paid to a club scheme.

(6) Regulation 18 of those regulations (termination of pensionable service in certain circumstances to be disregarded) only applies if—

- (a) in the case of a termination before the commencement date, no election was made under regulation D12(1)(c) of the 1995 regulations (or any corresponding earlier provision) in respect of the service which terminated, and
- (b) in any case, no election has been made under regulation 32(1) to have the service which terminated aggregated with later service.

(7) For this regulation and regulation 117, the fund authority, in relation to a member, is the body maintaining the pension fund to which he was contributing immediately before his pensionable service terminated.

(8) But if that fund has been closed, the fund authority is the body which would be liable to pay him his pension for that employment if he had been entitled to receive payment of such a pension when his pensionable service terminated.

Rights to payment out of fund authority's pension fund

117.—(1) The amount of any transfer payment due in respect of a member under Chapter IV of Part IV of the Pension Schemes Act 1993 is payable by the fund authority from their pension fund.

⁽³⁹⁾ 1993 c. 48.

⁽⁴⁰⁾ 1993 c. 48.

⁽⁴¹⁾ S.I. 1996/1847.

(2) Where such a transfer payment is to be or has been paid from a fund, no other payment or transfer of assets may be made from the fund as respects the accrued rights covered by the transfer payment.

(3) Paragraph (2) overrides anything to the contrary in the former regulations, any local Act scheme, the 1974 regulations, the 1986 regulations, the 1995 regulations or any other provision of these Regulations or the Transitional Regulations.

Contracting-out requirements affecting transfers out

118.—(1) There must be deducted from the transfer payment to be made in respect of any person—

- (a) the amount of any contributions equivalent premium payable pursuant to section 55 of the Pension Schemes Act 1993(42); or
- (b) an amount sufficient to meet the liability in respect of his contracted-out rights.

(2) But the amount mentioned in paragraph (1)(b) may not be deducted where—

- (a) the transfer payment is made to an occupational pension scheme which is contracted-out or an appropriate personal pension scheme, and
- (b) that scheme’s trustees or managers undertake to accept liability for his contracted-out rights.

(3) Where the amount mentioned in paragraph (1)(a) is deducted, if the appropriate administering authority think fit, that amount may be used in preserving the liability mentioned in paragraph (2) (b) in the appropriate fund.

(4) Otherwise, it must be used in paying the premium.

(5) Contracted-out rights, in relation to a member, are—

- (a) his and his surviving spouse’s rights to guaranteed minimum pensions, and
- (b) his section 9(2B) rights (as defined in regulation 1(2) of the Occupational Pension Schemes Contracting-out) Regulations 1996(43)).

Bulk transfer arrangements

Bulk transfers (transfers of undertakings) etc.

119.—(1) This paragraph applies where—

- (a) two or more members’ active membership ends on their joining an approved non-local government scheme (“the new scheme”),
- (b) it is agreed by—
 - (i) the members’ appropriate administering authority,
 - (ii) the members’ employing authorities (if different), and
 - (iii) the trustees or managers of the new scheme,that a payment should be made under this regulation, and
- (c) the members agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter IV of Part IV of the Pension Schemes Act 1993 and waive any rights they might have under that Chapter by virtue of the cessation of their active membership.

(42) 1993 c. 48.

(43) S.I. 1976/1172; the definition of “section 9(2B) rights” was substituted by S.I. 1997/786 Schedule 1, paragraph 4(2).

(2) The appropriate administering authority must not give their agreement under paragraph (1)(b) unless they are satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which he would have obtained if a transfer value had been paid to the same scheme under Chapter IV of Part IV of the Pension Schemes Act 1993, as it applies by virtue of regulation 116, (assuming in any case where the member would not be entitled to such a payment that he was).

(3) The appropriate administering authority must provide each member with sufficient information in writing to check that fact before he agrees as mentioned in paragraph (1)(c).

(4) Where paragraph (1) applies, the appropriate administering authority must—

(a) set aside (whether in cash or in assets or both) such part of the appropriate fund (“the transfer payment”) as an actuary appointed by them and an actuary appointed by the scheme managers of the new scheme for the purpose may agree as appropriate for the acquisition of such rights in that scheme as they may so agree, and

(b) pay or transfer it to the trustees or managers of the new scheme for the benefit of the relevant members.

(5) The appropriate administering authority must certify to the new scheme’s trustees or managers the amount included in the transfer payment which represents each member’s contributions and interest on them.

(6) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made from the pension fund by reason of membership covered by the transfer payment.

(7) Paragraph (6) overrides anything to the contrary in the former regulations, any local Act scheme or any provision of the 1974 regulations, the 1986 regulations, the 1995 regulations or these Regulations.

Calculation of amount of transfer payment under regulation 119

120.—(1) The amount of the transfer payment to be paid under regulation 119 is the amount determined by an actuary appointed by the members’ appropriate administering authority to be equal to the value at the date they join the new scheme of the actual and potential liabilities payable from their fund which have then accrued in respect of the members and the persons who are or may become entitled to benefits under the Scheme through them.

(2) The actuary may make such adjustments as he thinks fit in calculating that amount and, in particular, as respects the period from that date to the date of actual payment of the transfer value.

(3) He must specify in his valuation the actuarial assumptions he has used in making it.

(4) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund.

(5) But if there is more than one employing authority involved, each shall bear such part of the costs as the actuary determines to be appropriate.

Transfers in

Inward transfers of pension rights

121.—(1) If a person who becomes an active member has relevant pension rights, he may request his fund authority to accept a transfer value for some or all those rights from the relevant transferor.

(2) Relevant pension rights are accrued rights under—

(a) an occupational pension scheme (other than the Scheme),

- (b) a personal pension scheme,
 - (c) a retirement annuity contract approved by the Commissioners of Inland Revenue under section 620 or 621 of the Taxes Act,
 - (d) a self-employed pension arrangement, or
 - (e) an additional voluntary contributions scheme (other than a FSAVC scheme or a scheme constituted by virtue of Chapter IV of Part III).
- (3) Accrued rights include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993⁽⁴⁴⁾.
- (4) For this regulation and the following regulations of this Chapter the fund authority, in relation to a transferring person, are the body maintaining the pension fund of the Scheme to which he is contributing.
- (5) The relevant transferor is the trustees or managers of the scheme, contract or arrangement under which the transferring person's relevant pension rights arise.
- (6) But the relevant transferor for the rights specified in paragraph (3) is the trustees or managers of the scheme, contract or arrangement, or the insurance company, to which a payment in respect of his accrued rights has been made.
- (7) A request from a transferring person under paragraph (1) must be made by notice in writing.
- (8) That notice must be given before the expiry of the period of 12 months beginning with the date he became an active member (or such longer period as his employer may allow).
- (9) Where a request under paragraph (1) is duly made the fund authority may accept the transfer value and credit it to their pension fund.

Right to count credited period

- 122.**—(1) Where a transfer value has been accepted under regulation 121, the member may count the credited period as a period of membership for these Regulations (but see Schedule 3).
- (2) If the transfer value—
- (a) is paid by the trustees or managers of a club scheme,
 - (b) represents all the rights relating to the member in that scheme,
 - (c) has been calculated—
 - (i) in a case where Chapter IV of Part IV of the Pension Schemes Act 1993 applies, in accordance with that Chapter, and
 - (ii) otherwise, in a manner consistent with that prescribed under that Chapter,
- the credited period is the period which, if used to calculate a transfer value to be paid by the Scheme, would produce an amount equal to the transfer value received.
- (3) If the transfer value is not paid by the trustees or managers of a club scheme, the credited period must be calculated in a manner consistent with that Chapter.
- (4) In calculating the credited period under paragraph (3) due allowance must be given for the expected increase in the member's pensionable pay between the date he became a member (or, if more than twelve months later, the date on which the transfer value is received) and his NRD.
- (5) If the member is a man, the credited period must be treated as a period after 5th April 1978.
- (6) If the member is a woman, the credited period must be treated as a period after 5th April 1988.
- (7) The fund authority must give the member a written notice stating the period of membership he may count under paragraph (1).

(44) 1993 c. 48.

(8) The notice must contain a statement of the kind required by regulation 98(4).

Rights as to service not matched by credited period

123.—(1) Where the member's transferred-in service exceeds the credited period, he may count the excess as a period which counts towards his total membership for the purposes of the provisions mentioned in paragraph (2).

(2) Those provisions are—

- (a) regulation 19(1) (general qualification for benefits);
- (b) paragraphs (a) and (b) of the definition of “normal retirement date” in regulation 25(4);
- (c) regulation 41(4) and (5) (amount of active member's surviving spouse's long-term pension);
- (d) regulation 87(1) (return of contributions).

(3) A period which may be counted under paragraph (1) counts as its actual length.

(4) The fund authority must give the member a written notice stating the period of membership he may count under paragraph (1).

(5) The notice must contain a statement of the kind required by regulation 98(4).

(6) The transferred-in service of a transferring member is the service in respect of which he has accrued rights to benefits under his previous occupational pension scheme or appropriate policy (whether or not the transfer value covers all those rights).

(7) The period of that service is the period certified by the trustees or managers of that scheme or issuers of that policy.

Community scheme transferees

Community scheme transferees

124.—(1) Community scheme transferees and their surviving spouses, dependants and children are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

(2) A Community Scheme transferee is a person who became employed by a Community institution after having been employed in local government employment.

Payments between funds and authorities

Changes of fund

125.—(1) This regulation applies where—

- (a) a pension fund becomes an active member's appropriate fund,
- (b) immediately before it does so, another fund was his appropriate fund,
- (c) in a case where regulation 32(1) applies to him, he has made an election under that regulation.

(2) Where the member's appropriate administering authority has also changed, the authority which has ceased to be the member's appropriate administering authority must make such payment to his later appropriate administering authority as is indicated in guidance issued by the Government Actuary for this regulation (but see paragraph (3)).

(3) Where—

- (a) paragraph (2) applies as respects two or more members by virtue of a single event, and
- (b) the authority by which the payment under that paragraph must be made agree with the authority to which it must be made that it is appropriate for the amount of the payment to be determined by actuaries appointed by those authorities for the purpose,

that amount must be so determined.

(4) Any payment under paragraph (2) must be credited to the new appropriate administering authority's fund.

(5) Where the member's appropriate administering authority has not changed, they must arrange for a payment such as is indicated in guidance issued by the Government Actuary for this regulation to be made from the member's former appropriate fund to his new appropriate fund.

(6) Paragraph (1) does not apply where a member enters an employment which is concurrent with another in which he is also an active member.

Liability for combined benefits

126.—(1) Where—

- (a) a benefit under regulation 29 or 48 of these Regulations or Part II or Part IV of Schedule D5 to the 1995 regulations is payable out of a pension fund (“the new fund”), and
- (b) by reason of that benefit being payable another benefit ceases to be payable out of another fund,

such payments must be made to the authority maintaining the new fund by the authority maintaining the other fund as are indicated in guidance issued by the Secretary of State for this regulation.

(2) Such payments must be credited to the new fund.

PART V

SPECIAL CASES

CHAPTER I

ELIGIBILITY

Eligibility for active membership: employees etc. of non-Scheme employers

127.—(1) A person may be an active member if he is an employee of—

- (a) the governors of any voluntary school maintained but not provided by a local education authority, or
- (b) the governing body of any polytechnic, technical institute or other similar institution which is for the time being aided by a local education authority under the Education Act 1996⁽⁴⁵⁾,

and the local education authority have, with the consent of his employer, by a statutory resolution specified him or a class of employees to which he belongs as being eligible to belong to the Scheme.

(2) A person who immediately before 1st April 1974 was a contributory employee in the employment of any such governors or governing body may be an active member while he continues in employment with them.

(3) A person may be an active member if immediately before that date he was in employment with the London Transport Executive and by virtue of section 18(4) of the Transport (London) Act

⁽⁴⁵⁾ 1996 c. 56. See section 579(5) and (6).

1969⁽⁴⁶⁾ entitled to participate in the benefits of the superannuation fund maintained under Part I of the Act of 1937 by the Greater London Council or Newham London borough council, if he continued up to 29th June 1984 in employment with the London Transport Executive and continues in employment with London Regional Transport.

(4) But paragraph (3) is subject to any order made by the Secretary of State under section 74 of the Transport Act 1962⁽⁴⁷⁾.

(5) A person may be an active member if immediately before 1st April 1974 he—

- (a) was a justices' clerk (inner London area) or other officer employed by the committee of magistrates for the inner London area, and
- (b) was by virtue of regulation 2(1) of the Superannuation (Inner London Magistrates' Courts) Regulations 1965⁽⁴⁸⁾ entitled to superannuation rights corresponding with those to which he was entitled in respect of his service before 1st April 1965 as a justices' clerk in the county of London or an officer employed by the County of London Magistrates' Courts Committee.

(6) But paragraph (5) does not apply to a person if there has been a period of 12 months or more since 1st April 1974 during which he was not within paragraph (5)(a) nor an officer employed by the magistrates' court committee for the inner London area.

Supplementary provisions about employees within regulation 127

128.—(1) Members within regulation 127(1) are deemed to be in employment with the relevant local education authority.

(2) A member within regulation 127(2) who—

- (a) is an employee of the governors of a voluntary school which on 1st April 1974 became maintained by a local education authority for an area outside Greater London, and
- (b) is a contributory employee by virtue of his having been such an employee in that employment,

is deemed to be in employment with that authority.

(3) A member within regulation 127(2) who was specified as a contributory employee by a resolution of an education authority under section 3(2)(f) of the Act of 1937 is deemed to be in employment with that authority.

(4) A member within regulation 127(2) who was specified as a contributory employee by a resolution of the Greater London Council under section 53 of the London County Council (General Powers) Act 1929⁽⁴⁹⁾ or section 7 of the London County Council (General Powers) Act 1938⁽⁵⁰⁾—

- (a) if he was in the employment of any such governors as are mentioned in regulation 127(1) (a), is deemed to be in employment with the London Borough to which the school was transferred by virtue of the Education Reform Act 1988⁽⁵¹⁾ or, as the case may be, the body incorporated under Part III of the Education Act 1996⁽⁵²⁾, Part II of the Education Act 1993 or Chapter IV of Part I of the Education Reform Act 1988;
- (b) if he was in the employment of any such governing body as is mentioned in regulation 127(1)(b), is deemed to be in employment with such of the bodies mentioned in section 121, 122, 122A or 129 of the Education Reform Act 1988 or section 15, 16,

⁽⁴⁶⁾ 1969 c. 35.

⁽⁴⁷⁾ 1962 c. 46.

⁽⁴⁸⁾ S.I. 1965/537.

⁽⁴⁹⁾ 1929 c. lxxxvii.

⁽⁵⁰⁾ 1938 c.xxxviii.

⁽⁵¹⁾ 1988 c. 40; section 122A was inserted by the Further and Higher Education Act 1992 (c. 13), section 74(1).

⁽⁵²⁾ 1996 c. 56. See section 579(5) and (6).

28 or 47 of the Further and Higher Education Act 1992⁽⁵³⁾ as may in the circumstances be most appropriate.

(5) These Regulations apply to a person within regulation 127(3), as if London Regional Transport were a Scheme employer.

(6) These Regulations apply to a person within regulation 127(5), as if the committee of magistrates for the inner London area were a Scheme employer.

(7) If a person is deemed to be employed by a Scheme employer under this regulation references in these Regulations to employment by or under such an employer and all similar expressions include him.

Miscellaneous transport employees

129.—(1) For these Regulations every employee of a subsidiary (other than a public transport company) of a passenger transport executive is deemed to be in employment with that executive.

(2) For these Regulations every employee of a public transport company (“the first company”) in relation to whom a resolution under regulation 4 of the Local Government Superannuation (Miscellaneous Provisions) Regulations 1986⁽⁵⁴⁾ has effect is deemed to be in employment with the passenger transport executive or district council which passed the resolution.

(3) If a person in relation to whom such a resolution has continued to have effect becomes an employee of another public transport company (“the second company”), then for these Regulations he is deemed to be in employment—

(a) if the second company’s controlling authority—

(i) is not the body which passed the resolution or a composite authority of which that body was a component council, but

(ii) is an authority which has, or a composite authority each of whose component councils has, passed such a resolution,

with the controlling authority of the second company (or, where that authority is a composite authority, with such one of its component councils as the authority may decide), and

(b) if the second company is a subsidiary of a passenger transport authority and has employees to whom paragraph (2) applies by virtue of such a resolution, with the passenger transport executive or district council which passed the resolution.

(4) If the undertaking of the first company is divided among two or more companies formed under section 61 of the Transport Act 1985⁽⁵⁵⁾ by a passenger transport authority, an employee of any one of those companies (“the transferee company”) in relation to whom such a resolution has continued to have effect is deemed for these Regulations to be in employment with the passenger transport executive which passed the resolution.

(5) Paragraphs (3) and (4) do not apply where the person in question becomes an employee covered by an admission agreement.

(6) If a person to whom paragraph (2), (3) or (4) applies becomes an employee of a subsidiary of the first company, the second company or the transferee company, paragraph (2), (3) or (4), as the case may be, continues to apply to him as if he had remained an employee of the parent company.

(7) But those paragraphs cease to apply if the first company, the second company or, as the case may be, the transferee company ceases to be a public transport company.

⁽⁵³⁾ 1992 c. 13.

⁽⁵⁴⁾ S.I. 1986/380.

⁽⁵⁵⁾ 1985 c. 67.

(8) If a person is deemed to be employed by a Scheme employer under this regulation, references in these Regulations to employment by or under such an employer and all similar expressions include him.

(9) In this regulation—

- (a) “controlling authority”, “composite authority” and “component council” have the meanings given in section 72 of the Transport Act 1985⁽⁵⁶⁾, and
- (b) “subsidiary” has the meaning given in section 137(1) of that Act.

Miscellaneous airport employees

130.—(1) For these Regulations every employee of a public airport company (“the first airport company”) in relation to whom a resolution under regulation 2 of the Local Government Superannuation (Miscellaneous Provisions) Regulations 1987⁽⁵⁷⁾ has effect is deemed to be in employment with the body which passed the resolution.

(2) If a person in relation to whom such a resolution has continued to have effect becomes an employee of another public airport company (“the second airport company”) whose controlling authority—

- (a) is not the body which passed the resolution or a composite authority of which that body was a constituent council, but
- (b) is an authority which has, or a composite authority one at least of whose constituent councils has, also passed such a resolution,

then, for these Regulations he is deemed to be in employment with the controlling authority of the second airport company (or, where that authority is a composite authority, with such one of its constituent councils as the authority may decide).

(3) Paragraph (2) does not apply if he becomes an employee covered by an admission agreement.

(4) If a person to whom paragraph (1) or (2) applies becomes an employee of a subsidiary of the first airport company or, as the case may be, the second airport company, paragraph (1) or, as the case may be, paragraph (2) continues to apply to him as if he had remained an employee of the company in question.

(5) But those paragraphs cease to apply if the first airport company or, as the case may be, the second airport company ceases to be a public airport company.

(6) If a person is deemed to be employed by a Scheme employer under this regulation, references in these Regulations to employment by or under such an employer and all similar expressions include him.

(7) In this regulation—

- (a) “controlling authority”, “composite authority” and “constituent council” have the meanings given in section 16 of the Airports Act 1986⁽⁵⁸⁾; and
- (b) “subsidiary” has the meaning given in section 82(1) of that Act.

Further cases of eligibility: non-employees

131.—(1) A person may be an active member if he is an eligible officer.

(2) These are eligible officers—

- (a) a registration officer;

⁽⁵⁶⁾ 1985 c. 67.

⁽⁵⁷⁾ S.I. 1987/293.

⁽⁵⁸⁾ 1986 c. 31.

- (b) a coroner (other than an excepted coroner);
 - (c) a person who immediately before 1st April 1974 was a member of a passenger transport executive or a director of a subsidiary of a passenger transport executive, who was a contributory employee in that position and continues in it;
 - (d) a justices' clerk (outside the inner London area).
- (3) These are excepted coroners—
- (a) the Queen's coroner and attorney;
 - (b) the coroner of the Queen's household;
 - (c) a coroner who held office immediately before 6th April 1978 and did not elect in accordance with article 3(b) of the Social Security (Modification of Coroners (Amendment) Act 1926) Order 1978⁽⁵⁹⁾, that the provisions of the Coroners (Amendment) Act 1926⁽⁶⁰⁾ relating to pensions should not apply to him.
- (4) If a registration officer is an active member, he must be treated as being in employment with the local authority who made the scheme under section 14 of the Registration Service Act 1953⁽⁶¹⁾ for the district in or for which he acts.
- (5) If a coroner is an active member, he shall be treated—
- (a) if appointed by a metropolitan county council or the Greater London Council, as being in employment with the relevant council for the purposes of section 13 of the Local Government Act 1985⁽⁶²⁾;
 - (b) if appointed by the Common Council, as being in employment with that Council;
 - (c) if appointed by the council of a non-metropolitan county, as being in employment with that council.
- (6) If a person mentioned in paragraph (2)(c) is an active member he must be treated as being in the employment of the passenger transport executive.
- (7) If a justices' clerk is an active member and is not employed under a contract of employment, he must be treated as being in the employment of the magistrates' courts committee by which he was appointed or is deemed to have been appointed.
- (8) A Local Commissioner must be treated as being in employment with the Commission for Local Administration of which he is a member.
- (9) A person who has or is deemed to have been appointed as a rent officer in pursuance of a scheme under section 63 of the Rent Act 1977⁽⁶³⁾ must be treated as being in employment—
- (a) where subsection (9) of that section applies (where registration area is a metropolitan county), with the district council designated by the relevant scheme made under that section; and
 - (b) otherwise, with the local authority for whose area the relevant scheme is made (or has effect as if made) under that section.
- (10) A member of a passenger transport executive or a director of a subsidiary of such an executive must be treated as being in employment with the relevant executive.
- (11) But as respects such a member the passenger transport authority for which the relevant executive exercises its functions must consent to the relevant resolution mentioned in regulation 4(4).

⁽⁵⁹⁾ S.I. 1978/374.

⁽⁶⁰⁾ 1926 c. 59.

⁽⁶¹⁾ 1953 c. 37; section 14 was amended by the Local Government Act 1972 (c. 70), section 251, Schedule 29.

⁽⁶²⁾ 1985 c. 51.

⁽⁶³⁾ 1977 c. 42; section 63 was amended by the Local Government Act 1985 (c. 51), section 16, Schedule 8, the Housing Act 1988 (c. 50), sections 120, 121, 140, Schedules 14 and 18 and the Pension Schemes Act 1993 (c. 48), section 190, Schedule 8.

(12) Regulation 132(1) applies to the persons holding the positions specified in paragraph (10) as it applies to an employee specified in that regulation.

Separate employments etc.

132.—(1) Where a person holds separate employments under one Scheme employer, these Regulations apply as if each of them were with a different employer.

(2) This paragraph applies where a whole-time employee of a Scheme employer or a part-time employee with at least 30 contractual hours is also employed—

- (a) as a returning officer at local government elections, or
- (b) as an acting returning officer (including employment in the duties of a returning officer at an Assembly election which are required by regulations made under paragraph 2 of Schedule 1 to the European Assembly Elections Act 1978⁽⁶⁴⁾ to be discharged by an acting returning officer).

(3) Where paragraph (2) applies and the employee was in the whole-time employment or, as the case may be, the part-time employment immediately before 1st April 1974 and had duties in it which included one or both of the additional duties, each additional duty must be treated as a separate variable-time employment with a different Scheme employer from the Scheme employer with whom he is in the whole-time employment.

(4) Where paragraph (2) does and paragraph (3) does not apply, his employment for that duty (or those duties) must be treated as a (single) separate variable-time employment with a different Scheme employer.

(5) A person who—

- (a) is a member in any employment, and
- (b) is also a medical inspector of immigrants appointed under the Immigration Act 1971⁽⁶⁵⁾ who receives his pay in that appointment from a Scheme employer listed in Schedule 2,

is eligible to be an active member in that appointment and shall be deemed to be an officer in the employment of that Scheme employer.

CHAPTER II

MODIFICATIONS FOR CERTAIN EMPLOYEES ETC.

Members who may retire at 70 etc.

Members employed by magistrates' courts committees

133.—(1) These Regulations apply to a justices' clerk (outside the inner London area) who is employed by a magistrates' courts committee with the modifications specified in paragraphs (3) to (11).

(2) These Regulations apply to any other person who is employed by a magistrates' courts committee with the modifications specified in paragraphs (5) to (11).

(3) For regulation 6(3) (latest retirement age) substitute—

- “(3) A person may not become an active member after—
- (a) his 70th birthday or,

⁽⁶⁴⁾ 1978 c. 10.

⁽⁶⁵⁾ 1971 c. 77.

(b) any earlier day after his 65th birthday when his total membership equals his permitted maximum.”.

(4) In regulation 28(3) (enhanced membership period in cases of ill-health), regulation 52(2)(c) (power of employing authority to increase total membership) and paragraph 8(2)(b) of Schedule 4 (maximum addition under regulations 53 and 55) for “65” substitute “70”.

(5) Where a member who is employed by two or more magistrates’ courts committees does not receive separate pay for one or more of those employments (“the undifferentiated employment”) his pay for the undifferentiated employment is—

- (a) if no body pays him pay for more than one employment, that part of his total pay which is paid by the body responsible for meeting the employing committee’s expenses, and
- (b) otherwise, so much of his total pay for the employments remunerated by one body as may be agreed by the body and him, or, in default of agreement, determined by the Secretary of State.

(6) If a person is paid by different bodies as respects two or more clerkships under a magistrates’ courts committee, they count for these Regulations as separate employments under separate Scheme employers.

(7) Paragraph (6) applies whether the person holds the clerkships himself or is employed to assist another person in them.

(8) Paragraph (6) does not apply for the purposes of regulation 74 (appropriate funds) or the provisions mentioned in paragraph (1)(a), (b) or (c) of that regulation.

(9) The body paying the person’s pay is to be treated—

- (a) as employing him for the purposes of regulation 79 (employer’s contributions), and
- (b) as his employing authority for the purposes of regulation 80 (employer’s further payments) and regulation 89 (deduction and recovery of member's contributions).

(10) A magistrates’ courts committee are to report to the body paying the person’s pay any decision made by them under—

- (a) regulation 31 (early leavers: deferred retirement benefits and elections for early payment),
- (b) regulation 52 (power of employing authority to increase total membership),
- (c) regulation 53 (power of employing authority to increase total membership of new members),
- (d) regulation 88(2) (direction for return of contributions despite offences etc. in connection with employment),
- (e) regulation 111 (forfeiture of pension rights after conviction of employment-related offences), or
- (f) regulation 112 (interim payments directions).

(11) Regulation 105 (appeals by administering authorities) has effect as if—

- (a) a body receiving such a report were the administering authority maintaining the pension fund to which that body pays employer’s contributions for the purposes of regulation 105(1), and
- (b) paragraph (3) of regulation 103 were omitted.

Certain employees of the committee of magistrates for the inner London area

134.—(1) These Regulations apply with the modifications in paragraphs (3) to (7) to a person who—

- (a) is eligible for membership by reason of regulation 127(5), and

- (b) is a justices' clerk (inner London area).
- (2) These Regulations apply to any other person who is so eligible with the modifications in paragraphs (5) to (7).
- (3) For regulation 6(3) (latest retirement age) substitute—
 - “(3) A person may not become an active member after—
 - (a) his 70th birthday, or
 - (b) any earlier day after his 65th birthday when his total membership equals his permitted maximum.”.
- (4) In regulation 28(3) (enhanced membership period in cases of ill-health), regulation 52(2)(c) (power of employing authority to increase total membership on redundancy etc.) and paragraph 8(2) (b) of Schedule 4 (maximum addition under regulations 53 and 55) for “65” substitute “70”.
- (5) The Receiver for the Metropolitan Police District is to be treated—
 - (a) as employing the person for the purposes of regulation 79 (employer's contributions),
 - (b) as his employing authority for the purposes of regulation 80 (employer's further payments) and regulation 89 (deduction and recovery of member's contributions).
- (6) The committee of magistrates are to report to the Secretary of State any decision made by them under—
 - (a) regulation 31 (early leavers: deferred retirement benefits and elections for early payment),
 - (b) regulation 52 (power of employing authority to increase total membership),
 - (c) regulation 53 (power of employing authority to increase total membership of new members),
 - (d) regulation 88(2) (direction for return of contributions despite offences etc. in connection with employment),
 - (e) regulation 111 (forfeiture of pension rights after conviction of employment-related offences), or
 - (f) regulation 112 (interim payments directions).
- (7) Such a decision has no effect until approved by the Secretary of State.

Coroners

- 135.**—(1) These Regulations apply with the following modifications to a coroner who is a member by reason of regulation 131(2)(b).
- (2) For regulation 6(3) (latest retirement age) substitute—
 - “(3) A person may not become an active member after—
 - (a) his 70th birthday, or
 - (b) any earlier day after his 65th birthday when his total membership equals his permitted maximum.”.
- (3) In regulation 28(3) (enhanced membership period in cases of ill-health), regulation 52(2)(c) (power of employing authority to increase total membership on redundancy etc.) and paragraph 8(2) (b) of Schedule 4 (maximum addition under regulations 53 and 55) for “65” substitute “70”.

Employees of probation committees

Employees of probation committees

136.—(1) These Regulations apply to a person employed by a probation committee with the following modifications.

(2) For an employee of the probation committee for the inner London area, the Receiver for the Metropolitan Police District is to be treated—

- (a) as employing him for the purposes of regulation 79 (employer's contributions),
- (b) as his employing authority for the purposes of regulation 80 (employer's further payments) and regulation 89 (deduction and recovery of member's contributions).

(3) The probation committee for the inner London area are to report to the Secretary of State any decision made by them under—

- (a) regulation 31 (early leavers: deferred retirement benefits and elections for early payment),
- (b) regulation 52 (power of employing authority to increase total membership),
- (c) regulation 53 (power of employing authority to increase total membership of new members),
- (d) regulation 88(2) (direction for return of contributions despite offences etc. in connection with employment),
- (e) regulation 111 (forfeiture of pension rights after conviction of employment-related offences), or
- (f) regulation 112 (interim payments directions).

(4) Such a decision has no effect until approved by the Secretary of State.

(5) The probation committee for an area other than the inner London area are to report any such decision made by them to the body or bodies responsible for meeting the committee's expenses.

(6) Regulation 105 (appeals by administering authorities) has effect as if—

- (a) a body receiving such a report were the administering authority maintaining the pension fund to which that body pays employer's contributions for the purposes of regulation 105(1), and
- (b) paragraph (3) of regulation 103 were omitted.

(7) In the application of regulation 11 (length of period of membership) to part-time service as a probation officer, instead of the fraction mentioned in paragraph (4) of that regulation, the appropriate fraction for each year of part-time service is the fraction—

- (a) of which the numerator is the pay received by him in the year, and
- (b) the denominator is the mean of the annual salary scale applicable to probation officers in respect of that year.

(8) For any year of part-time service before 1st April 1965, paragraph (7) applies as if the mean of the annual salary scale applicable to probation officers in respect of that year were—

- (a) in a case where the date on which that year commenced was on or after 1st July 1937 and before 1st July 1944, for male officers £330 and for female officers £290;
- (b) in a case where that date was on or after 1st July 1944 and before 1st December 1946, for male officers £375 and for female officers £330;
- (c) in a case where that date was on or after 1st December 1946 and before 1st April 1954, for male officers £485 and for female officers £420;

(d) in a case where that date was on or after 1st April 1954, for male officers £620 and for female officers £555.

(9) Separate calculations must be made for each year of part-time service (and the calculation must be adjusted appropriately for periods of part-time service of less than a year).

(10) In the application of regulation 28(5) (enhanced membership periods in cases of ill-health) the appropriate fraction is the fraction specified in paragraph (7).

City of London and other contributory employees

Certain City of London employees and former contributors

137. Schedule 6 (certain City of London employees and other contributory employees) shall have effect.

Local government re-organisation

Transfers under the Local Government Act 1992 etc.

138.—(1) Where—

- (a) a person leaves an employment in relation to which he is an active member, because he is transferred to another employment in the circumstances set out in paragraph (2), and
- (b) apart from this paragraph, he would not be treated for regulation 31 (early leavers) as leaving a local government employment,

he must be so treated for that regulation.

(2) Those circumstances are—

- (a) that he leaves that employment as a result of a transfer to another employment which is—
 - (i) an employment with the same employing authority at lower pay, or
 - (ii) an employment with a different employing authority; and
- (b) that transfer is made by virtue or in consequence of—
 - (i) an order made under section 17 of the Local Government Act 1992⁽⁶⁶⁾,
 - (ii) the Local Government (Wales) Act 1994⁽⁶⁷⁾, or
 - (iii) the transfer to the Environment Agency under section 3(1)(a)(ii) or (b)(ii) of the Environment Act 1995⁽⁶⁸⁾ of the property, rights and liabilities of a waste regulation authority in England or Wales (as defined in section 56 of that Act).

Local government reorganisation

139.—(1) The Scheme applies, in relation to a transferred employee, as if his new employment and his former employment had been one continuous employment (but see paragraph (3)).

(2) Transferred employees who are active members immediately before their transfer continue to be active members in their new employment.

(3) Where—

- (a) immediately before the transfer of a transferred employee it was the usual practice of the body employing him to exercise any discretionary power exercisable by them by virtue of

⁽⁶⁶⁾ 1992 c. 19.

⁽⁶⁷⁾ 1994 c. 19.

⁽⁶⁸⁾ 1995 c. 25.

any enactment relating to pensions so as to pay or increase the payment of allowances or pensions for employees of his description, and

(b) that power or any corresponding one becomes exercisable in relation to him, the new employing body shall exercise the power in a way which is not less beneficial than the general character of that practice.

(4) Paragraph (3) also applies where it was the usual practice of the Greater London Council or a metropolitan county council to exercise a discretionary power which has become exercisable by another body in consequence of regulation 3(1) of the Local Government Superannuation (Miscellaneous Provisions) Regulations 1986(69) in a way that was beneficial to employees.

(5) A transferred employee is—

(a) a person transferred on or after 1st April 1974—

(i) by or under a relevant statutory order, regulations, agreement or scheme; or

(ii) by the operation of the Public Libraries and Museums Act 1964(70);

(b) any person appointed by a local authority, or the National Water Council or a water authority (as defined in the Water Act 1973(71)) to hold any office or employment before or as from 1st April 1974 who, but for the appointment, would have been transferred on that day under section 255 of the Local Government Act 1972(72); and

(c) any person who on 1st April 1974 remained in the employment of the same body as immediately before that day but who, in consequence of the Local Government Act 1972, or anything done under that Act, or of the 1974 regulations, became on that day entitled to participate in a superannuation fund maintained under those regulations by a different body from the body which maintained the superannuation fund he was entitled to participate in immediately before that day.

(6) These are relevant statutory orders, regulations, agreements and schemes—

(a) an order made under section 84 of the London Government Act 1963(73) or an agreement made under section 24(7) of that Act;

(b) a scheme made under Part I of the Police Act 1964(74);

(c) an order made under section 17 of the Transport Act 1968(75);

(d) an order made under section 46 of the Children and Young Persons Act 1969(76);

(e) an order or regulations made under the Local Government Act 1972 which, in accordance with the provisions of section 255 of that Act, contains a provision as to the transfer of that person;

(f) regulation 5 of and Schedule 1 to the Valuation and Community Charge Tribunals (Transfer of Jurisdiction) Regulations 1989(77).

(7) For this regulation where paragraph (5)(b) applies the taking up of the office or employment to which the appointment is made is a transfer.

(69) S.I. 1986/380.

(70) 1964 c. 48.

(71) 1973 c. 37.

(72) 1972 c. 70.

(73) 1963 c. 33.

(74) 1964 c. 48.

(75) 1968 c. 73.

(76) 1969 c. 74; section 46 was amended by the Powers of Criminal Courts Act 1973 (c. 62), sections 56(1), 60(2), Schedule 5, paragraph 36, and the Probation Service Act 1993 (c. 47), section 32, Schedule 3, paragraph 3(3).

(77) S.I. 1989/440.

Former employees of Manchester Corporation

140.—(1) This regulation applies where a transferred employee (as defined in regulation 139(5)) was a contributor to the Manchester pension fund immediately before his transfer and has continued in the employment of the body to whom he was transferred.

(2) Where this regulation applies—

- (a) references in these Regulations to old statutory provisions must be taken as references to the Manchester pension provisions or to the particular corresponding provision of the Manchester pension provisions, as the case may be;
- (b) references to old funds must be taken as references to the Manchester pension fund;
- (c) references to contributory employees must be taken as references to contributors to that fund.

(3) The old statutory provisions are—

- (a) the Acts of 1937 to 1953, or the regulations made under them (including those provisions applying as amended or extended by any local Act or scheme or together with any such provisions);
- (b) the former regulations or a provision in the former regulations.

(4) The Manchester pension fund is the pension fund maintained immediately before 1st April 1974 by the Manchester City Council for the officers and servants of the Manchester Corporation.

(5) The Manchester pension provisions are the provisions of the enactments, and of the schemes and other instruments in force under them immediately before 1st April 1974, relating to the Manchester pension fund (including the provisions of the Acts of 1937 to 1953 and of any relevant instruments under them so far as applicable to that fund).

Transferees under s.18(4)(a) of the National Health Service Reorganisation Act 1973

141.—(1) This paragraph applies to any person who was transferred to the employment of a Scheme employer (“the new employment”) by or under an order made under section 18(4)(a) of the National Health Service Reorganisation Act 1973(78) and immediately before that transfer was in an employment (“the old employment”) in which he was an officer (as defined in the Health Service regulations).

(2) If immediately before his transfer he was a person in respect of whom the Secretary of State—

- (a) paid contributions under regulation 45 of the Health Service regulations (persons subject to non-statutory superannuation schemes and arrangements), or
- (b) carried out any such scheme or arrangements as are referred to in that regulation,

then, that person shall only be subject to the provisions of these Regulations mentioned in paragraph (4).

(3) The body to which he was transferred shall—

- (a) if immediately before 1st April 1974 the Secretary of State was paying under regulation 45 of the Health Service regulations in respect of that person the contributions authorised or required by the relevant scheme to be paid by the employer, pay those contributions, and
- (b) deduct from the person’s pay the amount of any contribution required by the scheme or under the arrangements to be paid by the employee.

(4) In relation to a person who gave notice under regulation J17(3)(e) of the 1974 regulations that he did not wish to avail himself of the benefits provided under those regulations and to whom

regulation H6(5) of the 1986 regulations applied immediately before the commencement date of the 1995 regulations, these Regulations—

- (a) have effect as if they conferred on him rights corresponding with those which he would have enjoyed if he had remained subject to the provisions of the Health Service regulations, and
- (b) continue so to apply so long as he is employed without a disqualifying break of service by a Scheme employer on duties reasonably comparable to those on which he was engaged immediately before he was transferred.

(5) Where paragraph (4) applies the modifications mentioned in paragraphs (6) and (7) apply.

(6) Regulations 109 and 110 (abatement of retirement pensions during new employment) apply instead of regulation 39 of the Health Service regulations and—

- (a) as if “retirement pension” included a pension payable by virtue of paragraph (4), and
- (b) in any case where the final pay of a former employment must be ascertained, as if entitlement to such a pension were not an entitlement under the Scheme.

(7) Regulations 111 (forfeiture) and regulation 112 (interim payments directions) have effect instead of regulation 55 of the Health Service regulations.

(8) The Health Service regulations are the National Health Service (Superannuation) Regulations 1961 to 1973(79) as in force immediately before 1st April 1974.

Reduction of pensions of certain former teachers

Deduction for teachers’ pension payments

142.—(1) This regulation applies where a person—

- (a) becomes entitled to be paid a retirement pension under the Scheme which is calculated by reference to section 17 teacher’s membership, and
- (b) has a potential retirement payment as a teacher.

(2) The amount receivable by him in any year in respect of that retirement pension must be reduced by the amount of that payment.

(3) A person has a potential retirement payment as a teacher in any year if—

- (a) any amount is receivable by him in that year by virtue of the Teachers’ Acts, or
- (b) any sums are payable to him in that year under the Teachers’ regulations,

and the aggregate of that amount and sums is the amount of that payment.

(4) If a capital payment has been paid or is payable at any time under the Teachers’ Acts or the Teachers’ regulations, such proportion of that payment as is indicated in guidance issued by the Government Actuary must be treated as a sum receivable by him in any year by virtue of the Teachers’ Acts or the Teachers’ regulations (but see paragraph (7)).

(5) If a sum representing a return of contributions in respect of a period of service which has been taken into account in calculating the amount of the retirement pension has been paid or is payable at any time under the Teachers’ Acts or the Teachers’ regulations, then, in computing the reduction under paragraph (2), such proportions—

- (a) of the amount he has become entitled to be repaid at the date on which he became entitled to the pension, and

(b) of the amount representing the balance of his contributions under the Teachers' Acts or the Teachers' regulations which he may become entitled to be repaid after that date, as are indicated in guidance issued by the Government Actuary must be treated as a sum receivable by him by virtue of the Teachers' Acts or payable to him by virtue of the Teachers' regulations in any year (but see paragraph (7)).

(6) But if, after paragraph (5) has become applicable to a person, a repayment of the amount representing the balance of his contributions under the Teachers' Acts or the Teachers' regulations is made to him, then, in computing the reduction under paragraph (2), paragraph (5) shall continue to apply as before as respects the repaid amount and no further account shall be taken of it.

(7) If—

- (a) after paragraph (5) has become applicable to a person a superannuation allowance under the Teachers' regulations is granted to him, and
- (b) the aggregate amount of the deductions previously made from his retirement pension by virtue of that paragraph is less than any lump sum granted to him under the Teachers' Acts or the Teachers' regulations,

then—

- (i) that paragraph ceases to have any further effect in relation to him, and
- (ii) for paragraph (4) the amount so granted shall be deemed to be the difference between that amount and that aggregate amount.

(8) The amount of a person's potential retirement payment is calculated without taking into account—

- (a) deductions under the avoidance of duplicate pensions provisions, or
- (b) any surrender of annual retirement pension he has made in accordance with regulation E11 of the Teachers' Superannuation (Consolidation) Regulations 1988⁽⁸⁰⁾, Part VI of the Teachers' Superannuation Regulations 1967⁽⁸¹⁾ or Part III of the Teachers' Superannuation Regulations 1976⁽⁸²⁾.

(9) Section 17 teacher's membership is membership deriving from service the pensioner was entitled to count under section 17 of the Local Government Superannuation Act 1937⁽⁸³⁾ (teachers).

(10) The Teachers' Acts means section 9 of the Superannuation Act 1972⁽⁸⁴⁾ and the Teachers (Superannuation) Acts 1918 to 1945.

(11) The Teachers' regulations means the Teachers' Superannuation (Consolidation) Regulations 1988, the Teachers' Superannuation Regulations 1967 to 1974, and the Teachers' Superannuation Regulations 1976.

(12) The avoidance of duplicate pensions provisions are—

- (a) section 7 of the Teachers (Superannuation) Act 1925⁽⁸⁵⁾,
- (b) regulation 52 of the Teachers' Superannuation Regulations 1967,
- (c) regulation 77 of the Teachers' Superannuation Regulations 1976, and
- (d) regulation E9 of the Teachers' Superannuation (Consolidation) Regulations 1988.

⁽⁸⁰⁾ S.I. 1988/1652.

⁽⁸¹⁾ S.I. 1967/489, revoked by S.I. 1970/862.

⁽⁸²⁾ S.I. 1976/1987, revoked by S.I. 1988/1652 Schedule 14.

⁽⁸³⁾ 1937 c. 68.

⁽⁸⁴⁾ 1972 c. 11; section 9 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4, 8, 11.

⁽⁸⁵⁾ 1925 c. 59.

Conversion of Discretionary Payments Regulations periods into membership

Conversion of periods credited under Discretionary Payments Regulations etc. into membership

143.—(1) Where, apart from paragraph (9) of regulation 52, an employing authority could pass a resolution under that regulation to increase a person’s total membership, they may resolve that his total membership be increased by the whole or part of the period credited to him as mentioned in that paragraph.

(2) Where—

- (a) any person has been credited by an employer (“the transferor employer”) under any scheme, the terms of which correspond to Part III of the Local Government (Discretionary Payments) Regulations 1996~~(86)~~, with a period of service in respect of a former employment,
- (b) the transferor employer’s liability in respect of payments falling due to that person as respects that credited period has been transferred to an employing authority,
- (c) apart from paragraph (9) of regulation 52, if—
 - (i) the person’s employment with the transferor employer had been employment with the employing authority, and
 - (ii) any actions taken by the transferor employer under the scheme mentioned in paragraph (a) had been taken by that authority,

that authority could pass a resolution under regulation 52 to increase his total membership, they may resolve that his total membership be increased by the whole or part of the period credited to him.

(3) The additional period must not exceed the period which would be the maximum additional period under regulation 52, if—

- (a) a resolution under that regulation could be passed in relation to him, and
- (b) the period of 10 years were substituted for the period of $6 \frac{243}{365}$ years in paragraph (2) (d) of that regulation.

(4) The additional period may only be counted as a period of membership if—

- (a) the employing authority and the administering authority agree that the employing authority will pay increased contributions under regulation 79 to meet the cost of the increase in membership, or
- (b) the employing authority make the payment which is required by regulation 80(2) within the period specified in that regulation,

but it may be so counted as from the date from which the resolution has effect.

(5) If the employing authority fail duly to pay those increased contributions or make that payment, the resolution shall cease to have effect.

(6) Where the resolution has effect, the period credited as mentioned in regulation 52(9) is reduced or extinguished accordingly (but without prejudice to any payments which have fallen due or have been made before that date).

(7) No resolution may be passed under this regulation, the result of which would be to place any individual in a worse position than he would otherwise be.

(8) If the person was credited as mentioned in regulation 52(9) on or after the commencement date, this regulation only applies if—

- (a) the employing authority is an authority who have reasonable grounds to believe that they will cease to exist as a result of a provision made by or under an enactment; or
 - (b) the employing authority have ceased to exist as a result of any such provision;
- and where paragraph (b) applies “employing authority” includes the person to whom the former employing authority’s functions as respects the former employee in question have been transferred in connection with their abolition.

Environment Agency Closed Fund

The Environment Agency Closed Fund

144.—(1) Part IV applies to the Environment Agency Closed Fund with the following modifications.

(2) Omit regulations 75, 76 and 78 to 81.

(3) In regulation 77—

- (a) omit paragraph (1)(c) and the word “and” immediately preceding it;
- (b) for paragraphs (3) to (7) substitute—

“(3) After obtaining a valuation under paragraph (1) the Environment Agency must obtain from the same actuary a certificate specifying the amount by which in his opinion the value of the assets of the fund exceeds or, as the case may be, falls short of, the amount required to meet its existing and prospective liabilities.”;

- (c) omit paragraph (10)(b) and (c).

(4) The Environment Agency Closed Fund is the Closed Fund vested in the Environment Agency by regulation 2(1) of the Local Government Pension Scheme (Environment Agency) Regulations 1996(87).

Rights under section 12 of the Superannuation Act 1972

Rights under section 12 of the Superannuation Act 1972

145.—(1) If, apart from this regulation, any provision of these regulations, which re-enacts with any modification any provision of the Scheme which ceases to have effect by virtue of the Transitional Regulations in relation to any person to whom a relevant benefit is or may become payable, would place him in a worse position in relation to that benefit than that he would have been in if that modification had not been made and he makes an election under this paragraph, these regulations shall have effect, in relation to him and to that benefit, as if these regulations had re-enacted that provision of the Scheme without modification (but see paragraph (4)).

(2) An election under paragraph (1) must be made by notice in writing given to the appropriate administering authority within the period of six months beginning with the commencement date.

(3) In this regulation—

“relevant benefit” means a benefit payable to, or in respect of, a person who before the commencement date—

- (a) ceased to hold an employment in which he was an active member (whether or not he has subsequently become an active member again); or
- (b) died while in such employment; and

“benefit” includes a return of contributions and any pension payable to a widow, widower or any dependant by virtue of a surrender.

(4) If an election under paragraph (1) is made in relation to a benefit in respect of a person who is an active member, or subsequently becomes an active member again—

(a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued by virtue—

(i) of periods of membership before the cessation referred to in paragraph (3)(a) (or, if there has been more than one such cessation, the last of them before the commencement date); or

(ii) of contributions paid in respect of such periods of membership; and

(b) in determining entitlement to, or the amount of, the benefit to that extent, he shall be treated as if he had never become an active member again at any time after the cessation referred to in paragraph (2)(a) (but without prejudice to the application of this paragraph);

and these regulations shall have effect accordingly.

Signed by authority of the Secretary of State

30th June 1997

Hilary J Armstrong
Minister for Local Government and Housing,
Department of the Environment

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

SCHEDULES

SCHEDULE 1

Regulation 2.

INTERPRETATION

“The Act of 1922” means the Local Government and other Officers’ Superannuation Act 1922⁽⁸⁸⁾;

“The Act of 1937” means the Local Government Superannuation Act 1937⁽⁸⁹⁾;

“The Act of 1953” means the Local Government Superannuation Act 1953⁽⁹⁰⁾;

“The Acts of 1937 to 1953” means the Local Government Superannuation Acts 1937 to 1953⁽⁹¹⁾;

“The 1974 regulations” means the Local Government Superannuation Regulations 1974⁽⁹²⁾;

“The 1986 regulations” means the Local Government Superannuation Regulations 1986⁽⁹³⁾;

“The 1995 regulations” means the Local Government Pension Scheme Regulations 1995⁽⁹⁴⁾;

“Active member” has the same meaning as in section 124(1) of the Pensions Act 1995⁽⁹⁵⁾;

“Actuary” means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries;

“Added years” has the meaning given in Schedule A1 to the 1995 regulations;

“Additional voluntary contributions provision” is a provision of an occupational pension scheme approved under section 591 of the Taxes Act, which provides for the payment by employees of voluntary contributions;

“Additional voluntary contributions scheme” means a scheme approved under section 591 of the Taxes Act, to which an employer is not a contributor and which provides benefits additional to those provided by an occupational pension scheme;

“Administering authority” means a body required to maintain a pension fund under these Regulations;

“Admission agreement” has the meaning given in regulation 5(2);

“Admission agreement employee” means such an employee as is mentioned in regulation 5(10);

“Admission body” means a body mentioned in regulation 5(8);

“Appropriate administering authority” means the body maintaining the appropriate fund;

“Appropriate fund”, in relation to a member, has the meaning given in regulation 74;

(88) 1922 c. 59.

(89) 1937 c. 68.

(90) 1953 c. 25.

(91) 1937 c. 68, 1939 c. 18, 1953 c. 25.

(92) S.I. 1974/520; amended by other instruments listed in Part III of Schedule 20 to the Local Government Superannuation Regulations 1986 (S.I. 1986/24).

(93) S.I. 1986/24; amended by other instruments listed in Schedule M5 to the Local Government Superannuation Regulations 1995 (S.I. 1995/1019).

(94) S.I. 1995/1019.

(95) 1995 c. 26.

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“Appropriate policy” means a policy of insurance or annuity contract which provides an annuity which satisfies requirements prescribed under section 95(2)(c) of the Pension Schemes Act 1993⁽⁹⁶⁾;

“Appropriate personal pension scheme” means a personal pension scheme for which there is in force a certificate issued in accordance with regulations made under section 7 of the Pension Schemes Act 1993;

“Approved AVC body” means a building society or a person operating an approved scheme which provides benefits in respect of persons who have paid contributions in addition to those provided in relation to them under an occupational pension scheme;

“Approved non-local government employment” means employment in which a person participates in an approved non-local government scheme;

“Approved non-local government scheme” means a non-local government scheme which is—

- (a) approved under Part XIV of the Taxes Act; or
- (b) approved by the Commissioners of Inland Revenue for the purposes of these Regulations;

“Approved scheme” has the meaning given in section 612 of the Taxes Act;

“Assisted”, in relation to an educational institution, has the same meaning as in the Education Act 1996⁽⁹⁷⁾;

“AVCs” means contributions made under regulation 61;

“AVC insurance company” means—

- (a) a body authorised under section 3 or 4 of the Insurance Companies Act 1982⁽⁹⁸⁾ to carry on long term business,
- (b) an EC company which is lawfully carrying on long term business, or providing long term insurance, in the United Kingdom, or
- (c) a friendly society within the meaning of the Friendly Societies Act 1992⁽⁹⁹⁾ (including any society which is to be treated as a registered friendly society by virtue of section 96(2) of that Act),

and paragraphs (a) and (b) of this definition must be interpreted as if they were contained in the Insurance Companies Act 1982;

“AVC pension policy” means a contract entered into on behalf of a member by the appropriate administering authority with an AVC insurance company for the payment by the company of pension benefits to the intended recipients of those benefits which are in addition to those payable under Part II and Chapters II and III of Part III of these Regulations;

“Away on jury service”, in relation to a person, means being away from work with permission given so that he could—

- (a) attend for jury service in pursuance of a summons under the Juries Act 1974⁽¹⁰⁰⁾, or
- (b) attend as a juror at an inquest under the Coroners Act 1988⁽¹⁰¹⁾;

“Base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

⁽⁹⁶⁾ 1993 c. 48.

⁽⁹⁷⁾ 1996 c. 56. *See* section 579(5) and (6).

⁽⁹⁸⁾ 1982 c. 50.

⁽⁹⁹⁾ 1992 c. 40.

⁽¹⁰⁰⁾ 1974 c. 23.

⁽¹⁰¹⁾ 1988 c. 13.

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“The Benefits regulations” means the Local Government Superannuation (Benefits) Regulations 1954 and 1955(**102**);

“Building society” has the meaning given in the Building Societies Act 1986(**103**);

“Cancelling notice”, in relation to a person’s relevant reserve forces service, means—

- (a) the agreement (by a member who has not waived his right to receive a return of contributions under regulation 87) to receive them; or
- (b) a notice in writing given by him to the appropriate administering authority not later than 12 months after the end of the period of service to which the notice relates (or within such longer period as they may allow) that the service should not be treated as relevant reserve forces service;

“City of London employing body” means—

- (a) the Common Council,
- (b) the magistrates’ courts committee for the City of London,
- (c) the probation committee for the City of London probation area, or
- (d) the Board of Governors of the Museum of London;

“Class A member”, “Class B member” and “Class C member” have the meanings given in paragraph 1(1) of Schedule 4 and “Class B membership” and “Class C membership” must be construed accordingly;

“Club scheme” means an occupational pension scheme which—

- (a) provides benefits calculated by reference to final pay;
- (b) (except where it is established and maintained in the Channel Islands or the Isle of Man) is approved by the Commissioners of Inland Revenue under Chapter I of Part XIV of the Taxes Act;
- (c) is open to new participants, or is a closed scheme the trustees or managers of which also provide an open scheme which is a club scheme for new employees of the same employer and of the same grade or level of post as the participants in the closed scheme; and
- (d) complies with reciprocal arrangements for the payment and receipt of transfer values with the schemes made under section 7 of the Superannuation Act 1972(**104**);

“The Commencement date” means 1st April 1998;

“Common Council” means the Common Council of the City of London;

“The Communities’ scheme” means the pension scheme provided for officials and other servants of the Communities in accordance with regulations adopted by the Council of the European Communities;

“Community institution” includes a body treated as one of the Communities’ institutions for the purposes of the Communities’ scheme;

“Company under the control of a body listed in Schedule 2” has the same meaning as in section 68 or, as the case may be, section 73 of the Local Government and Housing Act 1989(**105**) (except that any direction given by the Secretary of State must be disregarded, and any references to a local authority treated as references to such a body);

“Continuity conditions” has the meaning given in paragraph 1(1) of Schedule 4;

(102) S.I. 1954/1048, 1955/1041.

(103) 1986 c. 53.

(104) 1972 c. 11.

(105) 1989 c. 42.

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“Contracted-out employment” has the same meaning as in the Pension Schemes Act 1993 and “contracted-out”, in relation to a scheme, must be construed in accordance with that Act;

“Contractual hours”—

- (a) in relation to an employee (other than an employee with non-cyclical fluctuating hours), means the number of hours specified in his contract of employment as his contractual hours for the purposes of the Scheme; and
- (b) in relation to an employee with non-cyclical fluctuating hours, means the number of hours calculated as his contractual hours for the purposes of the Scheme in accordance with the provisions of his contract of employment;

“Contractual weeks”, in relation to an employee, means the number of weeks in every period of 12 months for which, assuming he is not away on unpaid leave, pay is payable to him;

“Contract of employment” includes terms of office;

“Contributory employee” means a person who was entitled to participate in the benefits of a pension fund maintained under Part I of the Act of 1937;

“Deferred member” has the same meaning as in section 124(1) of the Pensions Act 1995, except as provided in regulation 32(3) and (5);

“Earnings factors” means the earnings factors referred to in section 14 of the Pension Schemes Act 1993;

“Eligible child” has the meaning given in regulation 44;

“Employee” includes a permanent, temporary or casual employee;

“Employing authority” means a body employing an employee who is eligible to be a member;

“Employment” includes office;

“Enactment” includes an instrument made under an Act;

“Equivalent pension benefits” has the meaning given by section 57(1) of the National Insurance Act 1965⁽¹⁰⁶⁾ and “EPB pension” must be construed accordingly;

“Fees” includes other payments in the nature of fees;

“Final pay” must be construed in accordance with regulation 21;

“Final pay period” must be construed in accordance with regulations 21 and 22;

“Former local authority” means a body, other than a Scheme employer, which was a local authority within the meaning of the Act of 1937 as originally enacted;

“The former regulations” means—

- (a) those of the enactments and instruments referred to in paragraph 5(1) of Schedule 7 to the Superannuation Act 1972⁽¹⁰⁷⁾ and applying to England and Wales that were in force immediately before 1st April 1974,
- (b) the Local Government Superannuation (Miscellaneous Provisions) Regulations 1973⁽¹⁰⁸⁾, and
- (c) the Local Government Superannuation (Miscellaneous Provisions) (No. 2) Regulations 1973⁽¹⁰⁹⁾;

“FSAVC scheme” means a scheme approved by virtue of section 591(2)(h) of the Taxes Act;

“Guaranteed minimum” means the guaranteed minimum as defined in sections 14 and 17 of the Pension Schemes Act 1993 (minimum pensions for earners, widows and widowers), so far

⁽¹⁰⁶⁾ 1965 c. 51.

⁽¹⁰⁷⁾ 1972 c. 11.

⁽¹⁰⁸⁾ S.I. 1973/313.

⁽¹⁰⁹⁾ S.I. 1973/1996.

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as it is attributable to earnings factors for the tax year 1988–89 or for subsequent tax years, increased in accordance with the requirements of section 109 of that Act (annual increase of guaranteed minimum pensions);

“Ill-health pension” and “ill-health grant” must be construed in accordance with regulation 27;

“Independent school” has the same meaning as in the Education Act 1996**(110)**;

“Inner London area” has the same meaning as in section 2 of the Justices of the Peace Act 1979**(111)**;

“The Insurance Acts” means the National Insurance Acts 1965 to 1973**(112)**;

“Justices’ clerk (inner London area)” means a person who, under section 24D, 25 or 34B of the Justices of the Peace Act 1979, has been or is deemed to have been appointed by the magistrates’ court committee for the inner London area or the inner London magistrates’ courts committee to be a justices’ clerk;

“Justices’ clerk (outside the inner London area)” means a person who, under section 24D or 25 of the Justices of the Peace Act 1979, has been or is deemed to have been appointed by a magistrates’ courts committee (other than the committee for the inner London area) to be a justices’ chief executive or, as the case may be, a justices’ clerk;

“Levying body” has the meaning given in section 74 of the Local Government Finance Act 1988**(113)**;

“Local Act contributor” means a person who was entitled to participate in the benefits of a pension fund maintained under a local Act scheme;

“Local Act scheme” has the meaning given in section 8 of the Superannuation Act 1972, except that where it refers to any time before 25th March 1972 it has the same meaning as in the Act of 1937;

“Local authority” has the same meaning as in the Local Government Act 1972**(114)**;

“Local education authority” has the same meaning as in the Education Act 1996;

“Local government area” has the same meaning as in section 270 of the Local Government Act 1972;

“Local government employment” means—

- (a) in relation to any time before 1st April 1974, employment by virtue of which the person employed was, or is deemed to have been, a contributory employee or a local Act contributor, and
- (b) in relation to any time after 31st March 1974, means employment by virtue of which the person employed is or has been, or is or has been deemed to be a member, or a pensionable employee (within the meaning of the 1986 regulations) or a local Act contributor;

“Lower earnings limit” has the same meaning as in the Pension Schemes Act 1993;

“Maintained”, in relation to an educational institution, has the same meaning as in section 34 of the Education Act 1996**(115)**;

“Member” has the same meaning as in section 124(1) of the Pensions Act 1995**(116)**;

(110) 1996 c. 56.

(111) 1979 c. 55; section 25 was substituted by and sections 24D and 34B were inserted by the Police and Magistrates’ Courts Act 1994 (c. 29), sections 74, 76, 91, Schedule 8, paragraph 15.

(112) 1965 c. 51, 1966 c. 6, 1969 c. 44, 1971 c. 50, 1972 c. 57, 1973 c. 42.

(113) 1988 c. 41.

(114) 1972 c. 70; section 270 was amended by the Local Government (Wales) Act 1994 (c. 19), section 1.

(115) 1996 c. 56.

(116) 1995 c. 26.

“Maternity rights returner” is a woman who exercises a right to return to work after being away from work wholly or partly because of pregnancy or confinement;

“Money purchase benefits” has the same meaning as in the Pension Schemes Act 1993;

“Non-cyclical fluctuating hours” means hours which the employing authority are entitled to require the employee to work in a contractual week in any case where those hours vary in a way which is not cyclical;

“Non-local government scheme” means an occupational pension scheme or other arrangements for superannuation, not being—

- (a) a local Act scheme; or
- (b) an occupational pension scheme provided—
 - (i) in the Acts of 1937 to 1953 and the regulations made under those Acts, or
 - (ii) in the Local Government Superannuation (Scotland) Acts 1937 to 1953⁽¹¹⁷⁾ and the regulations made under those Acts, or
 - (iii) in regulations made under section 7 of the Superannuation Act 1972;

“Normal retirement age” has the meaning given in regulation 25(5);

“NRD” has the meaning given in regulation 25(3);

“Occupational pension scheme” means an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 other than—

- (a) a retirement benefits scheme (as defined in section 611 of the Taxes Act) which is not of a description mentioned in section 596(1)(a), (b) or (c) of that Act,
- (b) an additional voluntary contributions scheme,
- (c) an appropriate policy,
- (d) a personal pension scheme, or
- (e) a self-employed pension arrangement;

“Official pension” has the meaning given in the Pensions (Increase) Act 1971⁽¹¹⁸⁾;

“Part-time employee” means an employee—

- (a) whose contract of employment provides that he is such an employee for the Scheme, or
- (b) who is neither a whole-time employee nor a variable-time employee;

“Passenger transport authority” means a metropolitan county passenger transport authority established by section 28 of the Local Government Act 1985⁽¹¹⁹⁾;

“Passenger transport executive” means the Executive for a designated area within section 9(1) of the Transport Act 1968⁽¹²⁰⁾;

“Payment in lieu of contributions” means a payment made in lieu of contributions under Part III of the National Insurance Act 1965⁽¹²¹⁾;

“Payment period” has the meaning given in regulation 7(4);

“Pay” must be construed in accordance with regulation 13;

“Pensioner member” has the meaning given in section 124(1) of the Pensions Act 1995⁽¹²²⁾;

⁽¹¹⁷⁾ 1937 c. 69, 1939 c. 18, 1953 c. 25.

⁽¹¹⁸⁾ 1971 c. 56.

⁽¹¹⁹⁾ 1985 c. 51.

⁽¹²⁰⁾ 1968 c. 73; section 9(1) was substituted by the Transport Act 1985 (c. 51), section 57, Schedule 3, and amended by section 58(1) of that Act.

⁽¹²¹⁾ 1965 c. 51.

⁽¹²²⁾ 1995 c. 26.

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“Personal pension scheme” means a personal pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993) which has been approved under Chapter IV of Part XIV of the Taxes Act or provisionally approved under section 655(5) of that Act;

“Period of maternity absence” means any period throughout which a woman—

- (a) is absent from duty by reasons of pregnancy or confinement; and
- (b) may exercise the right under her contract of employment to return to work;

“Precepting authority” has the meaning given in section 144 of the Local Government Finance Act 1988(**123**);

“Preserved benefits” means benefits to which a person—

- (a) becomes entitled under regulation 31,
- (b) was entitled immediately before 1st April 1986 by virtue of regulation E2(1)(c) of the 1974 regulations,
- (c) was entitled immediately before 2nd May 1995 by virtue of regulation E2(1)(c) of the 1986 regulations, or
- (d) was entitled immediately before the commencement date by virtue of regulation D11 of the 1995 regulations,

and which have not had an election made in respect of them under regulation 32(1) nor have yet become payable;

“Principal civil service pension scheme” has the meaning given in section 2(10) of the Superannuation Act 1972(**124**);

“Probation committee” means a probation committee constituted or deemed to have been constituted by section 3 of the Probation Service Act 1993(**125**);

“Probation officer” means a probation officer appointed or deemed to have been appointed by a probation committee under section 4 of the Probation Service Act 1993;

“Prospective member” means a person who under his contract of service or these Regulations—

- (a) may, if he wishes or his employer consents, become a member or will be able to do so if he continues in the same employment sufficiently long, or
- (b) will become a member unless he chooses not to do so;

“Public airport company” has the same meaning as in section 16 of the Airports Act 1986(**126**);

“Public transport company” has the same meaning as in section 72 of the Transport Act 1985(**127**);

“Reference banks” means the seven largest institutions for the time being which—

- (a) are authorised by the Bank of England under the Banking Act 1987(**128**);
- (b) are incorporated in and carrying on within the United Kingdom a deposit-taking business (as defined in section 6, but subject to any order under section 7 of that Act); and
- (c) quote a base rate in sterling;

and for this definition the size of an institution at any time is to be determined by reference to the gross assets denominated in sterling of that institution, together with any subsidiary (as

(123) 1988 c. 41.

(124) 1972 c. 11.

(125) 1993 c. 47.

(126) 1986 c. 31.

(127) 1985 c. 67.

(128) 1987 c. 22.

defined in section 736 of the Companies Act 1985(**129**)), as shown in the audited end-of-year accounts last published before that time;

“Registration officer” means—

- (a) a superintendent registrar or registrar of births and deaths,
- (b) a registrar of births and deaths exercising any of the functions of a registrar of marriages, or
- (c) a person provided by and at the expense of a local authority to act as a deputy superintendent registrar or deputy registrar of births and deaths;

“Relevant reserve forces service” means service (other than service for the purposes of training only or service for a period in respect of which a cancelling notice has been served)—

- (a) in pursuance of any notice or directions given under any enactment which provides for the calling out on permanent service, or the calling into actual service, or the embodiment of, any reserve or auxiliary force, or members of such a force, or the recall of service pensioners;
- (b) in pursuance of any obligation or undertaking to serve when called upon as a commissioned officer; or
- (c) rendered by virtue of section 14(1) or 34 of the Reserve Forces Act 1980(**130**),

and paragraph (b) applies whether or not the obligation or undertaking is legally enforceable, but not in the case of an obligation or undertaking to accept a permanent commission or a commission for a fixed term or to serve for the purposes of periodical training;

“Reserve forces pay”, in relation to any person, is the total of—

- (a) his pay for performing relevant reserve forces service (including marriage, family and similar allowances), and
- (b) any payments under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(**131**);

“Reserve forces service leave”, in relation to a person, means being away from work—

- (a) after—
 - (i) he has left the employment in which he is an active member; or
 - (ii) he has been granted leave of absence from such an employment, in order to perform reserve forces service,
- (b) without having agreed to receive a return of contributions under regulation 87, and
- (c) without having elected that the absence is not to count as such by giving notice in writing to the appropriate administering authority not later than 12 months after the end of the period of reserve forces service to which the notice relates (or within such longer period as they may allow);

“Reserve or auxiliary force” means the whole or part of the Royal Navy Reserve (including the Royal Fleet Reserve), the Royal Marines Reserve, the Territorial Army, the Army Reserve, the Air Force Reserve, the Royal Air Force Volunteer Reserve or the Royal Auxiliary Air Force;

“Revenue agreement”, in relation to a member, means agreement in writing by the Commissioners of Inland Revenue given after an application to them by the member's appropriate administering authority that he may be treated as a Class B member or a Class C

(129) 1985 c. 6.

(130) 1980 c. 9.

(131) 1951 c. 65.

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member by virtue of his membership before 1st June 1989 or, as the case may be, 17th March 1987 of a scheme approved under Chapter I of Part XIV of the Taxes Act;

“Revenue permitted maximum” means the permitted maximum, within the meaning of section 590C(2) of the Taxes Act;

“SCAVCs” means contributions made under regulation 68;

“The Scheme” means the occupational pension scheme constituted by these Regulations, the Transitional regulations and the 1995 regulations (so far as they continue to operate);

“Scheme employer” means a body specified in Schedule 2 (but see regulation 5(10) and Chapter I of Part V);

“Section 75 body” means a body to which section 75 of the Local Government Finance Act 1988(132) applies;

“Scheme managers” means—

- (a) in relation to a statutory scheme, the Minister of the Crown or police or fire authority administering the scheme; and
- (b) in any other case, the person responsible for the management of the scheme;

“Self-employed pension arrangement” has the same meaning as in the Pension Schemes Act 1993;

“Service”—

- (a) in Chapter VI of Part IV means service or employment with any employer, and
- (b) elsewhere, means service with a Scheme employer,

and service rendered by an employee of a Scheme employer 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 the Scheme employer;

“Service pensioner” means a person in receipt of a pension (other than a pension awarded in respect of disablement) granted—

- (a) in respect of service in the Royal Navy, the Royal Marines, the regular army and the regular air force or any reserve or auxiliary force which has been called out on permanent service or which has been embodied, or
- (b) in respect of that and other service;

“Standard contribution rate” must be construed in accordance with regulation 12;

“State pensionable age” means pensionable age within the meaning of section 122 of the Social Security Contributions and Benefits Act 1992(133);

“Superannuable membership” has the meaning given in regulation 10(2);

“The Taxes Act” means the Income and Corporation Taxes Act 1988(134);

“Tax year” means the 12 months beginning with 6th April in any year;

“Teachers scheme” means an occupational pension scheme made under section 9 of the Superannuation Act 1972(135) (superannuation of teachers);

“The Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions) Regulations 1997(136);

(132) 1988 c. 41.

(133) 1992 c. 4.

(134) 1988 c. 1.

(135) 1972 c. 11.

(136) S.I. 1997/1613.

“Total membership” and “total period of membership” must be construed in accordance with regulation 9(2);

“Trade dispute” has the meaning given in section 218 of the Trade Union and Labour Relations (Consolidation) Act 1992(**137**);

“Trade dispute absence” means absence from duty, otherwise than with leave, for a period of one or more days during and because of a trade dispute;

“Unaggregated period”, in relation to a period of membership, has the meaning given in regulation 32(6) and “aggregated” shall be construed accordingly;

“Upper earnings limit” has the same meaning as in the Pension Schemes Act 1993;

“Variable-time employee” means an employee whose contract of employment provides that he is such an employee for the Scheme and—

- (a) whose pay is calculated by reference to his duties (rather than necessarily by reference to the number of hours he has worked), or
- (b) whose duties only have to be performed on an occasional basis;

“Voluntary school” has the same meaning as in the Education Act 1996(**138**);

“Whole-time employee” means an employee whose contract of employment provides—

- (a) that he is such an employee for the Scheme, or
- (b) that his contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis.

SCHEDULE 2

Regulation 4(3).

SCHEME EMPLOYERS

The Commission for Local Administration in England.

The Commission for Local Administration in Wales.

A county council, a county borough council in Wales, the Common Council, a district council, a London borough council, a residuary body (within the meaning of section 105(1) of the Local Government Act 1985(**139**)), the Residuary Body for Wales and a joint board, body or committee appointed under any Act or statutory order, or statutory scheme, of which all the constituent authorities are such councils or such bodies or a combination of such councils and bodies.

A fire authority constituted by a combination scheme made under the Fire Services Act 1947(**140**).

A metropolitan county fire and civil defence authority established by section 26 of the Local Government Act 1985 and the London Fire and Civil Defence Authority established by section 27 of that Act.

A valuation tribunal established under Schedule 11 to the Local Government Finance Act 1988(**141**).

(**137**) 1992 c. 52.

(**138**) 1996 c. 56.

(**139**) 1985 c. 51.

(**140**) 1947 c. 41 (10 and 11 Geo.6 c.41); sections 5 and 6 were amended by the Local Government Act 1972 (c. 70), sections 197(1) and 272(1), Schedule 30.

(**141**) 1988 c. 41; Schedule 11 was amended by the Local Government Finance Act 1992 (c. 14), section 117(1), Schedule 13, paragraph 88(2).

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- A magistrates' courts committee.
- A police authority within the meaning of the Police Act 1964**(142)**.
- A probation committee.
- The Chichester Harbour Conservancy.
- The Lee Valley Regional Park Authority.
- A passenger transport authority.
- The Broads Authority.
- A further education corporation.
- A higher education corporation.
- The governing body of a grant-maintained school which immediately before becoming such a school was a county school.
- The London Pensions Fund Authority.
- The South Yorkshire Pensions Authority.
- The Environment Agency.
- A National Park Authority established under Part III of the Environment Act 1995**(143)**.

SCHEDULE 3

Regulation 10(3).

EXCLUDED MEMBERSHIP

TABLE

<i>Description of membership</i>	<i>Purposes for which membership does not count</i>	<i>Relevant notes</i>
<p>1. A credited period which is counted as a period of membership under regulation 122(1) or was counted under any corresponding earlier provision and is counted under regulation 9(1)(d).</p>	<p>Calculating total membership as for regulation 6(3) and (5) or paragraph 2, 4, 5 or 6(1) of Schedule 4 (and see regulation 15(4)).</p>	
<p>2. A period credited by virtue of regulation 66(5) (including that regulation as it applies by virtue of regulation 72) or credited under regulation 122 as respects a transfer value representing accrued rights to benefits arising out of contributions made under any additional voluntary</p>	<p>Calculating the amount of the member's retirement grant.</p>	

(142) 1964 c. 48; section 62 was substituted by the Police and Magistrates' Courts Act 1994 (c. 29), Schedule 5, paragraph 15.
(143) 1995 c. 25.

<i>Description of membership</i>	<i>Purposes for which membership does not count</i>	<i>Relevant notes</i>
contributions scheme, where the payments began on or after 8th April 1987.		
3. Any period which has already been counted to determine whether a relevant member was entitled to the relevant benefit or has been or may be used to calculate its amount.	All regulations.	(1) and (2)
4. So much of a Class A member's total membership as exceeds 40 years.	Calculating the amount of any benefit under the Regulations.	(3) to (5)
5. So much of the total membership of a Class B member or Class C member as—	Calculating the amount of any benefit under the Regulations.	(3) to (5)
(a) is membership before he attains the age of 60 and exceeds 40 years, or		
(b) exceeds 45 years.		
6. So much of the membership of a member as respects whom an amount is recovered or retained under regulation 113 (misconduct obligations) as requires to be excluded to reduce the value referred to in regulation 113(2) (b) by that amount.	Calculating the amount of any benefit under regulations 19 to 33.	

Notes:

- (1) For paragraph 3, a relevant member is a member who—
 - (a) has entered the employment of a Scheme employer or former local authority after becoming entitled to payment of a pension benefit (other than a benefit under the National Insurance Act 1965(144)), or
 - (b) has entered such employment after becoming entitled to a benefit under regulation 31 and has not made an election under regulation 32(1) (or, in a case where he was able to do so, gave notice under regulation D12(1)(c) of the 1995 regulations (retention of entitlement to preserved benefits)), and the relevant benefit for a relevant member is the benefit mentioned in paragraph (a) or, as the case may be, paragraph (b).
- (2) Paragraph 3 applies to a maternity rights returner—
 - (a) unless she has made an election under regulation 32(1), or
 - (b) in a case where she was able to give notice under regulation D12(1)(c) of the 1995 regulations (retention of entitlement to preserved benefits), if she did so.
- (3) Any membership, which is excluded by paragraph 4 or 5(a) for calculating the amount of a death grant under regulation 38 in a case where a pension is reduced under regulation 42, is taken from the beginning of the period of membership.
- (4) A period which—

(144) 1965 c. 51.

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- (a) is the excess of any enhanced membership period counted under regulation 28 (ill-health) over the total membership otherwise, or
 - (b) is counted by virtue of regulation F6(1)(a) or (b) of the 1986 regulations (war service),
- counts as membership before attaining the age of 60 for calculating the amount of any benefit under regulations 19 to 33.
- (5) For paragraphs 4 and 5 the total membership includes—
- (a) any earlier period which was taken into account in the calculation of a retirement pension, an annual pension under the former regulations, or a superannuation allowance under Part I of the Act of 1937, or in respect of which any pension was granted under a local Act scheme, and
 - (b) any period by reference to which an additional benefit has been granted under regulation E13 of the 1986 regulations (discretionary additional benefits for certain female nursing staff) or under regulation 13 of the Benefits regulations.

SCHEDULE 4

Regulations 24, 51, 53 and 55.

REVENUE RESTRICTIONS

Preliminary

1.—(1) In these Regulations—

“Class A member” is a member who—

- (a) became a member on or after 1st June 1989 and is not to be treated as a Class B member or Class C member by virtue of a Revenue agreement; or
- (b) was a Class B member or a Class C member immediately before that date and is deemed to have become a Class A member by virtue of making a Class A election;

“Class A election” means an election duly made by a Class B member or a Class C member by notice in writing to the administering authority, before the date on which he ceases to be an active member for any reason (including death), that he wishes to be treated as a Class A member for the Scheme, as from 1st June 1989;

“Class B member” is a member who—

- (a) became a member on or after 17th March 1987 and before 1st June 1989,
- (b) has continued to be a member since before 1st June 1989 or satisfies one of the continuity conditions in relation to any period when he was not a member,
- (c) is not to be treated as a Class C member by virtue of a Revenue agreement, and
- (d) is not deemed to have become a Class A member by virtue of making a Class A election;

“Class C member” is a member who—

- (a) became a member before 17th March 1987 or is to be treated as a Class C member by virtue of a Revenue agreement,
- (b) has continued to be a member since before that date or satisfies one of the continuity conditions in relation to any period when he was not a member, and
- (c) is not deemed to have become a Class A member by virtue of a Class A election;

“continuity conditions”, in relation to a Class B member or a Class C member, are—

- (a) that his active membership ceased on his secondment or posting to another employer, at the time of the secondment or posting he had a definite expectation that he would become an active member again when it ended, and he again became an active member at the end of his secondment or posting;

- (b) that his active membership ceased by reason of his unpaid absence and he began paying contributions again under regulation 12 within one month of returning to work;
- (c) that the member's active membership ceased wholly or partly because of her pregnancy or confinement and she began paying contributions again under that regulation within one month of returning to work as a maternity rights returner;
- (d) that the member's active membership ceased otherwise than as mentioned in paragraph (a), (b) or (c) and within one month he rejoined the Scheme as an active member and began paying contributions again under that regulation;

“existing rights member” means a member to whom regulation 5(2) of the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990(145) applies;

“relevant benefits” has the meaning given in section 612(1) of the Taxes Act.

(2) A person is a retained rights member if he is entitled to or has received relevant benefits accrued under—

- (a) an approved scheme;
- (b) a relevant statutory scheme (as defined in section 611A) of the Taxes Act);
- (c) A fund to which section 608 of that Act applies (funds approved before 6th April 1980);
- (d) a retirement benefits scheme (as defined in section 611 of that Act) accepted by the Commissioners of Inland Revenue as a scheme which corresponds as mentioned in section 596(2)(b) of that Act; or
- (e) a contract or trust scheme approved under section 620 or a personal pension scheme approved under section 631 of that Act.

(3) But relevant benefits which are death benefits must be disregarded if—

- (a) the member's pay in the first year of his employment during which he is a member exceeds one quarter of the Revenue permitted maximum for the year of assessment in which that first year ends; or
- (b) they do not exceed £2,500.

(4) For sub-paragraph (2) benefits accrued under the Scheme must be disregarded unless they accrued in respect of a period of membership as respects which the person is treated as a deferred member or a pensioner member by virtue of regulation 32(5).

Class A members

2.—(1) This paragraph sets out limits on benefits in respect of local government employment payable to or in respect of a Class A member under Parts II and III.

(2) But sub-paragraphs (3), (4) and (6) do not apply to benefits under Chapter IV of Part III.

(3) The aggregate pension payable must not exceed one sixtieth of the member's final pay multiplied by his total membership.

(4) But for a pension payable under regulation 27 (ill-health) the limit is one sixtieth of the member's final pay multiplied by the total membership the member would have had if he had continued as an active member until his NRD.

(5) The aggregate pension payable must not exceed one thirtieth of the Revenue permitted maximum, multiplied by the member's total membership or 20 years, if less.

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(6) For sub-paragraphs (3), (4) and (5) a member who is entitled to be paid a lump sum on retirement is treated as if he were entitled instead to be paid a pension on retirement of an annual amount equal to one twelfth of the lump sum.

(7) The aggregate benefit payable by way of lump sum must not exceed three eightieths of the member's final pay, multiplied by his total membership.

(8) But for a lump sum payable under regulation 27 the limit is three eightieths of the member's final pay, multiplied by the total membership the member would have had if he had continued as an active member until his NRD.

(9) The benefits payable by way of lump sum on the death of an active or deferred member must not exceed four times his final pay or, if greater, £5,000.

(10) The total membership taken into account under sub-paragraphs (3), (4), (7) and (8) must not exceed 40 years.

(11) Without prejudice to Schedule 3, a credited period which is counted as a period of membership under regulation 122(1) does not count in calculating the total membership for this paragraph.

(12) The final pay of a Class A member must not exceed the Revenue permitted maximum.

(13) But if a Class A member is an existing rights member sub-paragraph (12) does not apply for calculating any benefit under the Scheme in so far as it is calculated by reference to a credited period which is counted as a period of membership under regulation 122(1).

Class B members and Class C members

3. Paragraphs 4 to 6 set out limits on benefits in respect of local government employment payable to or in respect of a Class B member or Class C member under Parts II and III and paragraph 7 limits additional contributions in some circumstances.

4.—(1) The aggregate pension payable on retirement at or before the member's NRD must not exceed one sixtieth of the member's final pay, multiplied by his total membership.

(2) But for a pension payable under regulation 27 the limit is one sixtieth of the member's final pay, multiplied by the total membership the member would have had if he had continued as an active member until his NRD.

(3) For a pension payable under regulation 31, if it results in a higher sum, for the maximum under sub-paragraph (1) there is substituted an amount equal to the amount that would be the maximum under that sub-paragraph if the member had remained an active member until his NRD (taking into account any reduction for retained benefits), multiplied by the fraction of which—

(a) the numerator is—

(i) the member's total membership, or

(ii) 40 years,

whichever is less, and

(b) the denominator is—

(i) his total membership, assuming he had remained an active member until his NRD, or

(ii) 40 years,

whichever is less.

(4) But sub-paragraphs (1) and (2) do not apply to benefits under Chapter IV of Part III.

(5) The aggregate pension payable on retirement after the member's NRD must not exceed—

(a) one sixtieth of the member's final pay, multiplied by his total membership;

- (b) one sixtieth of the member's final pay at his NRD, multiplied by his total membership at his NRD—
 - (i) with such an increase as an actuary appointed by the appropriate administering authority considers appropriate in view of the period of delay in payment between his NRD and the actual date the pension becomes payable, or
 - (ii) adjusted to reflect any increase in the general level of retail prices obtaining in Great Britain during that period;
 - (c) one sixtieth of the member's final pay, multiplied by his increased period of membership, whichever is the greatest.
- (6) For sub-paragraphs (1) to (5) a member who is entitled to be paid a lump sum on retirement is treated as if he were entitled instead to be paid a pension on retirement of an annual amount equal to one twelfth of the lump sum.
- (7) A member's increased period of membership is the sum of—
- (a) his total membership ending with his NRD, and
 - (b) his total membership after his NRD,
- but must not exceed 45 years.
- 5.—**(1) The aggregate benefit payable by way of lump sum on retirement at or before NRD—
- (a) in the case of a Class B member or a Class C member with a total membership period of less than 20 years, must not exceed three eightieths of the member's final pay, multiplied by his total membership;
 - (b) in the case of a Class B member must not be calculated by reference to final pay exceeding £100,000; and
 - (c) in the case of a Class C member whose total membership is at least 20 years, must not exceed one and a half times his final pay.
- (2) But for a lump sum payable under regulation 27 the limit is three eightieths of the member's final pay, multiplied by the total membership the member would have had if he had continued as an active member until his NRD.
- (3) But sub-paragraph (2) does not apply to benefits under Chapter IV of Part III.
- (4) The aggregate benefit payable by way of lump sum on retirement after NRD must not exceed—
- (a) three eightieths of the member's final pay, multiplied by his total membership;
 - (b) three eightieths of the member's final pay at his NRD, multiplied by his total membership at his NRD, together with interest in respect of the period of delay in payment between his NRD and the actual date of payment;
 - (c) three eightieths of the member's final pay, multiplied by his increased period of membership,
- whichever is the greatest.
- (5) A member's increased period of membership is the aggregate of—
- (a) his total membership ending with his NRD, and
 - (b) his total membership after his NRD,
- but must not exceed 45 years.
- (6) The benefits payable by way of lump sum on the death of an active or deferred member must not exceed four times his final pay or, if greater, £5,000.

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(7) If a sum other than £100,000 is specified by the Treasury as respects any year for section 590(3) of the Taxes Act (as that section continues to have effect for Class B members by virtue of paragraph 18(2) of Schedule 6 to the Finance Act 1989⁽¹⁴⁶⁾), then sub-paragraph (1)(b) has effect with the substitution for the reference to £100,000 of a reference to that sum.

6.—(1) The total membership taken into account under paragraphs 4(1), (2), (5)(a) and (b) and (7)(a) and 5(1)(c), (4)(a) and (b) and (5)(a) must not exceed 40 years.

(2) Without prejudice to Schedule 3, a credited period which is counted as a period of membership under regulation 122(1) does not count in calculating the total membership for sub-paragraph (1) or paragraph 4 or 5.

7.—(1) If adding the additional contributions payable by a Class B member or a Class C member under an agreement made by him before the commencement date (other than AVCs payable under Schedule C4 to the 1995 regulations or any corresponding earlier provision) to those payable by him under regulations 12, 17 and 18 would cause the total of those contributions to exceed 15 per cent. of his pay, he may not pay that excess, but he may pay a lump sum representing it to the Scheme at a time permitted by the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990⁽¹⁴⁷⁾.

(2) That lump sum must be calculated in a way approved by the Government Actuary, who may issue guidance indicating how it is to be done.

Maximum additions under regulations 53 and 55

8.—(1) The maximum addition under regulation 53 or 55 is—

- (a) the period (if any) by which the person's potential period of membership falls short of 40 years, or
- (b) his potential period of membership,

whichever is the shorter.

(2) His potential period of membership is the period he would be entitled to count as a period of membership in relation to his local government employment, assuming—

- (a) if he is not an active member on the date of the resolution, that he became such a member on that date, and
- (b) that he continued as an active member until he was aged 65.

(3) If—

- (a) the resolution under regulation 53 relates to a person who on the date of the resolution has retained benefits, or
- (b) on the date of the election under regulation 55 the member has retained benefits,

the period of 40 years mentioned in sub-paragraph (1) must be reduced by the appropriate period.

(4) The appropriate period is such period as is certified by an actuary appointed by the appropriate administering authority to be sufficient to secure—

- (a) that the aggregate of—
 - (i) the relevant income benefits, and
 - (ii) the pension equivalent of the relevant capital benefits,
 will not exceed two-thirds of his final pay; and

⁽¹⁴⁶⁾1989 c. 26.
⁽¹⁴⁷⁾S.I. 1990/2101.

- (b) that his retirement grant will not exceed his final pay by more than 50 per cent.
- (5) In this regulation—
- “pension equivalent” has the meaning given in regulation 5(5)(b) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(148);
- “the relevant income benefits”, in relation to a member, means the aggregate annual amount of—
- (a) the actuarial value, expressed as an annuity payable to him, of the relevant benefits which are pension benefits, and
- (b) the part of his retirement pension attributable to his period of membership before his NRD; and
- “the relevant capital benefits”, in relation to a member, means the aggregate amount of—
- (a) his retirement grant, and
- (b) any lump sum comprised in the relevant benefits which are pension benefits.
- (6) For the purposes of sub-paragraphs (4) and (5)—
- (a) it is to be assumed that the person will, until his NRD, continue in the same employment and on the same terms and conditions (including, in particular, his scale of pay) as at the date of the resolution or, as the case may be, the election (assuming, if he has not entered the employment of the authority at that date, that he had done so on that date on the scale of pay at which the employment was offered to him),
- (b) any period of membership on or after that date is to be disregarded, and
- (c) regard is to be had to any advice from the Commissioners of Inland Revenue as to the calculation of the value of the earlier benefits.

Controlling directors

- 9.—(1) This paragraph applies to any member who is a controlling director, as defined in paragraph 5(5) of Schedule 23 to the Taxes Act.
- (2) Regulation 22(1)(a) does not apply to a controlling director.
- (3) For determining whether a controlling director who is a Class A member has retained benefits, “approved scheme” includes—
- (a) a retirement annuity contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act, or
- (b) any personal pension scheme approved under Chapter IV of that Part,
- so far as it provides benefits secured by contributions in respect of his service with his Scheme employer or an associated employer.
- (4) An employer is associated with another if one is controlled by the other or both are controlled by a third party; and control must be construed in accordance with section 840 of the Taxes Act or, in the case of a close company (as defined in section 416 of that Act) in accordance with section 416.
- (5) Paragraph 1(3)(a) does not apply to controlling directors.

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Overriding provisions

10. Where by virtue of the Taxes Act or any later enactment schemes which were approved schemes before a certain date, have effect as if their rules restricted the total benefits payable under them, the rules of the Scheme have effect subject to those restrictions, notwithstanding any amendments of them by virtue of these or any earlier regulations after the date of that Act or enactment, and in so far as those restrictions would permit those total benefits to be greater than is otherwise permitted under the Scheme, those restrictions shall prevail.

SCHEDULE 5

Regulation 74.

APPROPRIATE FUNDS

PART I

GENERAL RULES

1.—(1) The appropriate fund for a member is the fund specified in column 2 of the following Table for a member of his description.

(2) But where a member falls into paragraph 5 of that Table or paragraph 3 of the Table in Part II of this Schedule, the Secretary of State may by direction substitute another fund (“the substituted fund”).

(3) Before doing so he must consult with any bodies appearing to him to be affected by the proposed direction.

(4) The direction may require the making of financial adjustments between the funds, whether by way of a payment to the substituted fund or of a transfer of assets or both.

(5) It may also contain provision as to the transfer of liabilities to the substituted fund and any other consequential and incidental matters.

(6) Where an administering authority have established an admission agreement fund under regulation 75—

- (a) references in this Schedule and in regulation 74 to the fund are to the fund maintained by that authority under regulation 73, and
- (b) in relation to a member employed by a body specified in the notice required by regulation 75(3), the appropriate fund is the admission agreement fund.

TABLE

<i>Member</i>	<i>Appropriate fund</i>
1. An employee of an administering authority (other than a London member).	Fund maintained by that authority.
2. A London member.	Fund maintained by the London Pensions Fund Authority.
3. A Welsh member.	Appropriate regulation 3 fund.
4. A Part II member.	Fund specified for him in Part II of this Schedule.

<i>Member</i>	<i>Appropriate fund</i>
5. An employee of a company under the control of a Scheme employer specified in Schedule 2.	Fund which is the appropriate fund for employees of that Scheme employer.
6. An admission agreement employee.	Fund maintained by the administering authority with whom the admission agreement making him eligible for membership was made.
7. Members for whom no fund is specified by paragraphs 1 to 6, being—	(a) (a) Fund maintained by the administering authority specified for that authority in column 2 of the Table in Part III of this Schedule;
(a) members whose employing authority is specified in column 1 of the Table in Part III of this Schedule;	
(b) (b) members whose employing authority's area is situated wholly or mainly in the local government area of another employing authority which is specified in column 1 of the Table in Part III of this Schedule.	(b) (b) Fund maintained by the administering authority specified for that other authority in column 2 of the Table in Part III of this Schedule.
8. Members for whom no fund is specified by paragraphs 1 to 7.	Fund maintained by the administering authority within whose local government area all or most of his employing authority's area lies.

Notes

- 1.—(1) A London member is a member to whom sub-paragraph (2), (3) or (4) applies.
- (2) This sub-paragraph applies to an employee of a London borough council or of the Common Council who—
- (a) immediately before 1st April 1974 was by virtue of article 14 or 15 of the London Authorities (Superannuation) Order 1965(149) entitled to participate in the benefits of the superannuation fund maintained under Part I of the Act of 1937 by the Greater London Council,
 - (b) became a pensionable employee (within the meaning of the 1986 regulations) on 1st April 1974, and
 - (c) has since 1st April 1974 continued in the employment of the same London borough council, or, as the case may be, of the Common Council.
- (3) This sub-paragraph applies to a person who—
- (a) is eligible to be a member by virtue of regulation 127(3), and
 - (b) immediately before 1st April 1974 was entitled to participate in the benefits of the superannuation fund maintained under Part I of the Act of 1937 by the Greater London Council.
- (4) This sub-paragraph applies to a person who—
- (a) is eligible to be a member by virtue of regulation 127(5),
 - (b) is an employee of—

(149)S.I. 1965/621.

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- (i) the probation committee for any area in Greater London other than the City of London probation area,
 - (ii) the London Residuary Body established by section 57(1)(a) of the Local Government Act 1985(150),
 - (iii) the Lee Valley Regional Park Authority,
 - (iv) the London Fire and Civil Defence Authority established by section 27 of that Act,
 - (v) the London Waste Regulation Authority, the West London Waste Authority, the North London Waste Authority, the East London Waste Authority or the Western Riverside Waste Authority (all of which authorities were established by the Waste Regulation and Disposal (Authorities) Order 1985(151)), or
 - (vi) the Commission for Local Administration in England, and
- (c) either—
- (i) within one month and a day after ceasing to be an employee of the Inner London Education Authority established by section 18 of the Local Government Act 1985, became an employee of a London borough council or of the Common Council, or
 - (ii) at any time after 31st March 1990 ceased to be an employee of the London Residuary Body, and within one month and a day after so ceasing became an employee of a London borough council or of the Common Council.

2.—(1) A Welsh member is a member whose appropriate fund was determined immediately before the commencement date by regulation 3 of the Local Government Pension Scheme (Local Government Reorganisation in Wales) Regulations 1995(152) and who continues to be employed by the same employing authority.

(2) The appropriate regulation 3 fund for such a member is the fund determined under that regulation for him.

3. A Part II member is a member falling within column 1 of the Table in Part II of this Schedule.

PART II

MISCELLANEOUS AUTHORITIES

TABLE

<i>Member</i>	<i>Appropriate fund</i>
1. Employee of the Commission for Local Administration in Wales.	Fund maintained by Cardiff County Council.
<i>Notes</i>	
1.	An ILEA employer is an institution or school formerly assisted or maintained by the Inner London Education Authority, or a corporation which has been established for the purpose of conducting an institution or school formerly assisted or maintained by that Authority.
2.	A metropolitan county employer is a school, corporation or institution, the whole or greater part of which is situated in a metropolitan county.
3.	A further education corporation and a higher education corporation are to be treated as situated where the institution conducted by the corporation is situated.

(150) 1985 c. 51.

(151) S.I. 1985/1884.

(152) S.I. 1995/1985.

<i>Member</i>	<i>Appropriate fund</i>
<p>2. Person who—</p> <p>(a) is eligible to be a member by virtue of regulation 127(3), and</p> <p>(b) immediately before 1st April 1974 was entitled to participate in the superannuation fund maintained under Part I of the Act of 1937 by Newham London borough council.</p>	<p>Fund maintained by Newham London borough council.</p>
<p>3. Member employed by a further education corporation, a higher education corporation, a designated institution or the governing body of a grant-maintained school which is—</p> <p>(a) an ILEA employer;</p> <p>(b) (b) a metropolitan county employer;</p> <p>(c) (c) another employer.</p>	<p>(a) (a) Fund maintained by the London Pensions Fund Authority;</p> <p>(b) (b) Fund maintained by the authority specified in column 2 of paragraph 4 of this Part of this Schedule in relation to the area in which the whole or greater part of the school, corporation or institution is situated;</p> <p>(c) (c) Fund to which the local authority contributes.</p>
<p>4. Employee of a body the greater part of whose area falls within—</p> <p>Greater Manchester</p> <p>Merseyside</p> <p>West Midlands</p> <p>Tyne and Wear</p> <p>West Yorkshire</p> <p>South Yorkshire.</p>	<p>Fund maintained by—</p> <p>Tameside district council</p> <p>Wirral district council</p> <p>Wolverhampton district council</p> <p>South Tyneside district council</p> <p>Bradford district council</p> <p>South Yorkshire Pensions Authority.</p>
<p>5. Employee of the Residuary body for Wales.</p>	<p>Fund maintained by Cardiff County Council.</p>
<p><i>Notes</i></p> <p>1. An ILEA employer is an institution or school formerly assisted or maintained by the Inner London Education Authority, or a corporation which has been established for the purpose of conducting an institution or school formerly assisted or maintained by that Authority.</p> <p>2. A metropolitan county employer is a school, corporation or institution, the whole or greater part of which is situated in a metropolitan county.</p> <p>3. A further education corporation and a higher education corporation are to be treated as situated where the institution conducted by the corporation is situated.</p>	

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PART III

MEMBERS AFFECTED BY LOCAL GOVERNMENT REORGANISATION

TABLE

SECTION A

<i>Employing authority</i>	<i>Administering authority</i>
Denbighshire County Council	Flintshire County Council
Wrexham County Borough Council	
Cardiganshire County Council	Carmarthenshire County Council
Pembrokeshire County Council	
Blaenau Gwent County Borough Council	Torfaen County Borough Council
Caerphilly County Borough Council	
Monmouthshire County Council	
Newport County Borough Council	
Aberconwy and Colwyn County Borough Council	Caernarfonshire and Merionethshire County Council
Anglesey County Council	
Bridgend County Borough Council	Rhondda, Cynon, Taff County Borough Council
Merthyr Tydfil County Borough Council	
The Vale of Glamorgan County Borough Council	Cardiff County Council
Neath and Port Talbot County Borough Council	Swansea County Council
North Somerset District Council	Bath and North East Somerset District Council
South Gloucestershire District Council	
City of Bristol Council	
Kingston upon Hull	East Riding of Yorkshire District Council
North Lincolnshire District Council	
North East Lincolnshire District Council	
Redcar and Cleveland Borough Council	Middlesbrough Borough Council
Hartlepool Borough Council	
Stockton-on-Tees Borough Council	

<i>Employing authority</i>	<i>Administering authority</i>
York District Council	North Yorkshire County Council
Luton Borough Council	Bedfordshire County Council
Milton Keynes Borough Council	Buckinghamshire County Council
Derby City Council	Derbyshire County Council
Bournemouth Borough Council	Dorset County Council
Poole Borough Council	
Darlington Borough Council	Durham County Council
Brighton and Hove District Council	East Sussex County Council
Portsmouth City Council	Hampshire County Council
Southampton City Council	
Stoke-on-Trent City Council	Staffordshire County Council
Thamesdown Borough Council	Wiltshire County Council
Leicester City Council	Leicestershire County Council
Rutland District Council	

SECTION B

<i>Employing authority</i>	<i>Administering authority</i>
Bracknell Forest Borough Council	Royal Borough of Windsor and Maidenhead
Newbury District Council	
Reading Borough Council	
Slough Borough Council	
Wokingham District Council	
Peterborough City Council	Cambridgeshire County Council
Halton Borough Council	Cheshire County Council
Warrington Borough Council	
Plymouth City Council	Devon County Council
Torbay Borough Council	
Southend-on-Sea Borough Council	Essex County Council
Thurrock Borough Council	
Medway Towns District Council	Kent County Council
Blackburn with Darwen Borough Council	Lancashire County Council

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<i>Employing authority</i>	<i>Administering authority</i>
Blackpool Borough Council	
Nottingham City Council	Nottinghamshire County Council
The Wrekin District Council	Shropshire County Council
Herefordshire District Council	Worcestershire County Council

SCHEDULE 6

Regulation 137.

CERTAIN CITY OF LONDON EMPLOYEES AND FORMER CONTRIBUTORS

PART I

CITY OF LONDON EMPLOYEES

1. For any member who is an existing contributor (as defined in the Local Government Superannuation (City of London) Regulations 1977(**153**)) regulation 141 applies with these modifications—

- (a) omit paragraphs (1) to (3), and
- (b) in paragraph (4) for the words “regulation J17(3)(e) of the 1974 regulations”, “those regulations” and “Scheme employer” substitute the words “regulation 19(3) of the Local Government Superannuation (City of London) Regulations 1977”, “the 1974 regulations” and “City of London employing body” respectively.

2.—(1) For any member who is an existing contributor or a former contributor (as so defined) regulation 141 applies with these modifications.

(2) References to old statutory provisions must be taken as references to the local Act superannuation provisions or, as the case may be, to the particular corresponding provision of the local Act superannuation provisions.

(3) The old statutory provisions are—

- (a) the Acts of 1937 to 1953, or the regulations made under them (including those provisions applying as amended or extended by any local Act or scheme or together with any such provisions) or
- (b) the former regulations or a provision in the former regulations.

(4) References to old funds must be taken as references to the local Act superannuation fund (as defined in the Local Government Superannuation (City of London) Regulations 1977(**154**)).

(5) References to contributory employees must be taken as references to contributors to that fund.

(6) If immediately before the commencement date the member was entitled by virtue of paragraph 3 of Schedule M3 to the 1995 regulations to make contributions at a lower rate, regulation 12 has effect, while he continues in the employment of the same City of London employing body, as if he were a member with lower rate rights whose standard contribution rate was that lower rate.

(7) If immediately before the commencement date he—

(153) S.I. 1977/1341.

(154) S.I. 1977/1341.

- (a) was prospectively entitled under the local Act superannuation provisions to benefits which did not include a lump sum retiring allowance and a pension payable to his widow, and
 - (b) did not make an election under regulation E19(2) of the 1974 regulations,
- these Regulations apply with the modifications set out in paragraphs 3 and 5.

(8) But if a person within paragraph (7)—

- (a) first married on or after 1st October 1977,
- (b) has continued to contribute to the pension fund maintained by the Common Council from the day on which he first became a member and without a break of 12 months or more, and
- (c) at a time when he is a member and within three months after first marrying elects by notice in writing to the Common Council to be treated as a person falling within paragraph (7),

these Regulations apply with the modifications set out in paragraphs 4 and 5.

(9) These Regulations also apply with the modifications set out in paragraphs 4 and 5—

- (a) if a person within paragraph (7) who does not fall within paragraph (8)(a) and (b) made a similar election to that mentioned in paragraph (8)(c) under regulation E19(2) of the 1974 regulations; or
- (b) if a person who does not fall within paragraph (7)—
 - (i) was prospectively entitled under the local Act superannuation provisions to benefits which did not include a lump sum retiring allowance, and
 - (ii) did not make an election under regulation E19(2) of the 1974 regulations.

3.—(1) In regulation 20(2) for “80” substitute “60”.

(2) In regulation 41—

- (a) for “spouse” and “spouse’s” wherever they occur, substitute “widow” and “widow’s” respectively;
- (b) for paragraph (4) to (6) substitute—

“(4) The long-term pension is the aggregate of—

- (a) one four hundred and eightieth of the deceased’s pay multiplied by the length in years of his period of membership before 1st April 1972, and
- (b) one one hundred and sixtieth of his pay, multiplied by the length in years of the period of his membership after 31st March 1972.”.

(3) Omit regulations 45(7) and (8), 46, 54 and 57.

4.—(1) In regulation 20 for paragraph (2) substitute—

“(2) Unless another multiplier is indicated, the appropriate multiplier for a pension is the aggregate of—

- (a) the appropriate fraction of A, and
- (b) the appropriate fraction of B,

where—

the appropriate fraction mentioned in paragraph (a) is—

$$\frac{\text{the member's period of membership before 1st April 1972}}{\text{his total membership}}$$

the appropriate fraction mentioned in paragraph (b) is—

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the member's period of membership after 31st March 1972
his total membership

A is

the member's period of membership before 1st April 1972
70

B is

the member's period of membership after 31st March 1972
60

.”

(2) In regulation 41—

(a) for “spouse” and “spouse’s” wherever they occur, substitute “widow” and “widow’s” respectively;

(b) for paragraph (4) to (6) substitute—

“(4) The long-term pension is the aggregate of—

- (a) three tenths of the retirement pension to which the deceased was or would have been entitled at the time of his death in respect of the period of his membership before 1st April 1972 (but see paragraph (5)),
- (b) one four hundred and eightieth of the deceased’s pay, multiplied by his period of membership before 1st April 1972, and
- (c) one one hundred and sixtieth of the deceased’s pay, multiplied by his period of membership after 31st March 1972.

(5) Where—

- (a) the widow’s age at the date of the deceased’s death is greater than his, or
- (b) her age is less and she has no eligible child,

the amount calculated under paragraph (4)(a) is to be increased or reduced by an amount certified by an actuary appointed by the appropriate administering authority to be appropriate.”.

(3) In regulation 45—

(a) after paragraph (3) insert—

“(3A) Where a widow’s long-term pension is payable under regulation 41, no children’s long-term pension is payable until the day after the widow’s death.”; and

(b) for paragraphs (5) to (7) substitute—

“(5) The pension is the appropriate fraction of the aggregate of—

- (a) three tenths of the retirement pension to which the deceased was or would have been entitled at the time of his death in respect of his membership before 1st April 1972,
- (b) one four hundred and eightieth of his pay, multiplied by the length in years of his period of membership before 1st April 1972, and
- (c) one one hundred and sixtieth of his pay, multiplied by the length in years of his period of membership after 31st March 1972.

(6) For paragraph (5) no account shall be taken of any period of membership before attaining the age of 60 years beyond a total of 40 years; and any period of membership

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which is accordingly to be left out of account shall be taken from the beginning of the member's period of membership.”.

(4) In regulation 46(10), for the words from “training rate” onwards substitute the words “the pension is reduced by the excess”.

(5) Omit regulations 54 and 57.

5.—(1) In regulations 25(1), 26(1) and 31(3) omit the words “and retirement grant”.

(2) In regulations 25(2), 26(2) and 27(2) for the words “and grant are” substitute the word “is”.

(3) In regulations 27(1), and 31(4), (5) and (7) omit the words “and grant”.

(4) In regulation 28(1) omit the words “or grant”.

(5) In regulation 29—

(a) in paragraph (2) omit the words “and retirement grant, each”, and

(b) omit paragraphs (6) and (7).

(6) In regulation 38 for paragraph (5) substitute—

“(5) The amount of a pensioner member's death grant is the greater of his pay or his pay multiplied by—

$$3 \times \frac{\text{his pension membership period}}{80}$$

(but see paragraphs (5A) and (5B)).

(5A) The amount mentioned in paragraph (5) must be reduced—

(a) by any retirement grant paid to him, and

(b) by any payments which were made to him in respect of retirement pension (or would have been so made apart from regulation 29, 33 or 110).

(5B) If the pensioner member became entitled to his pension under regulation 31—

(a) paragraphs (5) and (5A) do not apply, and

(b) the amount of his death grant is the greater of amount A or amount B.

(5C) Amount A is his pay multiplied by—

$$3 \times \frac{\text{his pension membership period}}{80},$$

less the reduction mentioned in paragraph (5A).

(5D) Amount B is the amount of his pay (less that reduction), multiplied by—

$$\frac{\text{his pension membership period}}{\text{the total membership he would have had at NRD}}$$

(5E) A pensioner member's pension membership period is the period of membership taken into account in calculating the multiplier for his retirement pension.”.

(7) After paragraph (4) of regulation 41 insert—

“(4A) For paragraph (4) no account shall be taken of any period of membership before attaining the age of 60 years beyond a total of 40 years; and any period of membership which is accordingly to be left out of account shall be taken from the beginning of the member's period of membership.”.

(8) Omit regulations 54 and 57.

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PART II

FORMER COMMON COUNCIL LOCAL ACT SCHEME MEMBERS (DISCRETIONARY RIGHTS)

6.—(1) For any active member who—

- (a) immediately before 1st October 1977 was a contributor to the superannuation fund maintained by the Common Council under their local Act scheme,
- (b) became a member on that date and has remained an active member since that date, and
- (c) has been employed by a City of London employing body since that date without a disqualifying break of service,

these regulations apply with these modifications.

(2) After regulation 28(2) insert—

“(2A) But if, in any case where the enhanced membership period would otherwise be less—

- (a) the employing authority consider it appropriate to do so, and
- (b) if they are not the Common Council, that Council consent,

the employing authority may resolve that the enhanced membership period should be increased to any period not exceeding the member's total membership plus 10 years.”.

(3) In regulation 52(2) at the end of paragraph (d) add the words “or, if the employing authority consider it appropriate to do so and resolve accordingly, any longer period not exceeding 10 years”.

PART III

FORMER CONTRIBUTORS

7.—(1) This paragraph applies to a person—

- (a) who immediately before 1st April 1974 was a contributory employee to whom the Acts of 1937 to 1953 and the regulations made under them applied either as modified or extended by, or together with, any local Act or scheme,
- (b) who on that date became a pensionable employee under a scheduled body (within the meaning of the 1986 regulations), and
- (c) to whom immediately before the commencement date paragraph 6 of Schedule M2 to the 1995 regulations applied.

(2) Where any relevant provision of the former scheme of a person to whom this paragraph applies would have been more beneficial than the corresponding provision of these Regulations, these Regulations have effect, for the appropriate period, as if the relevant provision had applied.

(3) For sub-paragraph (2) the person's former scheme is the provisions which applied as mentioned in sub-paragraph (1)(a).

(4) For sub-paragraph (2) a provision of a former scheme is a relevant provision if it was similar to one of the provisions of these Regulations specified in sub-paragraph (5).

(5) They are—

- (a) regulation 6(3) (latest joining date);
- (b) regulation 12 (member's contributions);
- (c) regulation 13(2)(a) (exclusion from pay of non-contractual overtime);

- (d) regulations 21 to 23 (pay);
 - (e) regulation 25(3) to (5) (normal retirement age and NRD);
 - (f) regulation 110 (application of abatement policy in individual cases); and
 - (g) if the person made no election under regulation E19 of the 1974 regulations, regulation 33 (surrenders).
- (6) Where the person—
- (a) having voluntarily resigned from his employment during the appropriate period, becomes entitled to receive a payment under regulation 87 (rights to return of contributions), and
 - (b) if his former scheme had still applied to him, would have been entitled to interest on the contributions,

he is entitled to receive out of the appropriate fund interest on so much of the amount of that payment as is equal to the contributions paid by him in respect of service before 1st April 1972 to any pension fund under Part I of the Act of 1937 or a local Act scheme.

(7) Interest under sub-paragraph (6) is to be calculated, to the date the person left employment, at the same rate and with the same rests as if payable under his former scheme.

- (8) For this paragraph the appropriate period is—
- (a) the period of application specified in the relevant provision of the person's former scheme, or
 - (b) if none is specified, the period during which he continues in the employment of the body mentioned in sub-paragraph (1)(b).

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These regulations replace the provisions of the Local Government Pension Scheme Regulations 1995 (S.I. 1995/1019) and constitute the occupational pension scheme for persons engaged in local government employment (other than teachers, policemen and firemen) who are active members of the Scheme on or after 1st April 1998, and replace them in part for other members in accordance with the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 (S.I. 1997/1613).

The main changes are as follows—

Part II

- the restrictions on eligibility for membership have been simplified to exclude only those who have access to another occupational pension scheme or are part-time firemen from membership;
- regulation 12 sets a standardised contribution rate of 6 per cent. for all new members, while regulation 14 protects the position of existing members currently paying contributions at the rate of 5 per cent.;
- regulation 15 gives employers a new discretion to reduce or waive a member's contribution rate once 40 years of local government employment have been served;

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- regulations 16, 24, 51 and Schedule 4 set out overriding Inland Revenue limits;
- regulations 21 to 23 define final pay and make provision for protecting the value of a member's pension following a change in the circumstances of employment;
- regulation 25 defines the normal retirement age for new members as 65 but protects the position of existing members who may retire between the ages of 60 and 65;
- regulation 31 gives members aged at least 50 the right to apply for early payment of scheme benefits (subject, in the case of members aged less than 60 to the consent of the employer);
- regulation 32 places the onus on a deferred member to elect to carry earlier periods of membership forward on rejoining the Scheme, enabling an election to be made at any time during the fresh spell of membership;
- regulation 38 provides for a grant on the death of active members of two years' pay; for pensioners there is a standardised death grant of five times the annual pension;
- regulations 40 to 43 set out the arrangements for spouse's pensions which are payable for the life of the beneficiary;
- regulations 44 to 48 provide a simplified structure for the payment of children's pensions;

Part III

- regulation 52 gives employers a new discretionary power to augment scheme membership by up to 6 years on the termination of a member's employment;
- regulations 58 and 59 allow for the conversion of the retirement grant to pension or vice versa;
- regulations 60 to 66 set out a simplified structure for the payment of additional voluntary contributions and give the member the option to transfer the accumulated value of the contributions into additional scheme membership;
- regulations 67 to 72 allow employers to operate a shared-cost additional voluntary contributions scheme and give members the option to transfer the accumulated value of the contributions into additional scheme membership;

Part IV

- regulation 78 gives administering authorities the power to set revised contribution rates for employers with immediate effect where the costs to the fund exceed the assumptions stated in the rates and adjustment certificate which would otherwise determine these rates;
- regulation 82 gives administering authorities the power to charge interest where an authority is more than one month overdue in making certain payments;
- regulations 109 and 110 give administering authorities the discretion to decide their own abatement policy;
- regulations 116 to 120 apply the provisions in the Pension Schemes Act 1993 about transfers of rights out of occupational pension schemes with a few modifications and enable an alternative basis to be used for bulk transfers out;
- regulations 121 to 126 set out a simplified procedure for transferring rights into the Scheme, operating on a cash equivalent transfer basis, and provide for adjustments between funds where internal transfers occur;
- regulation 143 gives employers the discretion to convert awards made under the Local Government (Discretionary Payments) Regulations 1996 into Scheme membership.