

1999 No. 3438

PENSIONS

**The Local Government Pension Scheme (Amendment etc.)
Regulations 1999**

<i>Made</i>	- - -	<i>22nd December 1999</i>
<i>Laid before Parliament</i>		<i>22nd December 1999</i>
<i>Coming into force</i>		<i>13th January 2000</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(a) 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:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment etc.) Regulations 1999 and shall come in to force on 13th January 2000, but regulation 10 shall have effect from 1st April 1999.

(2) In regulations 9 and 10, expressions which are also used in the Local Government Pension Scheme Regulations 1997(b) have the same meaning as they have in those Regulations.

Amendment of Regulations

2. The Local Government Pension Scheme Regulations 1997 shall be amended in accordance with regulations 3 to 8 of these Regulations.

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

3. For regulation 5 substitute the following—

“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) These are admission bodies—

(a) a body which provides a public service in the United Kingdom otherwise than for the purposes of gain and which either—

(i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest, whether because the operations of the admission body are dependent on the operations of the Scheme employer or otherwise, or

(ii) is approved by the Secretary of State for the purpose of admission to the Scheme;

(a) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
(b) S.I. 1997/1612, amended by S.I. 1998/1238, 1999/1212.

- (b) a body to the funds of which any Scheme employer contributes;
- (c) a body representative–
 - (i) of local authorities, or
 - (ii) of local authorities and officers of local authorities, or
 - (iii) of officers of local authorities, or
 - (iv) of Scheme employers;
- (d) the Housing Corporation;
- (e) Housing for Wales;
- (f) the Commission for the New Towns;
- (g) a company for the time being subject to the influence of a local authority as described in section 69 of the Local Government and Housing Act 1989(a);
- (h) a body which–
 - (i) provides services or assets referred to in a best value arrangement or part of such services or assets,
 - (ii) is nominated to exercise a function specified in a section 15 direction, or
 - (iii) is specified in section 497A directions to perform a function or part of it.

(4) But the governors or managers of a voluntary school do not count as a body within paragraph (3)(a) or (b) and a body is only within paragraph (3)(c)(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.

(5) Approval under paragraph (3)(a)(ii) may be subject to such conditions as the Secretary of State thinks fit and he may withdraw approval at any time if such conditions are not met.

(6) It must be a term of an admission agreement made with a non-associated admission body within paragraph (3)(b) that the Scheme employer who provides funding (and, if more than one, all of them) guarantees the liability of the admission body to pay all amounts due from it under the Regulations.

(7) In the case of an admission agreement with a transferee admission body–

- (a) the transferor Scheme employer, if not also the administering authority, must be a party to the admission agreement;
- (b) only those employees of the transferee admission body who are employed in connection with–
 - (i) the provision of the services or assets referred to in the best value arrangement,
 - (ii) the function specified in the section 15 direction, or
 - (iii) the function or part of it to which the section 497A directions apply
 are eligible to be members of the Scheme;
- (c) it shall require an indemnity or bond in an approved form and with an authorised insurer or a relevant institution; and
- (d) provision shall be made for the matters set out in Schedule 2A.

(8) Where a transferor Scheme employer and a transferee admission body undertake to meet the requirements of paragraph (7), an administering authority must admit to the Scheme the eligible employees of the transferee admission body and, where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

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

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

(11) When an administering authority make an admission agreement, they must promptly inform the Secretary of State of the date the agreement takes effect, the admission body's name and, in the case of an admission agreement with a transferee admission body, the name of the relevant transferor Scheme employer.

(a) 1989 c. 42.

(12) An administering authority must notify the Commissioners of Inland Revenue of the admission of an admission body within the time prescribed in regulations made under section 605 of the Taxes Act **(a)** and provide such information as may be so prescribed.

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

(14) Any question which may arise between the administering authority and any other party to an admission agreement relating to the construction of the agreement or to the rights and obligations under that agreement shall be referred in writing for determination to the Secretary of State.

(15) An employee of an admission body may not be a member if he is a member of another occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993 **(b)**) other than where the accrual of benefits under that pension scheme would not affect approval of the Scheme as an approved scheme.

(16) 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.

(17) In this regulation, regulation 6 and Schedule 2A (where applicable)–

(a) “authorised insurer” means–

- (i) an insurance company authorised under section 3 or 4 of the Insurance Companies Act 1982 **(c)** to carry on long term business, or
- (ii) an EC company which is lawfully carrying on long term business, or providing long term insurance, in the United Kingdom,

and expressions used in this definition and the Insurance Companies Act 1982 have the same meaning as in that Act;

(b) “best value arrangement” means a contract or other arrangement made with a transferor Scheme employer for the provision of, or making available of, services or assets, for the purposes of or in connection with the exercise of a function of that transferor Scheme employer;

(c) “indemnity or bond in an approved form” means an indemnity or bond to meet a level of risk exposure arising on premature termination of the best value arrangement actuarially assessed to the satisfaction of the administering authority and the transferor Scheme employer;

(d) “local authority” for the purposes of paragraph (3)(c) and (g) includes the Greater London Authority;

(e) “non-associated admission body” means a body described in–

- (i) paragraph (3)(a)(ii), or
- (ii) paragraph (3)(b) where, at the date that the admission agreement is made, the total contribution from any one or more Scheme employers to its funds equals less than 50% of funding contributed by third parties;

(f) “relevant institution” means–

- (i) an institution authorised under Part I of the Banking Act 1987 **(d)** (regulation of deposit-taking business),
- (ii) a person to whom the restriction on acceptance of deposits in section 3 of that Act does not apply because he is specified in Schedule 2 to that Act (Central banks etc.), or
- (iii) a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits,

and “European authorised institution” has the same meaning as in the Banking Co-ordination (Second Council Directive) Regulations 1992 **(e)**;

(g) “section 15 direction” means a direction given under section 15 of the Local Government Act 1999 **(f)**;

(a) 1988 c. 1; section 605 was amended by section 105 of the Finance Act 1994 (c. 9). For the regulations, see S.I. 1995/3103.

(b) 1993 c. 41.

(c) 1982 c. 50; section 2, which contains definitions, was amended by S.I. 1994/1696, regulations 4 and 45 and Schedule 6.

(d) 1987 c. 22.

(e) S.I. 1992/3218.

(f) 1999 c. 27.

- (h) “section 497A directions” means directions made under section 497A of the Education Act 1996^(a);
- (i) “transferee admission body” means an admission body described in paragraph (3) (h); and
- (j) “transferor Scheme employer” means an authority or body which is a Scheme employer and is–
 - (i) named in section 1(1) of the Local Government Act 1999 as a best value authority for the purposes of Part I of the Local Government Act 1999, or
 - (ii) mentioned in section 2(1) of that Act as an authority or body which the Secretary of State may by order provide is a best value authority for those purposes.”.

Further restrictions on eligibility

4. In regulation 6, add at the end–

“(10) A person who is a member and is an employee of a transferee admission body is treated as leaving a local government employment when he ceases to be employed in connection with–

- (a) the services or assets referred to in the best value arrangement,
- (b) the function specified in the section 15 direction, or
- (c) the function to which the section 497A directions apply.”.

Re-employed and rejoining deferred members

5. In regulation 32, add at the end–

“(11) In the case of a member who first becomes a member on or after 13th January 2000 any period of membership in the employment of a non-associated admission body (as defined in regulation 5(17)(e)) shall not be aggregated with any other periods of membership for the purpose of calculating his retirement grant.”.

Special circumstances where revised actuarial valuations and certificates must be obtained

6. In regulation 78(b)–

- (a) in paragraph (2)(a), for “of the admission body” substitute “of the fund in respect of current and former employees of the admission body”;
- (b) in paragraph (2A) after the words “the outgoing admission body” insert “or from an insurer or any person providing a guarantee or indemnity on behalf of that admission body,”; and
- (c) after paragraph (2A) insert the following–

“(2B) An administering authority may obtain from an actuary a certificate specifying, in the case of an admission body, the percentage or amount by which, in the actuary’s opinion,–

- (a) the contribution at the common rate should be adjusted, or
- (b) any prior individual adjustment should be increased or reduced,

with a view to providing that the value of the assets of the fund in respect of current and former employees of that admission body is neither materially more nor materially less than the anticipated liabilities of the fund in respect of those employees at the date that the admission agreement is to end.”.

Admission agreements

7. After Schedule 2, add as Schedule 2A the Schedule set out in the Schedule to these Regulations.

(a) 1996 c. 56; section 497A was inserted by section 8 of the School Standards and Framework Act 1998, c. 31.

(b) Regulation 78(2) was amended by S.I. 1999/1212, regulation 14.

Revenue Restrictions

8. In Schedule 4, amend paragraph 1(1) by—
- (a) in the definition of “Class B member” in sub-paragraph (b), after “ since before 1st June 1989” inserting “and has not had a continuity break”;
 - (b) in the definition of “Class C member” in sub-paragraph (a) after “ 17th March 1987” inserting “and has not had a continuity break”; and
 - (c) after the definition of “Class C member” inserting the following definition—
““continuity break” is a change of employment from a Scheme employer (including an admission body) to a non-associated or transferee admission body (as defined in regulation 5(17)(e) and (i)) but does not include a change in the case of a person who was a member of the Scheme on 13th January 2000.”.

Savings

9. The amendments made by regulations 2 to 8 shall not affect any admission agreements made in accordance with the Local Government Pension Scheme Regulations 1997 before the date on which these Regulations come into force.

Employees of local education authorities

- 10.—(1) This regulation applies where:—
- (a) directions are given, prior to the date on which these Regulations come into force, under section 497A of the Education Act 1996 pursuant to which a person (“the transferee”) performs a function on behalf of a local education authority; and
 - (b) a person (“the employee”) who, immediately before the date from which the transferee performs the function, is a member in the employment of the local education authority, continues from that date in employment with the transferee in connection with the performance of that function.
- (2) When this regulation applies the employee shall be treated for the purposes of the Local Government Pension Scheme Regulations 1997 as an employee of the local education authority as long as he remains in employment with the transferee in connection with the performance of the function referred to in paragraph (1).
- (3) Paragraph (2) ceases to have effect when the employee becomes a member under an admission agreement.

Signed by authority of the Secretary of State

Hilary Armstrong
Minister of State,
Department of the Environment,
Transport and the Regions

22nd December 1999

SCHEDULE

SCHEDULE TO BE ADDED TO THE LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997

“SCHEDULE 2A Regulation 5(7)(d) and (8)

MATTERS TO BE INCLUDED IN AN ADMISSION AGREEMENT IN CERTAIN CASES

A reference to the date of the best value arrangement, section 15 direction or section 497A directions.

A requirement for the transferee admission body to pay to the administering authority all contributions and payments due under the Regulations.

A provision whereby the transferor Scheme employer may set off against any payments due to the transferee admission body an amount equal to any overdue employer and

employee contributions and other payments (and interest payable under the Regulations) due from the transferee admission body as an employing authority.

A reference to the indemnity or bond in the approved form.

A warranty from the transferee admission body that such an indemnity or bond is in place.

A provision requiring the transferee admission body to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and in any employer's guide published by the administering authority and provided to the transferee admission body.

An undertaking from the transferee admission body to the administering authority that it shall not do anything to prejudice the status of the Scheme as an exempt approved scheme within the meaning given by section 592(1) of the Taxes Act^(a).

A representation and warranty from the transferee admission body to the administering authority and to the transferor Scheme employer that all the transferee admission body's employees or class of employees who are specified as members are employed in connection with the services, assets or function referred to in the best value arrangement, section 15 direction or section 497A directions.

An undertaking from the transferee admission body that it will promptly notify the administering authority and the transferor Scheme employer in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for its employees who are members and of any terminations of employment by virtue of redundancy or in the interests of efficiency.

A requirement that the transferee admission body notifies the administering authority and the transferor Scheme employer of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion.

A requirement that the transferee admission body notifies the administering authority and the transferor Scheme employer of any matter which may affect, or is likely to affect, its participation in the Scheme and that it gives immediate notice of any actual or proposed change in its status which may give rise to a termination, including take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution.

A minimum period of three months' notice to terminate the admission agreement but automatic termination, as required by regulation 5(9) of the Regulations, in the event that the transferee admission body ceases to be such.

A right for the administering authority to terminate the agreement in the event of—

the insolvency, winding up or liquidation of the transferee admission body,

a breach by the transferee admission body of any of its obligations under the admission agreement (but where the breach is capable of remedy only where it has not been remedied within a reasonable time),

the withdrawal of approval by the Commissioners of Inland Revenue to the participation of the transferee admission body as a Scheme employer, or

a failure by the transferee admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the administering authority requiring it to do so.

A requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the transferor Scheme employer and the administering authority (if different).”

(a) 1998 c. 1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations affect the Local Government Pension Scheme Regulations 1997 (“the principal Regulations”) which comprise the Local Government Pension Scheme (“the Scheme”).

Regulations 2 to 8 make a number of amendments to the principal Regulations and the amendments take effect from the date that these Regulations come into force.

Regulation 3 amends the principal Regulations by substituting a new regulation 5 which provides for administering authorities to make admission agreements to enable employees of non-Scheme employers to be members of the Scheme. The new regulation 5 of the principal Regulations widens the categories of bodies which are admission bodies. It also adds procedural requirements in connection with admission agreements with certain categories of admission bodies and provides that questions arising in connection with admission agreements shall be determined by the Secretary of State.

The principal change is to allow employees of transferee admission bodies to be members. Transferee admission bodies are bodies who provide services or assets to local authority or other best value authorities (as defined in the Local Government Act 1999), who exercise a function under a direction made under section 15 of that Act or who perform a function on behalf of a local education authority under directions made under section 497A of the Education Act 1996 (as amended by the School Standards and Framework Act 1998).

The substituted regulation 5 also includes a body representative of Scheme employers as an admission body.

Regulation 4 makes a consequential amendment to regulation 6 of the principal Regulations, to provide when employees of transferee admission bodies are treated as leaving local government employment for the purposes of the Scheme.

Regulation 5 amends regulation 32 of the principal Regulations, which covers re-employed and rejoining deferred members, to provide that for members who have accrued Scheme membership with certain admission bodies, specified periods of such membership may not be aggregated in calculating lump sum benefits.

Regulation 6 amends regulation 78 of the principal Regulations which deals with special circumstances where revised actuarial valuations and certificates must be obtained. The amendments makes special provision in connection with valuations and certificates in respect of liabilities of admission bodies and of the funds in respect of employees of those bodies.

Regulation 7 introduces a new schedule as Schedule 2A to the principal Regulations which sets out conditions to be included in an admission agreement with a transferee admission body.

Regulation 8 makes a consequential amendment to Schedule 4 to the principal Regulations which sets out Inland Revenue restrictions on benefits under the Scheme.

Regulation 9 provides that the amendments made by these Regulations do not affect admission agreements entered into before the date that these Regulations come into force.

Regulation 10 is a free-standing regulation which provides that where directions under section 497A of the Education Act 1996 are given between 1st April 1999 and the date on which these Regulations come into force which result in a body performing a function on behalf of a local education authority, the employees who transferred from employment with the local education authority to employment with that body are treated, for the purposes of the Scheme, as employees of the local education authority until such time, if applicable, as an admission agreement under regulation 5 of the principal Regulations is made. Section 12 of the Superannuation Act 1972 provides that regulations made under section 7 of that Act may have retrospective effect.

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