

**2009 No. 3150**

**PENSIONS, ENGLAND AND WALES**

**The Local Government Pension Scheme (Miscellaneous)  
Regulations 2009**

|                               |         |                           |
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| <i>Made</i>                   | - - - - | <i>1st December 2009</i>  |
| <i>Laid before Parliament</i> |         | <i>8th December 2009</i>  |
| <i>Coming into force</i>      | - -     | <i>31st December 2009</i> |

These Regulations are made in exercise of the powers conferred by sections 7, 12 and 24 of the Superannuation Act 1972(a).

In accordance with section 7(5) of that Act, the Secretary of State has consulted (a) such associations of local authorities as appeared to the Secretary of State to be concerned; (b) the local authorities with whom consultation appeared to the Secretary of State to be desirable; and (c) such representatives of other persons likely to be affected by the Regulations as appeared to the Secretary of State to be appropriate.

The Secretary of State makes the following Regulations:

**Citation, extent and commencement**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Miscellaneous) Regulations 2009.

(2) These Regulations extend to England and Wales(b).

(3) These Regulations shall come into force on 31st December 2009 but—

(a) regulations 2 to 6; regulations 7 to 10; regulation 11 (in so far as it inserts regulation 12A of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(c)) and regulations 15, 17, 18,21 and 22 shall have effect from 1st April 2008; and

(b) regulation 23 shall have effect from 8th May 2009.

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(a) 1972 c.11.

(b) The Secretary of State's functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (1998 c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(c) S.I. 2007/1166, amended by S.I. 2008/1083 and S.I. 2008/2425.

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

2. The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006(a) are amended in accordance with regulations 3 to 6.

3. In regulation 2 (interpretation)—

(1) in paragraph (1)—

(a) after the definition of “the 2000 Regulations”, insert—

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

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008(c);”;

(b) for paragraphs (a) and (b) in the definition of “employing authority”, substitute—

“(a) a body listed in Part 1 of Schedule 2 (Scheme employers) to the Administration Regulations by whom the person is employed immediately before the termination date;

(b) a body listed in Part 2 of that Schedule by whom the person is employed immediately before the termination date and who has been designated by the body as being eligible for membership of the Scheme under regulation 4(3) of those Regulations; or

(c) in the case of a person who is eligible to be a Scheme member under regulation 8(1)(a) or (b) of the Administration Regulations, the local education authority by whom the person is deemed to be employed under regulation 8(2) of those Regulations.”;

(c) omit the definition of “Pension Regulations”; and

(d) for the definition of “Scheme member” substitute—

““Scheme member” means a member of the Local Government Pension Scheme constituted by the Benefits Regulations and the Administration Regulations;”;

(2) for paragraph (2), substitute—

“(2) Expressions not defined in paragraph (1) but used in these Regulations and in the Benefits Regulations or the Administration Regulations or both have the same meaning as in the Benefits Regulations or the Administration Regulations, as the case may be.”.

4. In regulation 4 (application of the Regulations), for paragraph (1)(b)(ii) substitute—

“(b) (ii) eligible to be a Scheme member (whether or not the person is such a member) or would be so eligible but for the giving of a notification under regulation 14 of the Administration Regulations; and”.

5. In regulation 6 (discretionary compensation)—

(a) for paragraph (1)(b), substitute—

“(b) in respect of that cessation is not awarded—

(i) an additional period of membership under regulation 12 (power of employing authority to increase total membership of active members) (d); or

(ii) an additional pension under regulation 13 (power of employing authority to award additional pension)

of the Benefits Regulations.”; and

(b) for paragraph (4), substitute—

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(a) S.I. 2006/2914.

(b) S.I. 2007/1166, amended by S.I. 2008/1083 and S.I. 2008/2425.

(c) S.I. 2008/239, to which there are amendments not relevant to these Regulations.

(d) Regulation 12 was amended by S.I. 2008/2425.

“(4) Chapter 2 (a week’s pay) of Part 14 (Interpretation) of the 1996 Act shall apply for the purpose of calculating a person’s week’s pay as it applies for the purpose of calculating redundancy payments but without the limit on a week’s pay imposed by section 227 of that Act.”.

6. In regulation 9 (finance), for “the Pension Regulations” substitute “the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998(a), the Benefits Regulations and the Administration Regulations.”.

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

7. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 are amended in accordance with regulations 8 to 16.

8. In regulation 1 (citation, commencement, interpretation and application)(b), after the definition of “the 1997 Scheme” omit the definition of “the Administration Regulations” inserted by regulation 16(a) of the Local Government Pension Scheme (Miscellaneous) Regulations 2008(c).

9. In regulation 4 (meaning of “pensionable pay”)—

(a) in paragraph (2)(d), omit “or”; and

(b) after paragraph (2)(e) add—

“(f) the amount of any supplement paid by the Environment Agency(d) in recognition of the difference in contribution rates between members of the principal civil service pension scheme(e) and the Scheme; or

(g) any payment by way of compensation for the purposes of achieving equal pay in relation to other employees.”.

10. For regulation 10 (final pay: reductions)(f), substitute—

“10.—(1) Subject to paragraph (2), where a member’s pensionable pay in a continuous period of employment is reduced or restricted—

(a) because the member chooses to be employed by the same employer at a lower grade or with less responsibility;

(b) for the purposes of achieving equal pay in relation to other employees of that employer;

(c) as a result of a job evaluation exercise;

(d) because of a change in the member’s contract of employment resulting in the cessation or restriction of, or reduction in, payments or benefits specified in the member’s contract of employment as being pensionable emoluments; or

(e) because the rate at which the member’s rate of pay may be increased is restricted in such a way that it is likely that the rate of the member’s retirement pension will be adversely affected,

the member may choose to have his or her final pay calculated in accordance with paragraph (4), by giving notice—

(i) in writing;

(ii) to the appropriate administering authority; and

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(a) S.I. 1998/1831, to which there are amendments not relevant to these Regulations.

(b) Regulation 1 was amended by S.I. 2008/1083, and S.I. 2008/2425.

(c) S.I. 2008/2425.

(d) For the definition of the Environment Agency, see section 1 of the Environment Act 1995 c. 25.

(e) For the definition of the principal civil service pension scheme, see section 2(10) of the Superannuation Act 1972.

(f) Regulation 10 was substituted by S.I. 2008/1083.

(iii) no later than one month prior to the date on which the member ceases active membership.

(2) Where notice under this regulation has not been given, and a member to whom it applies has died, the appropriate administering authority may give notice on the member's behalf (whether or not the period within which the member could have given notice has expired).

(3) Paragraph (1) does not apply if the member's employment on reduced pensionable pay—

- (a) commences before the beginning of the period of ten years ending with the member's last day as an active member;
- (b) immediately follows a period in which the member occupies a post on a temporary basis at a higher rate of pay; or
- (c) is because the member chooses to reduce his or her hours of work or to be employed at a lower grade, for the purposes of regulation 18 (flexible retirement).

(4) Subject to regulations 8(3) and 8(4), the calculation mentioned in paragraph (1) is made by dividing by three the member's total annual pensionable pay in any three consecutive years of the member's choice, ending with 31st March, within the period of thirteen years ending with the member's last day as an active member.

(5) Paragraph (1)(a) applies to a member who is the subject of—

- (a) a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006(a) ("the TUPE Regulations") apply; or
- (b) a transfer which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations,

as if the transferor employer were the same employer as the transferee authority."

**11.** After regulation 12 (power of employing authority to increase total membership of active members), insert—

**“Duty of employing authority to increase total membership: enhanced protection**

**12A.**—(1) Where an active member intends to rely on paragraph 12 of Schedule 36 to the Finance Act 2004(b) (lifetime allowance “enhanced protection”) and—

- (a) gives notice of his or her intention to rely on that paragraph in accordance with regulation 4 of the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(c); and
- (b) subsequently becomes subject to a reduction in accrued membership calculated in accordance with guidance issued by the Government Actuary, but the enhanced protection is not taken into account in the calculation of the member's benefits under regulation 22 (limit on total amount of benefits),

the employing authority shall grant an additional period of membership equal to the reduction resulting from that calculation.

(2) “Enhanced protection” is to be construed in accordance with Schedule 36 to the Finance Act 2004.

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(a) S.I. 2006/246, to which there are amendments not relevant to these Regulations.  
(b) 2004 c. 12.  
(c) S.I. 2006/131.

### **Conversion of periods credited under Discretionary Compensation Regulations etc. into membership**

**12B.**—(1) Where an employing authority has awarded compensation to a member by way of a credited period in respect of a former employment under earlier Discretionary Compensation Regulations, the authority may resolve, before 31st March 2012, that the member’s total membership be increased by the whole or part of the period credited under those Regulations, but such additional period must not exceed 10 years.

(2) From the date on which the resolution takes effect, any period credited under those Regulations is reduced or extinguished accordingly (but without prejudice to any payments which have fallen due or have been made before that date).

(3) No resolution may be passed, the result of which would be to cause a member any financial detriment.

(4) In paragraph (1), “earlier Discretionary Compensation Regulations” means relevant provisions of—

- (a) Part 5 of the Local Government (Compensation) Regulations 1974(a);
- (b) Part 2 of the Local Government (Compensation for Premature Retirement) Regulations 1982(b);
- (c) Part D of the Local Government Superannuation Regulations 1986(c);
- (e) Part 3 of the Local Government (Discretionary Payments) Regulations 1996(d); or
- (d) Part 4 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000(e).”.

**12.** In regulation 13 (power of employing authority to award additional pension), in paragraph (2) for “regulation 12” substitute “regulations 12 or 12B”.

**13.** After regulation 13 (power of employing authority to award additional pension), insert—

#### **“Conversion of annual compensation into additional pension**

**13A.**—(1) Where an employing authority has awarded a member annual compensation in respect of a former employment under earlier Discretionary Compensation Regulations, the authority may resolve, before 31st March 2012, to award the member additional pension equal in value to that compensation.

(2) From the date on which the resolution takes effect, the annual compensation is reduced or extinguished accordingly (but without prejudice to any payments which have fallen due or have been made before that date).

(3) No resolution may be passed, the result of which would be to cause a member any financial detriment.

(4) In paragraph (1)—

- (a) “annual compensation” includes an annual sum or an annuity, where those terms occur in earlier Discretionary Compensation Regulations; and
- (b) “earlier Discretionary Compensation Regulations” means relevant provisions of—
  - (i) Parts 4 and 5 of the Local Government (Compensation) Regulations 1974;
  - (ii) Part 3 of the Local Government (Compensation for Premature Retirement) Regulations 1982;

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(a) S.I. 1974/463.  
(b) S.I. 1982/1009, which was revoked by S.I. 1996/1680.  
(c) S.I. 1986/24, which except for Parts K and L was revoked by S.I. 1995/1019.  
(d) S.I. 1996/1680, which was revoked by S.I. 2000/1410.  
(e) S.I. 2000/1410, which was revoked with savings by S.I. 2006/2914.

- (iii) Part K of the Local Government Superannuation Regulations 1986(a);
- (iv) Parts 3 and 6 of the Local Government (Discretionary Payments) Regulations 1996; or
- (v) Part 4 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.”.

14. After regulation 14 (election in respect of additional pension), insert—

**“Election to pay additional contributions: survivor benefits**

**14A.**—(1) A member may elect to pay additional contributions in respect of any period of membership occurring prior to 6th April 1988, in order to be credited with additional survivor benefits in respect of a surviving nominated cohabiting partner (within the meaning of regulation 25).

(2) An election to pay additional survivor benefits contributions (“ASBCs”) under paragraph (1), must be made no later than 31st March 2011.

(3) ASBCs may be paid—

- (a) in respect of the whole of any period of membership occurring before 6th April 1988 (whether or not that period constitutes a period of complete years of membership); or
- (b) in respect of complete years of membership only.

(4) The amount of ASBCs to be paid under paragraph (1) shall be calculated in accordance with actuarial guidance published by the Secretary of State.

(5) If a member elects to pay ASBCs under paragraph (1), a surviving nominated cohabiting partner’s entitlement to a pension by virtue of regulations 24, 33 or 36 as the case may be, will be based on the period of membership occurring after 5th April 1988 plus any period of membership occurring before that date in respect of which the member chooses to pay ASBCs.

(6) If a member gives written notice of revocation under regulation 25(5), the member is entitled to an additional pension equivalent to the amount of ASBCs paid under paragraph (1), calculated in accordance with actuarial guidance published by the Secretary of State.”.

15. At the end of regulation 27 (children’s pensions), add—

“(5) 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 such one or more eligible children as the authority may direct.”.

16. For regulation 38 (pension increases under the Pensions (Increase) Acts), substitute—

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

(2) Where the last employing authority is a Water Act Company, the Environment Agency—

- (a) must reimburse the appropriate administering authority the cost of any increase payable under the 1971 Act or the 1974 Act arising on or after 1st April 1990, from the Closed Water Authorities Fund; and
- (b) may discharge all future liabilities by way of a lump sum payment from the Closed Water Authorities Fund.

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(a) Part K was revoked by S.I. 1996/1680.  
 (b) 1971 c. 56.  
 (c) 1974 c. 9.

(3) 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(a).

(4) The amounts due under paragraph (2)(a) not paid by way of a lump sum under paragraph 2(b), must be paid on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine.

(5) Where a lump sum is to be paid under paragraph (2)(b), such sum must be calculated by reference to—

- (a) an actuary appointed by the Environment Agency working in agreement with an actuary appointed by the appropriate administering authority; but
- (b) where the respective actuaries cannot agree the calculation of the lump sum, the amounts due shall be paid in accordance with paragraph (4).

(6) The appropriate administering authority shall credit to the appropriate fund any amounts paid to them under paragraph (2) and any interest paid on those amounts.

(7) “The last employing authority” has the same meaning as in paragraph 1(2) of Schedule 3 to the 1971 Act.

(8) A “Water Act Company” is—

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

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

**17.** The Local Government Pension Scheme (Transitional Provisions) Regulations 2008(c) are amended in accordance with regulations 18 to 20.

**18.** In regulation 3(4) (active members before 1st April 1988), omit “or civil partners”.

**19.** For regulation 7 (deferred members: limit on death grant), substitute—

“7. Where a person to whom regulation 3 applies becomes a deferred member after 31st March 2008 and dies before their pension comes into payment, the death grant to which the person is entitled under any provision of the Scheme or of the 1997 Scheme as continued in effect by regulation 3, shall be a sum equal to their retirement pension multiplied by five.”.

**20.** In Schedule 2, in paragraph 3(2) for “regulation 12”, substitute “regulations 12 or 12B”.

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

**21.** The Local Government Pension Scheme (Administration) Regulations 2008(d) are amended in accordance with regulations 22 to 31.

**22.** In regulation 4 (general eligibility for membership), in paragraph (1)(b) for “regulation 2(3)”, substitute “regulation 2(2)”.

**23.** In regulation 9 (eligibility in certain cases of persons who are not employees), for paragraph (1)(d) and (e) substitute—

- “(d) a member of the London Assembly;
- (e) the Chairman of the London Transport Authority; or

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(a) S.I. 1996/711, amended by S.I. 1997/1613.

(b) 1989 c.15.

(c) S.I. 2008/238, amended by S.I. 2008/1083 and S.I. 2008/2425.

(d) S.I. 2008/239, amended by S.I. 2008/1083, S.I. 2008/2425, S.I. 2008/2989, S.I. 2008/3245 and S.I.2009/1025.

(f) the Chair of the Olympic Park Legacy Company(a).”.

24. In regulation 13 (joining the Scheme), for paragraph (8) substitute—

“(8) In paragraphs (2), (4), (6) and (7), regulation 14(5) (ending of membership), regulation 23(7) (payment of additional regular contributions) and regulation 24A(7) (payment of additional contributions: survivor benefits), a payment period is a period of service to which the employee’s wages or salary payment relate.”.

25. After regulation 24 insert—

**“Payment of additional contributions: survivor benefits (ASBCs)**

24A.—(1) A member who wishes to pay additional contributions under regulation 14A of the Benefits Regulations must make a request to do so, in writing, to the appropriate administering authority.

(2) A copy of the request must be sent to the member’s employing authority (if different) and must state the length of the period (“the ASB payment period”) over which the member wishes to pay the additional survivor benefits contributions (“ASBCs”).

(3) Before agreeing to the request, the member’s administering authority may pass a resolution requiring the member—

- (a) to satisfy it that the member is in reasonably good health; and
- (b) to produce to it a report by a registered medical practitioner of the results of a medical examination (obtained at the member’s own expense),

and if the administering authority is not so satisfied, it may refuse the member’s request.

(4) The ASB payment period must end before the member’s normal retirement age.

(5) The member may only pay ASBCs if the appropriate administering authority notifies the member in writing that it agrees to the request.

(6) The actuary appointed by the Secretary of State shall from time to time determine the amount of ASBCs required for any given amount of increased pension and may determine different amounts of ASBCs—

- (a) for—
  - (i) persons of different ages, or
  - (ii) men or women; or
- (b) by reference to the length of different payment periods.

(7) Where the appropriate administering authority agrees to the member’s request—

- (a) it must notify the member and the member’s employing authority (if different) of the amount of ASBCs payable in accordance with the actuary’s determination, expressed as an amount in pounds sterling; and
- (b) the member must pay those ASBCs from the next payment period (as defined in regulation 13(8)) following the date of the administering authority’s notification under paragraph (5).

(8) The actuary may at any time redetermine any amount determined under paragraph (6) and if the actuary does so, the member must pay the redetermined ASBCs from 1st April next following the redetermination.

(9) If the member pays (or is treated under regulation 24B as having paid) ASBCs for the whole of the ASB payment period, the member must be credited with the additional survivor benefits of the amount that those ASBCs purchase.

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(a) The Olympic Park Legacy Company is a registered company No. 6900359.

## **Discontinuance of ASBCs**

### **24B.—(1) A member—**

- (a) may stop paying ASBCs before the end of the ASB payment period if the member notifies the appropriate administering authority and the employing authority (if different) in writing; and
- (b) must stop doing so if the member ceases to be an active member.

### **(2) If a member stops paying ASBCs before the end of the ASB payment period—**

- (a) on leaving their employment on the grounds of ill-health where the employing authority makes a determination under regulation 20(2) or (3) of the Benefits Regulations; or
- (b) on the member's death,

the member is to be treated as having paid ASBCs up to the end of that period.

(3) If a member stops paying ASBCs and paragraph (2) does not apply, the member must be credited with additional survivor benefits of an amount determined by the actuary appointed by the Secretary of State, having regard to the ASBCs that were paid before the member stopped paying them.”.

**26.** In regulation 38 (special circumstances where revised actuarial valuations and certificates must be obtained)—

- (a) in paragraph (5)(a), after “40(4)” insert “or (5)”; and
- (b) after paragraph (6), add—

“(7) Where the Environment Agency Pension Fund agrees with the Environment Agency as mentioned in regulation 40(5), the fund actuary may determine that no revision of the rates and adjustments certificate relating to the Closed Water Authorities Fund is necessary.”.

**27.** For regulation 40 (employer's payment following resolution to increase membership or award additional pension) substitute—

### **“40.—(1) This regulation applies—**

- (a) where an employing authority makes a resolution under any of the following provisions of the Benefits Regulations:
  - (i) regulation 12 (which confers power to increase the total membership of an active member);
  - (ii) regulation 12B (which confers power to convert compensatory credited periods into increased membership);
  - (iii) regulation 13 (which confers power to award additional pension); or
  - (iv) regulation 13A (which confers power to convert annual compensation into additional pension); and
- (b) where the Environment Agency makes a resolution under regulation 40A (which confers power on the Environment Agency to convert compensatory credited periods awarded to former employees of Water Act Companies into pension in the Closed Water Authorities Fund).

(2) Unless paragraph (4) or (5) applies, the employing authority must before the expiry of the relevant period, pay to the appropriate fund, the appropriate sum for the person to whom the resolution relates.

(3) The appropriate sum for a person is such sum as is shown as appropriate in guidance issued by the Government Actuary, but if no relevant guidance is issued, then the appropriate sum is such sum as may be determined by the actuary acting for the appropriate fund.

(4) This paragraph applies where 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 39 or an amount to meet the cost of the increase in membership or the additional pension.

(5) This paragraph applies where the Environment Agency—

- (a) makes a resolution to transfer liabilities into the Closed Water Authorities Fund under regulations 12B or 13A of the Benefits Regulations, or under regulation 40A; and
- (b) the Environment Agency Pension Fund and the Environment Agency agree before the expiry of the relevant period, that the Environment Agency will pay increased contributions under regulation 39, or an amount to meet the cost of the increase in membership or the additional pension.

(6) Any extra charge on the appropriate fund resulting from the resolution under paragraph (1) must be repaid to the fund by the employing authority concerned but only so far as not paid under paragraphs (2), (4) or (5).

(7) In the case of a resolution under regulation 12 or 12B of the Benefits Regulations or regulation 40A, the additional period in question may only be counted as a period of membership if one of the conditions in paragraph (9) is met.

(8) In the case of a resolution under regulation 13 or 13A of the Benefits Regulations, a person is only entitled to the additional pension awarded if one of those conditions is met.

(9) The conditions are that either—

- (a) the employing authority makes the payment required by paragraph (2) within the relevant period; or
- (b) paragraphs (4) or (5) apply.

(10) The relevant period is—

- (a) the period of one month beginning with the date of the resolution; or
- (b) such longer period as the employing authority and the administering authority agree.

(11) If neither of the conditions in paragraph (9) is met, the resolution ceases to have effect.”.

28. After regulation 40, insert—

**“Water Act Company pensions: Environment Agency payments**

**40A.**—(1) Where, because powers have been exercised under paragraph 2(1) of Schedule 3 to the Water Act 1973 (“the 1973 Act”)(**a**), to allow additional periods to be treated as periods of service reckonable for pension purposes under the Employment Security and Severance Schemes for the Water Industry 1977 and 1981 or under arrangements to similar effect(**b**), the Environment Agency (“the Agency”) (as successor to the National Rivers Authority(**c**)) is required to discharge liabilities under regulation 4 of the Water Reorganisation (Pensions etc.) Regulations 1989(**d**)—

- (a) subject to paragraph (4), the Agency may resolve to discharge such liabilities by way of a lump sum payment to a Water Act Company from the Closed Water Authorities Fund;

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(a) 1973 c. 37; paragraph 2 of Schedule 3 was substituted by Schedule 1 to the Water Act 1983 (c.23). Paragraph 2(1) of Schedule 3 to the 1973 Act was revoked with savings by regulation 3 and Schedule 1 to S.I. 1989/1161.

(b) Made under paragraph 2(1) of Schedule 3 to the Water Act 1973, as substituted by Schedule 1 to the Water Act 1983.

(c) As to which see section 2(1) of the Environment Act 1995 (c. 25) and regulation 2 of the Local Government Pension Scheme (Environment Agency) Regulations 1996 (S.I. 1996/711).

(d) S.I. 1989/1161.

- (b) the amounts due shall be calculated by reference to an actuary appointed by the Agency working in agreement with an actuary appointed by the Water Act Company; and
- (c) the Water Act Company shall credit to the appropriate fund any amounts paid to it (including interest).

(2) Where the Agency resolves not to discharge its liabilities in accordance with paragraph (1), it may alternatively resolve to grant each member a period of membership in the Closed Water Authorities Fund equal to the value of the additional period allowed to be treated as a period of reckonable service for pension purposes.

(3) Where a resolution is passed under paragraph (2), the additional period awarded in the exercise of powers under the 1973 Act is extinguished accordingly (but without prejudice to any payments which have fallen due or have been made before the date the resolution has effect).

(4) Where under paragraph (1)(b) the respective actuaries cannot agree the calculation, the resolution under paragraph (1) shall cease to have effect, but the Agency may at a future date resolve to discharge its liabilities in accordance with paragraph (1) or (2).

(5) No resolution may be passed under paragraph (2), the result of which would be to cause a member any financial detriment.

(6) A Water Act Company is—

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

29. After regulation 50 (commencement of pensions), insert—

**“Guaranteed minimum pensions**

**50A.**—(1) Where a member’s local government employment is contracted-out employment and he or she has a guaranteed minimum, the member is entitled from the date he or she attains pensionable age to payment of a pension at a weekly rate equal to not less than that guaranteed minimum.

(2) But if the member attains pensionable age while in local government employment, the member is not so entitled until he or she leaves that employment, unless paragraph (3) (4), or (5) applies.

(3) If the member—

- (a) continues in local government employment for a further period of five years after attaining pensionable age; and
- (b) does not then leave that employment,

the member is entitled from the end of the period mentioned in sub-paragraph (a) to payment of so much of his or her retirement pension as equals that guaranteed minimum.

(4) If the member attains pensionable age while in local government employment but subsequently changes employment to employment which is not local government employment, the member is entitled.

(5) If the member changes employment to employment which is not local government employment and the member attains pensionable age while in that employment, the member is entitled.

(6) Where paragraph (3), (4) or (5) applies the member may consent to a postponement of the entitlement.

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(a) 1989 c. 15.

(7) For the purposes of this regulation, a person has a guaranteed minimum if they have such a minimum under section 14 (earner's guaranteed minimum) of the Pension Schemes Act 1993(a) in relation to benefits under these Regulations or the Benefits Regulations, and references to entitlement are to the entitlement to payment of a pension in accordance with paragraph (1).

(8) In this regulation—

(a) “contracted-out employment” shall be construed in accordance with section 8 of the Pension Schemes Act 1993(b); and

(b) “pensionable age” shall be construed in accordance with section 181 of that Act.”.

**30.** In regulation 74 (recovery or retention where former member has misconduct obligation), for paragraph (3) substitute—

“(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 ARCs, ASBCs, AVCs or SCAVCs.”.

**31.** In Schedule 1 (interpretation), insert—

(a) after the definition of “ARCs”—

““ASBCs” means additional survivor benefits contributions as referred to in regulation 24A;” and

(b) after the definition of “CIPFA”—

““the Closed Water Authorities Fund” means the Closed Fund vested in the Environment Agency by regulation 2(1) of the Local Government Pension Scheme (Environment Agency) Regulations 1996(c);”.

### **Transfer of funds**

**32.—**(1) Any surplus held by the London Pension Fund Authority after discharging its liabilities in respect of the London Residuary Body stock shall be transferred to the fund maintained by it under regulation 29 of the Local Government Pension Scheme (Administration) Regulations 2008.

(2) In this regulation, “the London Residuary Body stock” means the stock transferred by article 8(1) of the London Residuary Body (Transfer of Property etc) Order 1990(d).

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

*Rosie Winterton*  
Minister of State

1<sup>st</sup> December 2009

Department for Communities and Local Government

### **EXPLANATORY NOTE**

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

These Regulations, which extend to England and Wales, amend four statutory instruments namely:

The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (“the Compensation Regulations”);

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

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(a) 1993 c. 48.

(b) Section 8 was amended by the Pensions Act 2007 c.22, section 15 and Schedule 4.

(c) S.I. 1996/711.

(d) S.I. 1990/419, to which there are amendments not relevant to these Regulations.

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

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

These Regulations also make a new freestanding provision in respect of the London Pension Fund Authority.

Sections 12 and 24 of the Superannuation Act 1972 (“the 1972 Act”) provide that regulations made under sections 7 and 24 may have effect from a date earlier than the making of the regulations.

The amendments made by regulations 2 to 6, regulations 7 to 10; regulation 11 in so far as it relates to new regulation 12A of the Benefits Regulations; regulations 15, 17, 18, 21 and 22 have effect from 1st April 2008. The amendment made by regulation 23 has effect from 8th May 2009. The remainder of the regulations have effect from 31st December 2009.

Regulation 2 introduces the amendments set out in regulations 3 to 6 and relating to the Compensation Regulations.

Regulations 3 and 4 substitute former references to the “Pension Regulations” with references to the relevant corresponding Regulations that constitute the 2008 Scheme.

Regulation 5 amends regulation 6 (discretionary compensation) to include a reference to regulation 13 (power of employing authority to award additional pension) of the Benefits Regulations.

Regulation 6 substitutes former references to the “Pension Regulations” with references to the relevant corresponding Regulations that constitute the 2008 Scheme.

Regulation 7 introduces the amendments set out in regulations 8 to 16 relating to the Benefits Regulations.

Regulation 8 makes a minor technical amendment to regulation 1 (citation, interpretation and application).

Regulation 9 inserts into regulation 4 (“meaning of pensionable pay”) two additional exclusions to the meaning of “pensionable pay”.

Regulation 10 amends regulation 10 (final pay: reductions) by the addition of four further circumstances in which final pay may be reduced or restricted for the purpose of calculating a member’s pension, and extends the application of this regulation to members who transfer employment in circumstances where the provisions of TUPE would not otherwise apply.

Regulation 11 inserts new regulations 12A and 12B. Regulation 12A provides for additional periods of membership to be awarded to members who have had their period of membership reduced in consequence of applying for enhanced protection under the Finance Act 2004. Regulation 12B provides that an award of discretionary compensation by way of a credited period in respect of a former employment may be converted into additional periods of membership, subject to a maximum of ten years.

Regulation 12 makes a consequential amendment to regulation 13 (power of employing authority to award additional pension) to insert a reference to regulation 12B.

Regulation 13 inserts new regulation 13A to enable compensation that has been awarded in respect of a former employment, to be converted into additional pension.

Regulation 14 inserts new regulation 14A which enables members to make additional contributions in respect of periods of membership before 6th April 1988, to provide additional pension for a surviving nominated cohabiting partner.

Regulation 15 amends regulation 27 (children's pensions) to enable the payment of a children's pension to a person such as a surviving parent or legal guardian to be applied for the benefit of an eligible child.

Regulation 16 amends regulation 38 (pension increases under the Pensions (Increase) Acts) to enable the Environment Agency to discharge its liabilities for pension increases relating to former employees of Water Act companies.

Regulation 17 introduces the amendments set out in regulations 18 to 20 relating to the Transitional Regulations.

Regulation 18 amends regulation 3(4) (membership accrued before 1st April 2008: active members) to enable periods of membership accrued before 6th April 1988 to be taken into account for the purposes of a surviving civil partner's entitlement to a pension under regulations 24, 33 or 36 of the Benefits Regulations.

Regulation 19 amends regulation 7 (deferred members: limit on death grant) to clarify the amount of death grant payable.

Regulation 20 amends paragraph 3(2) in Schedule 2, which relates to the so called "85 year rule" about early retirement, to insert a reference to regulation 12B of the Benefits Regulations.

Regulation 21 introduces the amendments set out in regulations 22 to 31 relating to the Administration Regulations.

Regulation 22 makes a minor consequential amendment to regulation 4 (general eligibility for membership).

Regulation 23 adds the Chair of the Olympic Park Legacy Company to the list in regulation 9 of persons eligible to be active members.

Regulation 24 makes a consequential amendment to regulation 13 (joining the scheme) to insert a reference to new regulation 24A introduced by regulation 24 of these Regulations.

Regulation 25 inserts new regulation 24A (payment of additional contributions: survivor benefits (ASBCs)), and new regulation 24B (discontinuance of ASBCs). These new regulations set out the process for making, ending and calculating additional contributions to provide a pension for a surviving nominated cohabiting partner.

Regulation 26 makes consequential amendments to regulation 38 (special circumstances where revised actuarial valuations and certificates must be obtained) relating to the Environment Agency Pension Fund.

Regulation 27 amends regulation 40 (employer's payment following resolution to increase membership or award additional pension) to insert references to new regulations 12B, 13A and 40A and makes provision about payments by the Environment Agency to meet the costs of any increase in membership.

Regulation 28 inserts new regulation 40A (Water Act Company pensions: Environment Agency payments) to enable the Environment Agency to discharge certain liabilities from the Closed Water Authorities Fund, in respect of Water Act Company pensioners.

Regulation 29 inserts new regulation 50A (guaranteed minimum pensions) which specifies the circumstances in which a guaranteed minimum pension is paid.

Regulation 30 amends regulation 74 (recovery or retention where former member has misconduct obligation), to insert a reference to ARCs and ASBCs.

Regulation 31 inserts some new definitions into Schedule 1.

Regulation 32 provides for the transfer to the London Pension Fund Authority of certain sums relating to London County Council and Greater London Council stocks which were transferred to

the London Pension Fund Authority from the London Residuary Body, and in respect of which the Authority has now discharged its liabilities.

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