

2007 No. 0000

PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007

<i>Made</i>	- - - -	<i>xxth xx 2007</i>
<i>Laid before Parliament</i>		<i>xxth xx 2007</i>
<i>Coming into force</i>	- -	<i>1st April 2008</i>

These Regulations are made in exercise of the powers conferred by sections 7 and 12 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 her to be concerned; (b) the local authorities with whom consultation appeared to her to be desirable; and (c) such representatives of other persons likely to be affected by the Regulations as appeared to her to be appropriate.

The Secretary of State makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.

(2) These Regulations apply in relation to England and Wales(b).

(3) These Regulations shall come into force on 1st April 2008.

(4) In these Regulations—

“the 1986 Regulations” means the Local Government Superannuation Regulations 1986(c);

“the 1995 Regulations” means the Local Government Pension Scheme Regulations 1995(d);

“the 1997 Regulations” means the Local Government Pension Scheme Regulations 1997(e);

“the 1997 Scheme” means the occupational pension scheme constituted by the 1997 Regulations;

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2007(a);

(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. 1986/24; amended by other instruments listed in Schedule M5 to the Local Government Pension Scheme Regulations 1995 which revoke all the 1986 Regulations except for Parts K and L. Part K was amended by S.I. 1995/1497.

(d) S.I. 1995/1019.

(e) S.I. 1997/1612.

“part-time employee” means an employee whose contract of employment provides—

- (a) that he is such an employee for the Scheme, or
- (b) who is neither a whole-time employee nor a variable-time employee;

“the Scheme” means the Local Government Pension Scheme 2008 constituted by these Regulations, the Administration Regulations and the Transitional Regulations;

“the Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions) Regulations 2007^(b)

“variable-time employee” means an employee whose contract of employment provides that he is such an employee for the Scheme and—

- (c) whose pay is calculated by reference to his duties (rather than necessarily by reference to the number of hours he has worked), or
- (d) whose duties only have to be performed on an occasional basis; and

“whole-time employee” means an employee whose contract of employment provides—

- (e) that he is such an employee for the Scheme, or
- (f) 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.

Active members

2.—(1) An employee of a body listed in Part 1 of the Local Government Pension Scheme (Administration) Regulations 2007 is an active member of the Scheme unless he has elected otherwise in accordance with regulation XX of those Regulations.

(2) An active member of the 1997 Scheme is an active member of the Scheme for as long as he continues in Local Government Pension Scheme employment.

Contributions payable by active members

3.—(1) Each active 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.

(2) Subject to paragraph (3), the standard contribution rate is 5.5% on the first £12,000 of his pensionable pay and 7.5% on any amount by which his pensionable pay exceeds that sum.

(3) Where a member is a part-time employee, his contributions shall be calculated by multiplying the contributions he would have paid had he been a full-time employee (calculated in accordance with paragraph (2)) by the proportion that the number of his weekly hours bears to the number of weekly hours that he would have worked had he been a full-time employee.

Meaning of “pay”

4.—(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; and
- (b) 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;

(a) S.I.2007/XXXX.
(b) S.I. 2007/XXXX.

- (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 treated as money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision;
- (g) in the case of an employee or former employee of the Commission for 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; or
- (h) a payment made in consequence of a School Achievement Award under the scheme established by the Secretary of State known as the School Achievement Award Scheme.

(3) 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 or an amount in lieu of such provision and immediately before 1st April 1998 his remuneration for the 1995 regulations included such an amount, or
- (b) immediately before 1st April 1998 his remuneration for the 1995 regulations included an amount in lieu of the provision of a motor vehicle as referred to in paragraph 7(2)(b) of Schedule C2 to the 1995 regulations,
then his pay includes such an amount.

(4) But paragraph (2)(f) shall cease to apply if—

- (a) he leaves employment with the employing authority who were employing him on—
 - (i) 31st December 1992; or
 - (ii) where appropriate under the provisions of paragraph 7 of Schedule C2 to the 1995 regulations, on 2nd May 1995;
 - (iii) 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.

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

Benefits

5.—(1) Membership of the Scheme only entitles the member to benefits under these Regulations if—

- (a) his total membership is at least three months; or
- (b) a transfer value is credited to him.

(2) But paragraph (1) does not apply to benefits in respect of a member under regulation 15 (death grants: active members), regulation 19 (survivor benefits: active members), or regulation 23 (children's pensions).

Calculations

6.—(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 the member's total membership/60.

Final pay

7.—(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.

(2) A member's final pay period is the year ending with the day on which he stops being an active member.

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

(4) 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.

(5) 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 under regulation XX of the Administration Regulations, 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.

(6) For the purposes of these regulations, a member's final pay for any period of maternity, paternity or adoption absence during the final pay period in respect of which he pays or is treated as paying contributions is the pay he would have received had he not been absent.

(7) If a member is absent from work for any other reason during his final pay period, he is only to be treated for these regulations as having received the pay he would otherwise have received if he has made the appropriate contributions under regulation XX of the Administration Regulations for the period he is absent.

(8) 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.

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

(10) But a member may elect to have his final pay calculated as the average of his annual pay in any three consecutive years—

(a) in the period of ten years ending with the last day he was an active member; and

(b) ending with a day of which that last day is an anniversary .

(11) And the average referred to in paragraph (10) is increased as if it were a pension to which the Pensions (Increase) Act 1971 applies.

Retirement benefits

8.—(1) If a member who has attained his normal retirement age retires from a local government employment he is entitled to immediate payment of retirement pension without reduction.

(2) The normal retirement date ("NRD") of a member is his 65th birthday.

Retirement after the normal retirement date

9.—(1) A member who, with the consent of his employing authority, remains in service after his 65th birthday is entitled to a pension when he retires from service.

(2) His pension rights accrued at that date, and any rights accruing between that date and the date of his retirement or his 75th birthday, whichever is earlier, shall be enhanced as shown in guidance issued by the Government Actuary.

(3) The pension is payable immediately on retirement.

(4) But they must begin to be paid not later than the day before the member's 75th birthday even if he has not retired.

Flexible retirement

10.—(1) A member who has attained the age of 55 and who, with his employer's consent, reduces the hours he works, or the grade in which he is employed, may elect in writing to the appropriate administering authority to receive all or part of his retirement benefits, and those benefits may be paid to him notwithstanding that he has not retired from that employment.

(2) If the payment of benefits referred to in paragraph (1) takes effect before the member's 65th birthday, the benefits payable are reduced in accordance with guidance issued by the Government Actuary.

(3) But the employer may choose to waive, in whole or in part, any such reduction.

(4) Where the employer so chooses, it shall pay to the fund the cost incurred as a result of such waiver as calculated by the fund's actuary.

(5) Any benefits paid following an election under paragraph (1) are not subject to abatement under regulation XX of the Administration Regulations in respect of any subsequent employment with the person who is his employer at the date of his election.

(6) In the case of a person who is a member on 31st March 2008, and who makes an election before 31st March 2010, paragraph (1) applies as if "aged 50" were substituted for "aged 55".

Early leavers: inefficiency and redundancy

11.—(1) Where—

- (a) a member is redundant; or
- (b) his employing authority has decided that, on the grounds of his limited efficiency, it is in the employing authority's interest that he should leave their employment; and
- (c) in either case, the member has attained the age of 55,

the authority may determine, subject to paragraph (2), to pay him his retirement benefits immediately.

(2) Before making a determination under paragraph (1), an employing authority shall consider whether to reduce the member's retirement benefits having regard to any guidance issued by the Government Actuary.

(3) In the case of a person who is a member on 31st March 2008, and who makes an election before 31st March 2010, paragraph (1) applies as if "aged 50" were substituted for "aged 55".

Early leavers: ill-health

12.—(1) If an employing authority determines that a member who leaves local government employment on the grounds of ill-health has a reduced likelihood of obtaining gainful employment (whether in local government or otherwise) before his NRD, they shall pay him benefits under this regulation.

(2) If the authority determine that there is no reasonable prospect of his obtaining gainful employment before his NRD, his benefits are increased—

- (a) as if the date on which he left local government employment were his NRD; and
- (b) by adding to his reckonable service at that date 50% of the period between that date and his actual NRD.

(3) If the authority determine that, although he cannot obtain gainful employment within a reasonable period of leaving local government employment, but that it is likely that he will be able to obtain gainful employment before his NRD, his benefits are increased—

- (a) as if the date on which he left local government employment were his NRD; and
- (b) by adding to his reckonable service at that date 25% of the period between that date and his actual NRD.

(4) But if the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is less than the period that would have been added had regulation 28 of the 1997 Regulations applied, then his benefits are increased by adding the latter period.

(5) If the authority determine that it is likely that, although he is unable to effectively perform his local government employment duties, he will nevertheless be able to obtain gainful employment within a reasonable period of leaving local government employment, he is treated as if the date on which he left local government employment were his NRD.

(6) Before making a determination under this regulation, an authority shall consider a report from a medical practitioner.

Election for lump sum in lieu of pension

13.—(1) A member in respect of whom a benefit crystallisation event occurs on or after 1st April 2008 may elect in writing to the appropriate administering authority before any benefits become payable to commute his pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered up to a maximum of 25% of the capital value of his pension entitlement.

(2) In paragraph (1), the capital value of a member's pension entitlement is the aggregate of the capital values of his entitlements under the Scheme and the 1997 Scheme.

(3) A member and any of his dependants shall not be entitled, under any provision of these regulations, to receive benefits the capital value of which exceeds his lifetime allowance increased, where applicable, by his primary protection or enhanced protection.

(4) In this regulation, "lifetime allowance", "primary protection" and "enhanced protection" are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004(a).

(5) Any calculation of the increased retirement grant payable as a result of an election under paragraph (1) shall be carried out in accordance with guidance issued by the Government Actuary.

Limit on total amount of benefits

14.—(1) A member and any dependent of his shall not be entitled, under any provision of these Regulations, to receive benefits the capital value of which exceeds his lifetime allowance increased, where applicable, by his primary protection or his enhanced protection.

(2) In this regulation, "lifetime allowance", "primary protection" and "enhanced protection" are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004(b).

(3) Any calculation of the capital value of a member's benefits is to be carried out in accordance with guidance issued by the Government Actuary.

Death grants: active members

15.—(1) If an active member dies, a death grant is payable.

(2) The administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

(3) The death grant is his reckonable pay multiplied by 3.

(4) But in calculating death grant in respect of a part-time or variable-time employee, actual pay in part-time or variable-time employment is to be used.

(a) 2004 c. 12.
(b) 2004 c. 12.

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

Elections for early payment of pension

16.—(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 55 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 payable immediately.

(4) His pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary.

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

(6) Subject to paragraph (7), 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 to receive payment of the retirement benefits immediately, whatever his age, 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 without reduction, payable from his NRD.

(8) In the case of a person who is a member on 31st March 2008, and who makes an election before 31st March 2010, paragraph (1) applies as if "aged 50" were substituted for "aged 55".

Death grants: deferred members

17.—(1) If a deferred member dies, a death grant is payable.

(2) The administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

(3) The death grant is his retirement pension (aggregating his entitlements under the Scheme and the 1997 Scheme) multiplied by 5.

Death grants: pensioner members

18.—(1) If a deferred member dies, a death grant is payable.

(2) The administering authority at their absolute discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or personal representatives, or any person appearing to the authority to have been his relative or dependant at any time.

(3) The death grant is his pension multiplied by 10, but the amount so calculated is reduced by the amounts of any retirement pension paid to him.

Survivor benefits: active members

19.—(1) If a member dies leaving a surviving spouse, cohabiting partner or civil partner, that person is entitled to a pension.

(2) If the deceased's total membership was at least three months, the pension is calculated by multiplying his total membership, augmented by any provision of these Regulations, by his final salary and divided by 160.

(3) If the deceased was an active member with a total membership of less than three months or a deferred member, the multiplier for the pension is the deceased's total membership/160.

(4) But in the case of a surviving cohabiting partner or civil partner, only the deceased's membership after 6th April 1988 is taken into account for calculating the pension.

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

Survivor benefits: pensioners

20.—(1) If a pensioner member dies leaving a surviving spouse, cohabiting partner or civil partner, that person is entitled to a pension.

(2) The pension is calculated by multiplying his total membership by his final salary and divided by 160.

(3) But in the case of a surviving cohabiting partner or civil partner, only the deceased's membership after 6th April 1988 is taken into account for calculating the pension.

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

Survivor's benefits: deferred members

21.—(1) If a deferred member dies leaving a surviving spouse, cohabiting partner or civil partner, that person is entitled to a pension.

(2) The pension is calculated by multiplying his total membership by his final salary and divided by 160.

(3) But in the case of a surviving cohabiting partner or civil partner, only the deceased's membership after 6th April 1988 is taken into account for calculating the pension.

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

Meaning of "eligible child"

22.—(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 or, where the child is born after the member's death, who would have been so dependent if he had been born before or on the date of the member's death,

but does not include a child who was born on or after the first anniversary of the date of the deceased's death.

(2) A person only counts as a child if—

- (a) he is aged under 17,
- (b) he is aged under 23 and 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 handicapped and became so when 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 pensions

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

(2) The pension is payable from the death.

(3) An eligible child ceases to be entitled to a pension when he ceases to be a child within regulation 22.

(4) 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 12 (early leavers: ill-health).

(5) 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 8 (retirement benefits).

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

(7) The appropriate fractions are—

(a) where there is one eligible child, one-quarter,

(b) where there is more than one eligible child, one-half, which is apportioned among them.

Pension increases under the Pensions (Increase) Acts

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

Power of employing authority to increase total membership

25.—(1) An employing authority may resolve to increase the total membership of an active member.

(2) A member's total additional membership (including additional membership in respect of different employments) must not exceed—

(a) 10 years; or

(b) the period by which the member's total membership falls short of the total membership the member will have if he continues as an active member until he is 65,

whichever is the shortest.

Power of employing authority to award additional pension

26.—(1) An employing authority may resolve to award a person additional pension of £250 a year or multiples thereof.

(2) Additional pension may be paid in addition to any increase of total membership resolved to be made under regulation 25.

Election in respect of additional pension

27. A member may elect to pay additional contributions in order to be credited with additional pension of £250 a year or multiples thereof to a maximum of £5000.

Elections to pay AVCs

28. A member who has elected to pay contributions under regulation XX of the Administration Regulations ("AVCs") in addition to any other contributions he may pay under these Regulations is entitled to additional benefits in accordance with regulations 29 and 30.

Death benefits: AVCs

29.—(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: AVCs

30.—(1) The appropriate 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 27 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 at any time prior to the 75th birthday of the member.

(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 31 (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).

Commutation: small pensions

31. A lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act may be paid in accordance with the rules relating to the payment of such benefits under the Finance Act 2004.

Commutation: exceptional ill-health

32.—(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 of his retirement pension.

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

Guidance on future costs

33. Administering and employing authorities shall have regard to guidance to be issued by the Secretary of State, before 31st March 2009, as to the manner in which the costs of the Scheme will be met after 31st March 2010.

Signed by authority of the Secretary of State

Parliamentary Under Secretary of State
Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations...

LAFF