

Local Government Policy Division

Addressees listed below

6th Floor
Goodwood House
44-58 May Street
BELFAST
BT1 4NN

Telephone: (028) 9025 6093
Facsimile: (028) 9025 6080
Email: marie.cochrane@doeni.gov.uk

Your reference:
Our reference: DO1-09-4626
12 April 2010

Dear Consultee

**DRAFT LOCAL GOVERNMENT PENSION SCHEME (AMENDMENT NO. 2)
REGULATIONS (NORTHERN IRELAND) 2010**

1. I enclose for consultation, a copy of the above draft Regulations, which the Department proposes to make under the powers conferred by Articles 9 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972.
2. The closing date for receipt of comments is **12 June 2010**.

**Summary of Proposed Amendments to the Local Government Pension Scheme
(Benefits Membership and Contribution) Regulations (Northern Ireland) 2009**

3. The following changes are proposed:
 - the insertion of a new regulation 12A to deal with the loss of enhanced protection for the lifetime allowance in respect of pension tax rules under the Finance Act 2004;
 - the insertion of a new regulation 14A which enables certain members to make additional contributions to provide a pension for a surviving cohabiting partner;

- the amendment of regulation 27 (children's pensions) to enable the payment of a children's pension to a surviving parent or legal guardian for the benefit of an eligible child; and
- makes minor amendments to the ill-health retirement benefit provisions to correct a cross reference and clarify that it was the policy intention that deferred members with at least one years' membership would be eligible for ill-health retirement benefits.

Summary of Proposed Amendments to the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009

4. The following changes are proposed.

- The insertion of a new regulation 24A (payment of additional contributions: survivor benefits (ASBs)), and new regulation 24B (discontinuance of ASB contributions). These new regulations set out the process for making, ending and calculating additional contributions to provide a pension for a surviving nominated cohabiting partner.
- Amendments to the employers' payments and valuation provisions within Part 4 (see paragraphs 5 to 13).
- Amendment of regulation 42 to remove the right to a return of contributions where a member with concurrent employments ceases to be a member in one of these employments because it conflicts with HMRC legislation.
- The insertion of new regulation 45A (guaranteed minimum pensions) which specifies the circumstances in which a guaranteed minimum pension is paid where a member's local government employment is contracted-out.

Amendments to Part 4 of the Administration Regulations

5. The regulations 31 to 34 of the Administration Regulations deal with employer payments. These currently provide that a valuation will take place every 3 years, and on the basis of this valuation, the Actuary appointed by the Northern Ireland Local

Government Officers' Superannuation Committee ("the Committee") will issue a rates and adjustments certificate setting out the contributions payable by each employing authority. Where an employing authority leaves the scheme, it will cease to pay ongoing contributions, but a final termination contribution is required from that body in respect of its liabilities to the Scheme.

6. The termination payment is an important means of protecting the fund when an employing authority departs. This is because, where an employing authority no longer has an obligation to contribute to the Scheme, the cost of its unfunded pension liabilities will be included in the calculation of the "common rate of employer contributions", which is a sum payable by all employers of active members. The termination payment from an exiting employer is broadly speaking, a final payment to fund the estimated cost of that employing authority's pension liabilities. This termination payment is intended to, as far as is possible, protect the remaining employing authorities from being required to fund liabilities attributable to an exiting employing authority as part of the common rate.

7. The recent implementation of a number of changes to employing authorities, some as a result of the Review of Public Administration (RPA), the fact that there are more RPA related changes to come and the recent South Tyneside court judgement have highlighted the need to review the regulations, particularly with regard to employing authorities leaving the Scheme. The purpose of the proposed changes is to:
 - clarify the situations where termination debts are payable;
 - allow the Committee more flexibility in the arrangements for obtaining contributions from exiting bodies so that a commercially appropriate approach is taken which best protects the interests of the fund; and
 - prevent situations where there is a shortfall in respect of an exiting employer's liabilities when it exits and thereby protect the remaining employing authorities so far as possible from being required to fund liabilities attributable to an exiting employer.

Implications of South Tyneside case

8. A recent Court of Appeal case, *South Tyneside Metropolitan Borough Council v Lord Chancellor*, which related to the funding provisions of the Local Government Pension Scheme (England and Wales), determined that under that scheme's regulations it was not possible to require ongoing employer contributions from entities which do not employ active members. The consequence of such a decision was that the shortfall in the scheme relating to the pension liabilities attributable to those entities which did not employ active members fell on the other employers as part of the common rate.
9. As the Local Government Pension Scheme (Northern Ireland) funding provisions are similar (although not identical) it is considered appropriate to amend the regulations to prevent a similar case occurring.

Implications of Review of Public Administration and Other Re-organisations

10. Recently, a number of existing employing authorities have been the subject of reorganisation. In such cases, provision has to be made as to how the pension liabilities of the original employing authority will be met after the reorganisation. Although this may be achieved by, for example, an agreement between the original and new employers, with the probability of further reorganisations it is considered to be appropriate to amend the regulations to provide a mechanism whereby pension liabilities may be apportioned to bodies other than the original employer. This is to ensure there is clarity and certainty between all parties as to how the original employing authority's pension liabilities will be met.

Termination Debt Provisions

11. In light of the *South Tyneside* judgement, and the current climate where, in particular, proposed reorganisations of employers are likely to mean that existing employing authorities will leave the Scheme, it is considered desirable to update the regulations governing the termination debt payments to ensure there is clarity as to the operation of these regulations. The amendments will also give the Committee some flexibility as to how these regulations operate. For example, these amendments will enable the Committee, if it considers it appropriate in order to protect the Scheme, to agree with

an exiting employer that a termination payment will be deferred, provided that the employer agrees in the interim to pay contributions as if it continued to employ active members.

12. The following amendments are proposed.

- A regulation will be introduced permitting contributions to be required from entities which do not employ active members but which are responsible for pension liabilities under the Scheme. For example, this will apply to a former employing authority that has not paid a termination debt. It will also apply where under the arrangements described below entities which do not employ active members have accepted an obligation to contribute to the Scheme.
- The revised regulations will permit the apportionment of pension liabilities. This will enable one employing authority to agree with the Committee and one or more other employers or guarantors that its pension liabilities will become the responsibility of those other employing authorities or guarantors. This is similar to the apportionment and withdrawal arrangements currently possible in respect of private sector occupational pension schemes.

13. The regulations governing termination payments will be revised as follows.

- To confirm that a termination payment is payable when a body ceases to employ active members. Amending the regulations will give certainty to all parties.
- To enable the Committee to agree with an employing authority that intends to cease employing active members that the termination debt may be deferred, provided that employer continues to pay ongoing contributions as if it employed active members.

- A new provision will be introduced to allow the Committee to determine a nominated calculation date where it reasonably believes that a contributing body will cease employing active members in the near future but the actual cessation date for the purposes of calculating the contributing body's liabilities is not yet known. When the actual cessation date is known the Committee may then revisit the calculation taking into account any contributions already received from the contributing body.
- Make express provision that the Committee can obtain a valuation from the actuary which reports the liabilities of the body which is ceasing to employ active members, including liabilities that have arisen because the exiting body has accepted responsibilities for such liabilities or for which the exiting body has become responsible by virtue of a scheme of reorganisation, or because of the provisions of any legislation.

Retrospection

14. It is proposed that most of the draft Regulations will have retrospective effect, however, no one will be adversely affected by them. Some amendments to Part 4 of the Administration Regulations may have retrospective effect from April 2006.

Equality

15. Under the terms of section 75 of the Northern Ireland Act 1998, the Department carried out screening for equality impact and is satisfied that the draft Regulations will not lead to discriminatory or negative differential impact.
16. This letter, the draft Regulations and the equality screening are available to view at http://www.doeni.gov.uk/index/local_government/local_government_consultations.htm.
17. Copies of the documents in different formats are available and may be requested using the above contact details.

Freedom of Information

18. The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the attached Annex on the confidentiality of consultations which will give you guidance on the legal position about any information given by you in response to this consultation.
19. I should be grateful to receive your email address, which will be used solely for future consultations, please entitle the email *e-consultation* followed by your organisation's name.
20. Responses to this consultation should be sent to William.dobbin@doeni.gov.uk by **12 June 2010**.

Yours sincerely,



Marie Cochrane

Encl.

Addressees

All the Members of the Northern Ireland Legislative Assembly

All Northern Ireland political parties, MPs and Members of the House of Lords

The Clerk and Chief Executive of each District Council

The Chief Executive of each Education and Library Board

The Chief Executive, Northern Ireland Housing Executive

Other Employing Authorities contributing to the Local Government Pension Scheme

The Northern Ireland Local Government Association

The Northern Ireland Local Government Officers' Superannuation Committee

The Northern Ireland Committee of the Irish Congress of Trade Unions

The Northern Ireland Public Service Alliance

Various Representative Bodies and Interest Groups

Equality Commission for Northern Ireland

The Freedom of Information Act 2000 – Confidentiality of Consultations

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk>).

2010 No.

LOCAL GOVERNMENT

**Local Government Pension Scheme (Amendment No. 2) Regulations
(Northern Ireland) 2010**

Made - - - - - ***

Coming into operation - - - - - ***

The Department of the Environment makes these Regulations in exercise of the powers conferred by Articles 9 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972⁽¹⁾ and now vested in it⁽²⁾.

In accordance with Article 9 of that Order the Department has consulted with the Northern Ireland Local Government Association, the Northern Ireland Local Government Officers' Superannuation Committee and such representatives of other persons likely to be affected by the Regulations as appeared to it to be appropriate.

Citation, commencement and retrospectio

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2010 shall come into operation on *[10 Assembly sitting days after making]* except as provided for in paragraphs (2) to (4).

(2) Regulations 11, 14, 20, and 26 shall have effect from 1st April 2006.

(3) Regulation 21 shall have effect from 1st August 2007.

(4) Regulations 2 to 4, 6 to 10, 12, 13, 16, 18, 19, 22 to 24 and 27 to 29 shall have effect from 1st April 2009.

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

2. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009⁽³⁾ shall be amended in accordance with regulations 3 to 10.

3. In regulation 2—

- (a) in paragraph (1) after “regulation 1(2)” insert “and regulation 3(1) of the Administration Regulations”; and
- (b) in paragraph (3) (active members) for “a contract of employment of more than 3 months’ duration” substitute “a contract of employment of a duration of 3 months or more”.

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

(1) S.I. 1972/1073 (N.I. 10); Art. 9 was amended by Art. 34 S.I. 2005/1968 (N.I. 18); Art. 14 was amended by Art. 12 S.I. 1990/1509 (N.I. 13).
(2) S.R. & O (N.I.) 1973 No. 504 Article 7(1); S.I. 1976/424 (N.I. 6).
(3) S.R. 2009 No. 32.

“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⁽⁴⁾ (lifetime allowance “enhanced protection”) and—

- (a) gives notice of his intention to rely on that paragraph in accordance with regulation 4 of the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006⁽⁵⁾; 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 the calculation.

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

5. After regulation 14 (election to pay additional regular contributions (ARCs), 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 (“ASBCs”) under paragraph (1), must be made no later than 31 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 Government Actuary.

(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 members 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 Government Actuary.”.

6. In regulation 20(6) (early leavers: ill-health) for “paragraph (5)” substitute “paragraph (4)”.

7. After regulation 27(4) (children’s pensions) insert—

“(5) The Committee may pay the whole or part of a children’s pension to a person other than the eligible child, to be applied for the benefit of such one or more eligible children as the Committee may direct.”.

8. In regulation 30(1) (choice of early payment of pension), “or otherwise ceases to be a member” is deleted.

9. In regulation 31 (early payment of pension: ill-health)—

- (a) in paragraph (1) after “whatever his age” insert “, provided he has total membership of at least one year”; and
- (b) in paragraph (2) for “that condition is likely to prevent the member” substitute “he has a reduced likelihood of”.

10. In regulation 40 (guidance on future costs) for “31st March 2010” substitute “31st January 2011”.

(4) 2004 c.12.
(5) S.I. 2006/131.

Amendment of the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009

11. The Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009(6) shall be amended in accordance with regulations 12 to 26.

12. In regulation 3(1) (general eligibility for membership) for sub-paragraphs (a) and (b) substitute—

- “(a) this regulation, or any of regulations 4 (employees of community admission bodies) to 6 (admission agreements – further provisions) enables him to be one;
- (b) he is employed under a contract of employment of a duration of 3 months or more; or
- (c) regulation 2(2) (active members) of the Benefits Regulations applies to him,”

13. In regulation 5(5)(b) (employees of transferee admission bodies) after “an indemnity” insert “or”.

14. In regulation 6 (admission agreements – further provisions) after paragraph (6) insert—

“(7) A body designated under the provisions of the Local Government (Superannuation) Act (Northern Ireland) 1950(7) shall be deemed to have an admission agreement under Regulation 4 (employees of community admission bodies) for so long as that body continues to employ active members of the Scheme.”.

15. For regulation 9(6) (joining the scheme) substitute—

“(6) In paragraphs (2), (4), (6) and (7), regulation 10(5), regulation 19(7) (payment of additional regular contributions) and regulation 20A(7) (payment of additional contributions: survivor benefits (ASBCs), a payment period is a period of service to which the employee’s wages or salary payment relate.”.

16. In regulation 11(5) (periods of membership) for “regulation 6(1)(a)” substitute “regulation 6(a)”.

17. After regulation 20 (discontinuance of ARCs) insert—

“Payment of additional contributions: survivor benefits (ASBCs)

20A.—(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 Committee.

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

(3) Before agreeing to the request the Committee may pass a resolution requiring the member—

- (a) to satisfy it that the member is in reasonable 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 Committee is not 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 Committee notifies the member in writing that it agrees to the request.

(6) The Government Actuary 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 Committee agrees to the member’s request—

(6) S.R. 2009 No. 33.

(7) 1950 c. 10.

- (a) it must notify the member and the member's employing authority (if different) of the amount of ASBCs payable in accordance with the Government 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 9(6)) following the date of the Committee's notification under paragraph (5).

(8) The Government Actuary may from time to time redetermine any amount determined under paragraph (6) and if he 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 20B 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.

Discontinuance of ASBCs

20B.—(1) A member—

- (a) may stop paying ASBCs before the end of the ASB payment period if the member notifies the Committee and the employing authority (if different) in writing; and
- (b) must stop doing so if he 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 grounds of ill-health where the Committee 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 Government Actuary, having regard to the ASBCs that were paid before the member stopped paying them.”.

18. In regulation 31 (actuarial valuations and certificates)—

- (a) in paragraph (4) after “rates and adjustments” insert “certificate”;
- (b) for paragraph (5) substitute—

“(5) The common rate of employer's contribution is the amount, if any, which in the actuary's opinion, should be paid to the fund by all contributing bodies whose employees contribute to it and any other contributing body liable to contribute to the fund under Regulation 33(7) (special circumstances where revised actuarial valuations and certificates must be obtained), so as to secure the fund's solvency, expressed as a percentage of the pay of their employees who are active members.”;

- (c) for paragraph (7) substitute—

“(7) An individual adjustment is—

- (a) any percentage or amount by which, in the actuary's opinion contributions at the common rate of employer's contribution should in the case of a particular—
 - (i) contributing body;
 - (ii) guarantor; or
 - (iii) both contributing body and guarantor if agreed under Regulation 33A (apportionment),

be increased or reduced by reason of any circumstances peculiar to that contributing body, guarantor or both of them; and

- (b) any other amount (whether or not expressed as a percentage of the pay of their employees who are active members) which, in the actuary's opinion,
 - (i) a contributing body;
 - (ii) guarantor; or
 - (iii) both contributing body and guarantor if agreed under Regulation 33A,

should pay, by reason of any circumstances peculiar to that contributing body, guarantor, or both of them or by reason of any liabilities in the Scheme for which responsibility rests with the contributing body, guarantor, or both of them.”; and

(d) for paragraph 8(a) and (b) substitute—

- “(a) the number of members who will become entitled to payment of pensions under the provisions of the Scheme;
- (b) the amount of liabilities arising in respect of such members; and
- (c) such other information that the actuary considers relevant.”.

19. For regulation 32(1) (supply copies of valuations, certificates, etc.) substitute—

“**32.**—(1) The Committee must send copies of any valuation, report, certificate or revised certificate obtained under—

- (a) regulation 31 (actuarial valuations and certificates) to—
 - (i) the Department;
 - (ii) each contributing body with employees who contribute to the fund in question; and
 - (iii) any other contributing body, guarantor or inheriting body which is or may become liable to make payments to that fund; or
- (b) regulation 33 (special circumstances where revised actuarial valuations and certificates may be obtained) to—
 - (i) the Department; and
 - (ii) the contributing body, guarantor or inheriting body for which the Committee has commissioned the valuation, report, certificate or revised certificate.”.

20. In regulation 33 (special circumstances where revised actuarial valuations and certificates must be obtained)—

(a) for paragraph (2) substitute—

“(2) Where a contributing body ceases to employ active members or an admission agreement otherwise ceases to have effect, then unless agreed under paragraph (7) the Committee must obtain—

- (a) an actuarial valuation on an appropriate basis determined by the fund’s actuary as agreed with the Committee as at the date on which the contributing body ceases to employ active members or its admission agreement otherwise ceases to have effect, of the liabilities of the fund in respect of that contributing body (“the outgoing contributing body”);
- (b) a revision of any rates and adjustments certificate provided under regulation 31(4), showing the contributions due from or surplus due to the outgoing contributing body;
- (c) such revised contributions due to the fund or surplus due to the outgoing contributing body from the fund will be paid as a lump sum within 1 month of the date of the rates and adjustments certificate or such longer period as the Committee and the outgoing contributing body agree; and
- (d) the liabilities under sub-paragraph (a), include but are not limited to, liabilities in respect of current and former employees of the outgoing contributing body, liabilities which the outgoing contributing body has accepted, and liabilities which the outgoing contributing body has become responsible for by the operation of a scheme of reorganisation which has been created and approved in accordance with legislation, by the operation of law, because of the provisions of any legislation, or by an order of the Court.”;

(b) in paragraph (3)—

- (i) for “outgoing admission body” substitute “outgoing contributing body”;
- (ii) for sub-paragraphs (a) and (b) substitute—

“(a) in the case where that outgoing contributing body is a transferee admission body within regulation 5(2)(a) or 5(2)(b) (employees of transferee admission bodies), the revised contributions due from the employing authority, or as the case may be, guarantor in relation to that outgoing contributing body; and

- (b) in any other case, the revised contributions due from each contributing body which contributes to the fund.”;
- (c) for paragraphs (4) and (5) substitute—
 - “(4) The Committee may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary’s opinion, that contributing body’s—
 - (a) contribution at the common rate of employer’s contribution should be adjusted; or
 - (b) any prior individual adjustment should be increased or decreased,

with a view to providing that the value of the assets of the fund in respect of the liabilities of that contributing body is neither materially more or materially less than the anticipated liabilities of the fund in respect of that contributing body at the date it ceases to employ active members or its admission agreement ceases to have effect (“the calculation date”).

(4A) The Committee may determine a nominated calculation date, where it reasonably believes that a contributing body is to cease to employ active members in the near future but the actual calculation date is not known and such date will be the calculation date in substitution for the actual date on which the contributing body ceases to employ active members or its admission agreement otherwise ceases to have effect.

(4B) Where paragraph (4A) applies, the Committee—

- (a) will assess on or as soon as practicable after the date on which the contributing body actually ceases to employ active members or its admission agreement otherwise ceases to have effect whether it should obtain a further revision of the rates and adjustments certificate under Regulation 33(2)(b) as at that date; and
- (b) may subsequently ask the actuary to revise or withdraw and reissue the rates and adjustments certificate if it considers it is reasonable to do so.

(4C) Where a revised rates and adjustments certificate is obtained under paragraph (4B)(a), it will take account of any contributions already received from the contributing body further to the rates and adjustments certificate obtained under paragraph (4A).

(5) Paragraph (6) applies where—

- (a) the Committee agrees with an employing authority that the employing authority will pay increased contributions under regulation 35(4) (employer’s payment following decision to increase membership or award additional pension);
- (b) it appears to the Committee that the amount of liabilities arising or likely to arise in respect of members in employment with an employing authority differs from the amount specified in, or likely as a result of, the assumptions stated for that employing authority in the actuary’s report by virtue of regulation 31(1); or
- (c) an admission body has previously ceased to employ any active members and no actuarial valuation or rates and adjustments certificate has been obtained by the Committee in accordance with paragraph (7) but where that admission agreement still allows it to employ active members and it once again starts to employ active members.”;
- (d) in paragraph (6) for “employing authority” substitute “contributing body”; and
- (e) after paragraph (6) insert—

“(7) Where a contributing body—

- (a) ceases to employ any active members of the Scheme and it remains in the Scheme with the approval of the Committee; or
- (b) ceases to employ any active members of the Scheme and with the approval of the Committee its admission agreement remains in effect,

the Committee may, with the approval of the Department, defer obtaining an actuarial valuation and a revision of the rates and adjustments certificate and determine the date as at which the actuarial valuation and a revision of the rates and adjustments certificate will be obtained and the dates from which it will be effective and at which it will be reviewed.

(8) During any period of deferral under paragraph (7) the contributing body will continue to pay contributions under regulation 34 in respect of the liabilities of the fund which are attributable to it.

(9) The Committee may, with the approval of the Department, if it thinks necessary to protect the solvency of the fund or prevent liabilities in relation to one contributing body falling onto other contributing bodies, require active members employed by a particular contributing body to cease future accrual with effect from a date specified by the Committee so that the contributing body no longer employs active members.”.

21. After regulation 33, insert—

“Apportionment of liabilities

33A.—(1) Where a contributing body—

- (a) continues to employ active members of the Scheme after the transfer of liabilities; or
- (b) ceases to employ active members of the Scheme after the transfer of liabilities,

the Committee, the contributing body, the inheriting body and guarantor, may agree with effect from a specific date, that some or all of the liabilities of the contributing body shall, transfer to and be attributable to the inheriting body or as the case may be, the guarantor (“the apportionment agreement).

(2) The apportionment agreement under paragraph (1)(a) must specify—

- (a) its effective date;
- (b) on the advice of an actuary, the specific amount of the liabilities attributable to the contributing body which will transfer;
- (c) the manner and time in which those liabilities will be discharged; and
- (d) any other conditions to protect the solvency of the fund that the Committee considers necessary.

(3) An apportionment agreement under paragraph (1)(a) shall not relate to the contributing body’s liabilities in respect of the employment of active members after the date specified in the agreement.

(4) The Committee, after seeking advice from an actuary—

- (a) may vary the rates and adjustments certificate currently in place in respect of the contributing body; and
- (b) where a rates and adjustments certificate is not currently in place in respect of the inheriting body, may produce a rates and adjustments certificate,

to reflect the transfer of liabilities under paragraph (1)(a).

(5) The apportionment agreement under paragraph (1)(b) must specify—

- (a) its effective date;
- (b) that the revised certificate which the Committee must obtain for the outgoing contributing body under regulation 33(2)(b) will show contributions due from the outgoing contributing body of such liabilities as the Committee decides after taking advice from an actuary;
- (c) that the liabilities attributable to the outgoing contributing body which are not discharged by payments made by the outgoing contributing body under sub-paragraph (b) will instead become liabilities of the inheriting body or as the case may be the guarantor which has agreed to accept those liabilities, in such proportions as the Committee agrees with those parties;
- (d) the percentage share of the outgoing contributing body’s liabilities the inheriting body or as the case may be the guarantor agrees to accept;
- (e) the manner and time in which the liabilities will be discharged; and
- (f) any other conditions to protect the solvency of the fund that the Committee considers necessary.

(6) An apportionment agreement under paragraph (1)(b) may be made before or after the outgoing contributing body ceases to employ active members or the date admission agreement ceases to have effect.

(7) The transfer of liabilities in accordance with any apportionment agreement under paragraph (1) shall be reflected in—

- (a) the calculation of the individual adjustment in respect of the contributing body and, as the case may be, any inheriting body under regulation 31(7); and
- (b) any calculation in respect of the contributing body and, as the case may be, any inheriting body under regulation 33.

(8) Where an inheriting body has agreed to accept liabilities under paragraph (1) and it ceases to employ any active members of the Scheme, the revised contributions due from it under regulations 33 and 34 will be calculated by the fund's actuary to enable it to discharge the liabilities which it has accepted.

(9) Where a guarantor has agreed to accept liabilities under paragraph (1) the apportionment agreement must state the manner and time in which the guarantor will discharge those liabilities.

(10) Any agreement entered into prior to the introduction of this Regulation shall be treated as an agreement under this Regulation.

(11) Any question which may arise between the parties to an apportionment agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred to the Department for determination.”.

22. In regulation 34 (employer's contributions)—

- (a) in the heading for “Employer's” substitute “Contributing body's”
- (b) in paragraph (1) in each place where it occurs for “employing authority” substitute “contributing body”;
- (c) in paragraph (2) for “an employing authority” substitute “a contributing body”;
- (d) in paragraph (3) for sub-paragraph (a) substitute—

“(a) where the contributing body employs active members of the Scheme be paid at the end of the intervals determined under regulation 37 (payments by employing authorities to the Committee) and where the contributing body does not employ active members of the Scheme, be paid at intervals of not greater than 12 months as the Committee may determine; and”;

- (e) for paragraph (4) substitute—

“(4) A contributing body's contribution for any year is the sum of—

- (a) the common percentage of the pay on which contributions have during that year been paid to the fund or admission agreement fund under regulation 14 (contributions during child-related leave), 15 (contributions during reserve forces service leave) or 17 (contributions during absences with permission) of these Regulations or regulation 3 (contributions payable by active members) of the Benefits Regulations by employees who are active members (which may be a nil amount); and
- (b) any individual adjustment specified for that contributing body for that year or as the case may be, guarantor in the rates and adjustments certificate (which may be positive or negative and which may be expressed as an adjustment to the common percentage rate or a separate absolute amount).”.

23. For regulation 42(1)(b) and (c) (exclusion of rights to return of contributions) substitute—

“(b) he left his employment because of—

- (i) an offence of a fraudulent character; or
- (ii) grave misconduct,

in connection with his employment;

- (c) regulation 75(2) (rights to payment out of the fund) applies; or

- (d) he continues in a concurrent employment in which he was an active member.”.

24. After regulation 45 (commencement of pensions) insert—

“Guaranteed minimum pensions

45A.—(1) Where a member's local government employment is contracted-out employment and he has a guaranteed minimum, the member is entitled from the date he attains pension 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 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 5 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 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 entitlement.

(7) For the purposes of this regulation, a person has a guaranteed minimum if they have such a minimum under section 10 (earner's guaranteed minimum) of the 1993 Act⁽⁸⁾ in relation to benefits under these Regulations or the Benefits Regulations and references to entitlement are to entitlement to payment of a pension in accordance with paragraph (1).

(8) In this regulation—

- (a) "contract-out employment" shall be construed in accordance with section 4 of the 1993 Act; and
- (b) "pensionable age" shall be construed in accordance with section 176 of that Act."

25. For regulation 70(3) (recovery or retention where a former member has misconduct obligation) 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."

26. In Schedule 1 (interpretation)—

(a) at the appropriate place insert—

"contributing body" means an employing authority, an admission body or a body which is responsible for liabilities under the Scheme, whether pursuant to legislation, pursuant to an agreement with the Committee or pursuant to a scheme of reorganisation created and approved in accordance with legislation or which has had a liability imposed on it by a court order;

"guarantor" means a body or person which is acceptable to the Committee and is not an admission body or an employing authority, which has agreed to accept responsibility for some or all of the liabilities of the Scheme attributable to an outgoing contributing body;

"inheriting body" means—

- (a) an admission body which continues to employ active members or whose admission agreement otherwise remains in effect; or
- (b) an employing authority which employs active members at the date on which the outgoing admission body withdraws from the Scheme;

which has agreed to accept responsibility for some or all of the liabilities of the transferring employer towards the Scheme;

"liabilities" means, where it occurs in regulations 28 (admission agreement funds), 31 (actuarial valuations and certificates), 33 (special circumstances where revised actuarial valuations and certificates must be obtained) and 33A (apportionment of pension liabilities), the liabilities attributable to any employing authority or admission body by virtue of its participation in the Scheme whether it employs active members or not;" and

(b) in the definition of "variable-time employee" at the end of sub-paragraph (a) for "worked); and" substitute "worked); or".

⁽⁸⁾ 1993 c. 49.

Amendment of the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009

27. The Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009(9) shall be amended in accordance with regulations 28 and 29.

28. In regulation 1(2) (citation, commencement, interpretation and retrospection) for “come into operation as follows” substitute “have effect from”.

29. In regulation 7 (deferred members: limit on death grant) for “not exceed” substitute “be a sum equal to”.

Sealed with the Official Seal of the Department of the Environment on ***



W Shannon

A senior officer of the Department of the Environment

(9) S.R. 2009 No. 34.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain amendments relating to the new Local Government Pension Scheme which came into existence on 1st April 2009 and replaced the 2002 Scheme.

Article 14 of the Superannuation (Northern Ireland) Order 1972 confers express powers to make regulations retrospective in effect. These Regulations are retrospective, however no one will be adversely affected by them.

Regulation 2 introduces the amendments set out in regulations 3 to 10 relating to the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations (Northern Ireland) 2009.

Regulation 3 adds a cross reference to the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 and clarifies the minimum length of employment required for a person to become eligible for scheme membership.

Regulation 4 inserts a new regulation 12A which 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 5 inserts a new regulation 14A which enables certain members to make additional contributions to provide a pension for a surviving cohabiting or civil partner.

Regulations 6, 8, 10, 13, 16 and 28 makes a minor technical amendments.

Regulation 7 amends regulation 27 (children's pensions) to enable the payment of a children's pension to a surviving parent or legal guardian to be applied for the benefit of the eligible child or children.

Regulation 9 makes minor amendments to clarify the circumstances under which deferred members may become eligible for the early payment of an ill-health pension.

Regulation 11 introduces the amendments set out in regulations 12 to 26 relating to the Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009.

Regulation 12 clarifies eligibility for scheme membership.

Regulation 14 inserts a new paragraph to regulation 6 to clarify the position of admission bodies.

Regulation 15 makes a consequential amendment relevant to regulation 17 of these Regulations.

Regulation 17 inserts new regulation 20A (payment of additional contributions: survivor benefits ASBs) and new regulation 20B (discontinuance of ASB contributions). These new regulations set out the process for making, ending and calculating additional contributions to provide a pension for a surviving partner.

Regulations 18 to 22 make amendments to regulations 31 to 34 to clarify the arrangements for employer's pension liabilities. Regulation 21 introduces a new regulation which allows apportionment of pension liabilities between the relevant parties, by agreement, when an employer leaves the Scheme, merges with another employer while remaining within the Scheme or any other situation which raises questions concerning the ownership of pension liabilities.

Regulation 23 makes an amendment to introduce a no refund option for a member who holds a concurrent employment while being an active member.

Regulation 24 inserts new regulation 45A (guaranteed minimum pensions) which specifies circumstances in which a guaranteed minimum pension is paid.

Regulation 25 makes minor consequential amendments.

Regulation 26 inserts new definitions into Schedule 1.

Regulation 27 introduces the amendments set out in regulation 28 and 29 relating to the Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009.

Regulation 29 clarifies the amount of death grant payable to deferred members.

A full impact assessment has not been produced for these Regulations because no impact on the private or voluntary sectors is foreseen.