

**2007 No. 1166**

**PENSIONS, ENGLAND AND WALES**

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

*Made* - - - - - *3rd April 2007*

*Laid before Parliament* *4th April 2007*

*Coming into force* - - - *1st April 2008*

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

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

“appropriate administering authority” means the body maintaining the appropriate fund;

“appropriate fund”, in relation to a member, means the fund into which he pays contributions and from which he receives benefits;

“eligible child” has the meaning given by regulation 26;

“employing authority” means a body employing an employee who is eligible to be a member;

“financial year” means the year ending 31st March;

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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. 1997/1612.

“nominated cohabiting partner” has the meaning given by regulation 25;

“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;

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

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

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

- (a) that he is such an employee for the Scheme, or
- (b) that his contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis.

### Active members

2.—(1) An employee of a body listed in—

- (a) Chapter 1 of Part 2 of;
- (b) Chapter 1 of Part 5 of; or
- (c) Schedule 2 to

the 1997 Regulations is an active member of the Scheme.

(2) But a person is not an active member unless he is employed under a contract of employment of more than three months’ duration.

(3) 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) Subject to paragraph (9), each active member shall make contributions to the Scheme at the contribution rate from his pensionable pay in each employment in which he is an active member.

(2) Subject to paragraph (4), the contribution rate to be applied to his pensionable pay in any financial year is calculated on the basis of his pensionable pay in the previous financial year in accordance with the following table.

<i>Band</i>	<i>Range</i>	<i>Contribution rate</i>
1	£0-£12,000	5.5%
2	£12,001-£14,000	5.8%
3	£14,001-£18,000	5.9%
4	£18,001-£30,000	6.5%
5	£30,001-£40,000	6.8%
6	£40,001-£75,000	7.2%
7	More than £75,000	7.5%

(3) On 1st April 2009, and each subsequent anniversary thereof, the figures in the second column of the table in paragraph (2) (“Range”) are increased as if they were pensions to which the Pensions (Increase) Act 1971(a) applied.

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(a) 1971 c. 56.

(4) Where a member is employed in any employment for part only of any financial year, the range (and the contribution rate) applicable to him are those that would have applied had he been so employed for the whole of that financial year.

(5) 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.

(6) But a term-time worker is not a part-time employee for the purposes of this regulation.

(7) In this regulation, “term-time worker” means a person whose contract of employment provides for a regular pattern of periods of work and periods of no work so as to result in a recognisable cycle of work consisting of one year (but is not limited to persons working in educational establishments).

(8) The amount of an employee’s pensionable pay for the purposes of this regulation is calculated in accordance with regulation 4.

(9) In any event, an active member does not make any contributions after the day before his 75th birthday.

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

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

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

#### **Meaning of “pensionable pay”**

4.—(1) An employee’s pensionable 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 pensionable pay does not include—

- (a) payments for non-contractual overtime;
- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate his contract of employment; or
- (e) any payment as an inducement not to terminate his employment before the payment is made.

(3) No sum may be taken into account in calculating pensionable 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 23 (death grants: active members), regulation 24 (survivor benefits: active members), or regulation 28 (children’s pensions: active members).

### **Periods of membership**

6.—(1) These are the periods which count as periods of membership—

- (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 3; and
- (b) any period added under regulations 12 or 20.

(2) Where a member who has left local government employment rejoins such employment before his normal retirement age, the periods mentioned in paragraph (1) are (unless he chooses otherwise) aggregated with any such subsequent periods.

### **Calculation of length of periods of membership**

7.—(1) In calculating the length of a period of membership, fractions of years of membership count.

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

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

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

(5) The amount of any benefit payable to a member as a result of his membership is his total period of membership multiplied by his final pay and divided by 60.

### **Final pay: general**

8.—(1) Subject to regulations 9 to 11, 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 pensionable pay during the final pay period because of his absence from work owing to illness or injury is disregarded.

### **Final pay: reserve forces, maternity leave etc.**

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

- (a) in a case where he has continued to pay contributions in respect of it, 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.

(2) 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.

(3) 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 pensionable pay he would otherwise have received if he has continued to pay contributions in respect of it for the period he is absent.

(4) If a member is only entitled to count part of the year specified in regulation 8(2) as a period of active membership in relation to the employment which he ceases to hold, his final pay is his pensionable pay during that part multiplied by 365 and divided by the number of days in that part.

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

### **Final pay: reductions**

**10.**—(1) —A member who is in whole-time employment and whose pensionable pay has been reduced because he has chosen to continue in local government employment at a lower grade or with less responsibility than his previous post may, subject to paragraph (3), choose to have his final pay calculated as the average of his annual pensionable pay in any three consecutive years ending 31st March within the period of ten years ending with the last day he was an active member.

(2) And the average referred to in paragraph (1) is increased as if it were a pension to which the Pensions (Increase) Act 1971 applies.

(3) A member who has had a request under regulation 18 granted may not choose under paragraph (1) in respect of the same event.

### **Final pay: fees**

**11.**—(1) Subject to paragraph (2), where a variable-time employee's pensionable pay for the purposes of regulation 8(1) consists of or includes fees, his final pay is calculated as the sum of—

- (a) the average of all such fees for the three consecutive years ending with the final pay period; and
- (b) any sums falling within regulation 4(1), other than fees, for the final pay period.

(2) But a member's employer may consent to him having his final pay calculated as the average of all such fees for any three consecutive years ending 31st March within the period of ten years ending with the last day he was an active member.

### **Power of employing authority to increase total membership of active members**

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

(2) A member's total additional membership under this regulation (including additional membership in respect of different employments) must not exceed 10 years.

### **Power of employing authority to award additional pension**

**13.**—(1) An employing authority may resolve to award a member additional pension of not more than £5000 a year payable from the same date as his pension payable under any other provisions of these Regulations.

(2) Additional pension may be paid in addition to any increase of total membership resolved to be made under regulation 12.

### **Election in respect of additional pension**

**14.**—(1) A member may choose to pay additional contributions in order to be credited with additional pension, in respect of him alone or in respect of him and any survivor, of £250 a year or multiples thereof to a maximum of £5000.

(2) If he chooses to take the additional pension referred to in paragraph (1) earlier or later than his normal retirement age, it is reduced or, as the case may be, increased.

(3) The amount of the additional contributions to be paid under paragraph (1), and the reduction or increase referred to in paragraph (2), is calculated in accordance with guidance issued by the Government Actuary.

### **Elections to pay AVCs**

**15.**—(1) A member who has entered into an arrangement to pay additional voluntary contributions (“AVCs”) or to contribute to a shared cost AVC in addition to any other contributions he may pay under these Regulations is entitled to additional benefits in accordance with one of the methods permissible under the Finance Act 2004.

(2) Where a member chooses to take some or all of the benefits referred to in paragraph (1) in the form of a lump sum, that sum forms part of the total amount referred to in regulation 21(2).

(3) In this regulation, “a shared cost AVC” means an arrangement established and maintained by an employing authority for the purpose of enabling contributions to be paid by and for active members.

### **Retirement benefits**

**16.**—(1) A member who has attained the Scheme’s normal retirement age and ceases to be employed in local government pension scheme employment is entitled to immediate payment of retirement pension without reduction.

(2) The normal retirement age of the Scheme is 65.

### **Retirement after the normal retirement date**

**17.**—(1) A member who remains in employment 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 the day before his 75th birthday, whichever is earlier, shall be enhanced in accordance with guidance issued by the Government Actuary.

(3) The pension is payable immediately on retirement.

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

### **Flexible retirement**

**18.**—(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 make a request in writing to the appropriate administering authority to receive all or part of his benefits under these Regulations, and the authority may pay those benefits 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 agree to waive, in whole or in part, any such reduction as is referred to in paragraph (2).

(4) In the case of a person who is a member on 31st March 2008, and who makes a request before 31st March 2010, paragraph (1) applies as if “the age of 50” were substituted for “the age of 55”.

(5) Where a member is receiving benefits under this regulation, the period of membership used to calculate those benefits is not taken into account in any subsequent calculation of such benefits to which he is entitled under these Regulations.

### **Early leavers: inefficiency and redundancy**

**19.**—(1) Where—

(a) a member is dismissed by reason of redundancy; or

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

he is entitled to immediate payment of retirement pension without reduction.

(2) In the case of a person who is a member on 31st March 2008, and to whom paragraph (1) applies before 31st March 2010, that paragraph applies as if “the age of 50” were substituted for “the age of 55”.

### **Early leavers: ill-health**

**20.**—(1) If an employing authority determines, in the case of a member who has at least two year’s total membership—

- (a) to terminate his local government employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and
- (b) that he has a reduced likelihood of obtaining gainful employment (whether in local government or otherwise) before his normal retirement age,

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 normal retirement age, his benefits are increased—

- (a) as if the date on which he left local government employment were his normal retirement age; and
- (b) by adding to his total membership at that date the whole of the period between that date and his actual normal retirement age.

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

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

(4) In the case of a member in part-time service, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is calculated in accordance with regulation 7(3) as if he had remained in such part-time service until his actual normal retirement age.

(5) But if, in the case of a person who is a member before 1st April 2008, and—

- (a) has attained the age of 50 before that date, or
- (b) became a member of the 1997 Scheme having—
  - (i) attained the age of 45 before that date; and
  - (ii) not received a transfer for any other scheme,

the period to be added under paragraph (3)(b) 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.

(6) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body and, if so, as to the likelihood of the member being able to obtain other gainful employment within a reasonable time of leaving local government employment or, as the case may be, before reaching his normal retirement age.

- (7) In this regulation, “qualified in occupational health medicine” means—
- (a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, “competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003(a); or
  - (b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.
- (8) In this regulation, “gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

#### **Election for lump sum in lieu of pension**

**21.**—(1) A member in respect of whom a benefit crystallisation event within the meaning of the Finance Act 2004 occurs on or after 1st April 2008 may choose 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 .

(2) But the total amount of the member’s commuted sum, including any sum received as benefits provided in the form of a lump sum in accordance with regulation 15 shall not exceed 25% of the capital value of his accrued rights.

(3) For the purposes of this regulation, a member’s accrued rights include rights accrued in respect of any payments made by or for him in accordance with the 1997 Regulations.

(4) The capital value of a member’s accrued rights shall be calculated in accordance with guidance issued by the Government Actuary.

(5) And for the purposes of paragraph (1), a member’s pension is his pension after any reduction pursuant to regulation 18 or 30.

#### **Limit on total amount of benefits**

**22.**—(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 except in accordance with guidance issued by the Government Actuary.

(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 for the purposes of this or any other of these Regulations is to be carried out in accordance with guidance issued by the Government Actuary.

(4) The appropriate administering authority is responsible for deducting from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.

#### **Death grants: active members**

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

(2) The appropriate 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 final pay multiplied by 3.

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a) S.I. 2003/1250.  
b) 2004 c. 12.

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

(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.

#### **Survivor benefits: active members**

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

(2) The pension is calculated by multiplying his total membership, augmented as if Regulation 20(2) applied, by his final pay and divided by 160.

(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

#### **Meaning of “nominated cohabiting partner”**

**25.**—(1) “Nominated cohabiting partner” means a person nominated by a member in accordance with the terms of this regulation.

(2) A member (A) may nominate another person (B) to receive benefits under the Scheme by giving to his administering authority a declaration signed by both A and B that the condition in paragraph (3) has been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(3) The condition is that—

- (a) A is able to marry, or form a civil partnership with, B,
- (b) A and B are living together as if they were husband and wife or as if they were civil partners,
- (c) neither A nor B is living with a third person as if they were husband and wife or as if they were civil partners, and
- (d) either B is financially dependent on A or A and B are financially interdependent.

(4) But a nomination has no effect if the condition in paragraph (3) has not been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(5) A nomination ceases to have effect if—

- (a) either A or B gives written notice of revocation to the Secretary of State,
- (b) A makes a subsequent nomination under this regulation,
- (c) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or as if they were civil partners, or
- (d) B dies.

(6) B is A's surviving nominated partner if—

- (a) the nomination has effect at the date of A's death, and
- (b) B satisfies the Secretary of State that the condition in paragraph (2) was satisfied for a continuous period of at least 2 years immediately prior to A's death.

(7) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.

### **Meaning of “eligible child”**

**26.**—(1) The child of a deceased member is an eligible child if he falls within the meaning of “dependant” for the purposes of Part 2 of Schedule 28 to the Finance Act 2004 as modified by regulation 34 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006<sup>(a)</sup>

(2) But a child who was born on or after the first anniversary of the date of the deceased’s death is not an eligible child.

(3) If an appropriate administering authority wish—

- (a) they may treat education or training as continuous despite a break.; and
- (b) they may suspend payment of any entitlement to benefits under regulations 28, 34 or 37 during such a break.

### **Children’s pensions**

**27.**—(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 26.

(4) The amount of that pension is calculated in accordance with regulation 28, 34 or 37, as the case may be.

### **Children’s pensions: active members**

**28.**—(1) The amount of the pension of an eligible child of a deceased active member is calculated as follows.

(2) If a survivor benefit is payable under regulation 24—

- (a) where there is only one such child, the pension is calculated by multiplying the member’s total membership, augmented as if Regulation 20(2) applied, by his final pay, and dividing by 320; and
- (b) where there is more than one such child—
  - (i) the pension is calculated by multiplying the member’s total membership, augmented as if Regulation 20(2) applied, by his final pay, and dividing by 160; and
  - (ii) those children are jointly entitled in equal shares.

(3) If no survivor benefit is payable under regulation 24—

- (a) where there is only one such child, the pension is calculated by multiplying the member’s total membership, augmented as if Regulation 20(2) applied, by his final pay, and dividing by 240; and
- (b) where there is more than one such child—
  - (i) the pension is calculated by multiplying the member’s total membership, augmented as if Regulation 20(2) applied, by his final pay, and dividing by 120; and
  - (ii) those children are jointly entitled in equal shares.

### **Calculation on leaving early**

**29.**—(1) This regulation applies in the case of a member who leaves local government employment and is not entitled to immediate payment of retirement pension under any of regulations 16 to 20.

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(a) S.I. 2006/572.

(2) His entitlement to benefits that would, apart from any other provision of these Regulations, become payable on his attaining normal retirement age, is calculated in accordance with regulation 7 as at the date of his leaving such employment.

(3) But that entitlement is extinguished if an aggregation takes place under regulation 6(2) or if a transfer out takes place under regulations 116 to 118 of the 1997 Regulations.

#### **Choice of early payment of pension**

**30.**—(1) If a member leaves a local government employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he has attained the age of 55 he may choose to receive payment of them immediately.

(2) A choice 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 so chooses, 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) 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 "the age of 50" were substituted for "the age of 55".

#### **Early payment of pension: ill-health**

**31.**—(1) Subject to paragraph (2), 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 request to receive payment of the retirement benefits immediately, whatever his age, and

(b) paragraphs (2) and (4) of regulation 20 apply.

(2) If a member does not request immediate payment under this regulation, he is entitled to receive a pension without reduction, payable from his normal retirement age.

#### **Death grants: deferred members**

**32.**—(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 multiplied by 5.

(4) 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.

#### **Survivor benefits: deferred members**

**33.**—(1) If a deferred member dies leaving a surviving spouse, nominated 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) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

### **Children's pensions: deferred members**

**34.**—(1) The amount of the pension of an eligible child of a deceased deferred member is calculated as follows.

- (2) If a survivor benefit is payable under regulation 33—
  - (a) where there is only one such child, the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 320; and
  - (b) where there is more than one such child—
    - (i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 160; and
    - (ii) those children are jointly entitled in equal shares.
- (3) If no survivor benefit is payable under regulation 33—
  - (a) where there is only one such child, the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 240; and
  - (b) where there is more than one such child—
    - (i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by his final pay, and dividing by 120; and
    - (ii) those children are jointly entitled in equal shares.

### **Death grants: pensioner members**

**35.**—(1) If a pensioner member dies before his 75th birthday, 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: pensioners**

**36.**—(1) If a pensioner member dies leaving a surviving spouse, nominated 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) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

### **Children's pensions: pensioner members**

**37.**—(1) The amount of the pension of an eligible child of a deceased pensioner member is calculated as follows.

- (2) If a survivor benefit is payable under regulation 36—
  - (a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating his benefits under these Regulations by his final pay, and dividing by 320; and
  - (b) where there is more than one such child—
    - (i) the pension is calculated by multiplying the member's total membership used in calculating his benefits under these Regulations by his final pay, and dividing by 160; and

- (ii) those children are jointly entitled in equal shares.
- (3) If no survivor benefit is payable under regulation 36—
  - (a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating his benefits under these Regulations by his final pay, and dividing by 240; and
  - (b) where there is more than one such child—
    - (i) the pension is calculated by multiplying the member's total membership used in calculating his benefits under these Regulations by his final pay, and dividing by 120; and
    - (ii) those children are jointly entitled in equal shares.

### **Pension increases under the Pensions (Increase) Acts**

**38.** 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.

### **Commutation: small pensions**

**39.** 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.

### **Guidance on future costs**

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

Signed by authority of the Secretary of State

3rd April 2007

*Angela Smith*  
Parliamentary Under Secretary of State  
Department for Communities and Local Government

### **EXPLANATORY NOTE**

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

These Regulations set out provisions relating to benefits, membership and contributions in the new Local Government Pension Scheme (“the Scheme”) which is to come into existence on 1st April 2008 and replace the Local Government Pension Scheme 1997 (“the 1997 Scheme”).

Regulation 1 contains definitions.

Regulation 2 sets out who is a member of the Scheme: broadly speaking, this is anyone who is, or could have been had it continued in existence, a member of the 1997 Scheme.

Regulation 3 contains a table of rates of contributions on pensionable pay, and makes provisions for part-time and term-time workers. “Pensionable pay” is defined in regulation 4.

Regulation 5 provides for a minimum membership of three months for entitlement to benefits in most cases, and regulations 6 and 7 explain how length of membership is calculated.

Regulations 8 to 11 provide for the calculation of final pay.

Regulations 12 and 13 respectively provide power for employing authorities to increase membership or award additional pension.

Regulations 14 and 15 respectively provide for voluntary additional payments to increase pension, and for AVCs.

Regulation 16 provides for the normal retirement age (65), regulation 17 for retirement after this age, and regulation 18 for flexible retirement.

Regulation 19 makes provision relating to redundancy and inefficiency, and regulation 20 makes provision relating to ill-health retirement.

Regulation 21 provides for commutation of pension, and regulation 22 places a limit on the total amount of benefits.

Regulations 23, 24 and 28 (active members), 32, 33 and 34 (deferred members) and 35,36 and 37 (pensioner members) provide for death grants, survivor benefits and children's pension for the respective classes of member. Regulation 25 contains a definition of "nominated cohabiting partner" and regulation 26 of "eligible child" for these purposes. Regulation 27 makes further provision about children's pensions.

Regulations 29 to 31 make provision relating to early payment of pension.

Regulation 38 provides for payment of increases under the Pensions (Increase Act 1971), regulation 39 for commutation of small pensions, and regulation 40 requires administering and employing authorities to have regard to guidance issued by the Secretary of State about future costs of the Scheme.

A regulatory impact assessment has been produced for these Regulations and is available via the Local Government Pension Scheme website at [www.communities.gov.uk/lgps](http://www.communities.gov.uk/lgps).