

2020 No.

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

The Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020

<i>Made</i> - - - -	[tbc] 2020
<i>Laid before Parliament</i>	[tbc] 2020
<i>Coming into force</i> - -	[tbc] 2020

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 1, 2(1) and 3 of, and paragraph 3(a) of Schedule 2 and paragraph 2(c) of Schedule 3 to, the Public Service Pensions Act 2013(a).

In accordance with section 21 of that Act, the Secretary of State has consulted such persons, and the representatives of such persons, as appeared to the Secretary of State to be likely to be affected by these Regulations.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

PART 1

Introductory

Citation, extent, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020.

(2) These Regulations extend to England and Wales.

(3) These Regulations come into force on [date] December 2020.

(4) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996(b);

(a) 2013 c.25. See section 28 of the Act which provides for regulations made under section 7 of the Superannuation Act 1972 (c. 11) that make provision for the payment of pensions and other benefits to or in respect of a person in relation to the person’s service on or after 1st April 2014 to have effect as a scheme made under section 1 of the Act.

(b) 1996 c. 18.

“the 2013 Regulations” means the Local Government Pension Scheme Regulations 2013(a);
“the 2020 Regulations” means the Restriction of Public Sector Exit Payments Regulations 2020(b);

“employing authority”, in relation to a person, means—

- (a) a body listed in the Schedule by whom the person is employed immediately before the termination date; or
- (b) a body listed in Part 2 of the Schedule by whom the person is employed immediately before the termination date and who has been designated by the body as being eligible for membership of the Scheme under regulation 3(1)(b) of the 2013 Regulations;

“relevant Scheme member” means a member of the Local Government Pension Scheme constituted by the 2013 Regulations who is employed by an employing authority;

“termination date” in relation to a person means the final day of that person’s employment.

PART 2

Exit payments

Reduction of charges resulting from immediate payment of retirement benefits

2. Any extra charge payable by the employing authority under regulation 68(2) of the 2013 Regulations(c) (employer’s further payments) resulting from retirements benefits becoming immediately payable to a relevant Scheme member under regulation 30(5) (early retirement), (6) (flexible retirement) or (7) (early leavers on grounds of redundancy or business efficiency) of the 2013 Regulations is to be reduced by the total of any payments made to a relevant Scheme member in respect of that employment under Part 11 of the 1996 Act.

Payments by relevant Scheme members

3. The relevant Scheme member may elect to pay to the administering authority an amount in respect of all or part of the amount by which the extra charge is reduced under regulation 3 of the 2020 Regulations (restrictions on exit payments) where—

- (a) the election by the Scheme member to make the payment is made by notice in writing to the administering authority given not later than the day before leaving their employment (or such longer period as they allow); and
- (b) the member makes the payment before the expiry of the period of one month beginning with the date of the election.

Effect of restrictions on public sector exit payments

4.—(1) This regulation applies where the effect of the 2020 Regulations is to prevent all or part of a payment being required to be made under regulation 68(2) of the 2013 Regulations in respect of any extra charge on the fund resulting from retirement benefits which, in the absence of this regulation, would become immediately payable, without reduction, under regulation 10.

(2) The relevant Scheme member may elect to pay to the appropriate fund an amount in respect of all or part of that extra charge where—

- (a) the election to make the payment is made by notice in writing to the administering authority given not later than the expiry of the period of three months beginning on the day after leaving that employment (or such longer period as they allow); and

(a) S.I. 2013/2356.

(b) S.I. 2020/TBC.

(c) Regulation 68 was amended by S.I. 2018/493.

(b) the member makes the payment before the expiry of the period of one month beginning with the date of the election.

(3) A relevant Scheme member who makes a payment to the appropriate fund under paragraph (2) is entitled to enhancement of their pension by the amount calculated in accordance with actuarial guidance issued by the Secretary of State.

(4) Regulation 30(8) of the 2013 Regulations (retirement benefits) does not authorise the waiver of any reduction except to the extent that an additional payment may be required under regulation 68(2) of those Regulations, or a payment has been made to the appropriate fund by the relevant Scheme member under paragraph (2), in respect of any extra charge on the fund resulting from not making the reduction.

(5) The restriction specified in paragraph (4) applies to employing authorities which have power under section 1 of the Localism Act 2011^(a) (local authority's general power of competence) or section 5A(1) of the Fire and Rescue Services Act 2004^(b) (powers of fire and rescue authorities) in the exercise of those powers.

Amendment of the 2013 Regulations

5.—(1) The 2013 Regulations are amended as set out in the following paragraphs.

(2) In regulation 17(7) (additional voluntary contributions) after “makes an election to draw the realisable value in the AVC arrangement at the same time” insert “or, if a member elects to take early payment of benefits under regulation 10 of the Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020 (retirement benefits)”.

(3) In regulation 30 (retirement benefits)—

(a) in paragraph (7) at the beginning insert “subject to regulation 10 of the Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020 (retirement benefits)”;

(b) after paragraph (12A) insert—

“(12B) This regulation is subject to regulation 4 of the Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020 (effect of restrictions on public sector exit payments).”.

(4) In regulation 68(2) (employer’s further payments)—

(a) for “may require”, substitute “must require”;

(b) after “or (7) (early leavers on grounds on redundancy or business efficiency)” insert “or regulation 10 of the Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020 (retirement benefits)”;

(c) for “by an actuary appointed by the administering authority” substitute “in accordance with guidance issued by the Secretary of State”.

Amendment of the 2020 Regulations

6. In Part 1 of the Schedule to the 2020 Regulations (public sector authorities), after “South Tyneside Integrated Care Limited.”, insert “The South Yorkshire Pensions Authority.”.

(a) 2011 c. 20.

(b) 2004 c. 21. Section 5A was moved under a new heading entitled "Powers of certain fire and rescue authorities" by section 6 of paragraph 6 of Schedule 1 to the Policing and Crime Act 2017 (c. 3) and amended by sections 6 and 9 of and paragraph 7 of Schedule 1 and paragraph 112 of Schedule 2 to that Act

PART 3

Discretionary compensation for early termination of employment

Application

7. Part 3 of these Regulations applies in relation to a person—
- (a) whose employment is terminated by reason of —
 - (i) redundancy;
 - (ii) dismissal by mutual consent on grounds of business efficiency; or
 - (iii) in the case of a joint appointment, because the other holder of the appointment has left it; and
 - (b) who, on the termination date, is—
 - (i) employed by an employing authority, and
 - (ii) eligible to be a relevant Scheme member (whether or not the person is such a member) or would be so eligible but for the giving of a notification under regulation 5(2) of the 2013 Regulations (ending active membership),

and in the following provisions of Part 3 of these Regulations, “person” is to be construed accordingly, unless the context indicates that it has a different meaning.

(2) Where an additional requirement is specified in any provision of regulations 7 and 8 in relation to a person, that provision does not apply in relation to them unless that person satisfies that additional requirement.

Power to increase statutory redundancy payments

8.—(1) Compensation may be paid in accordance with this regulation to a person who is entitled to a redundancy payment under the 1996 Act on the termination of that person’s employment.

- (2) The amount which may be paid must not be more than the difference between—
- (a) the redundancy payment to which that person is entitled under Part 11 of the 1996 Act; and
 - (b) the payment to which that person would have been entitled if the limit on the amount of a week's pay used in the calculation of the redundancy payment was that as set out in regulation 9 (discretionary compensation).
- (3) The power to pay compensation is exercisable by the employing authority.

Discretionary compensation

- 9.—(1) This regulation applies where a person—
- (a) ceases to hold employment with an employing authority, and
 - (b) in respect of that cessation is not awarded an additional pension under regulation 31 of the 2013 Regulations (award of additional pension).

(2) Where this regulation applies, the employing authority may decide to pay compensation under this regulation no later than three months before the termination date.

(3) Where a payment has been made under paragraph (2), the employing authority must notify the person in whose favour it has been made, giving details of the amount of the compensation, as soon as reasonably practicable after the decision.

- (4) The amount of compensation must not exceed whichever is the lower of—
- (a) 3 weeks’ maximum pay per year of continuous service under the 1996 Act; or
 - (b) 15 months’ maximum pay.

(5) Chapter 2 (a week's pay) of Part 14 (interpretation) of the 1996 Act applies for the purpose of calculating a person's week's pay as it applies for the purpose of calculating redundancy payments but without the limit on a week's pay imposed by section 227 of that Act.

(6) Maximum pay under this regulation and regulation 9 (power to increase statutory redundancy payments) is the person's pay, to a maximum annual equivalent of £80,000.

(7) On the first day of the pay period in which 1st April falls, and on the first day of the pay period in which each subsequent 1st April falls, the figure in paragraph (6) is increased by applying the appropriate increase, rounding the result down to the nearest £100.

(8) Compensation payable under this regulation and regulation 9 (power to increase statutory redundancy payments)—

- (a) is to be reduced by any amount paid by the employer in relation to that employment under regulation 68 of the 2013 Regulations (employer's further payments);
- (b) is subject to any limits set out in the 2020 Regulations or other regulations made under section 153A(1) of the Small Business, Enterprise and Employment Act 2015 (regulations to restrict public sector exit payments).

(9) If the person in whose favour a decision under paragraph (2) has been made receives a redundancy payment under Part 11 of the 1996 Act or compensation under regulation 10 of these Regulations, the equivalent amount is to be deducted from the compensation otherwise payable to that person under this regulation.

(10) Compensation under this regulation must be paid by the employing authority as soon as practicable after the decision under paragraph (2).

(11) The compensation is payable in the form of a lump sum.

(12) In this regulation—

“the appropriate increase” means the amount (where it is greater than zero) by which the figures would be increased with effect from the first Monday falling on or after 6th April of the relevant year if they were pensions beginning on 1st April to which the Pensions (Increase) Act 1971 applied;

“pay period” means the period in respect of which a payment of pensionable earnings is made.

Retirement benefits

10.—(1) This regulation applies where a relevant Scheme member who has attained the age of 55 or over is dismissed from an employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency.

(2) A relevant Scheme member may before their termination date decide to take immediate payment of—

- (a) retirement pension relating to that employment payable under regulation 16 of the 2013 Regulations (additional pension contributions), adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State under regulation 2(3) of the 2013 Regulations (introductory); and
- (b) any other retirement pension relating to that member's pension account payable under these Regulations, without reduction, subject to paragraph (3) below.

(3) Where the payment made by the employing authority has been reduced in accordance with the limits set out in regulation 3 of the 2020 Regulations—

- (a) regulation 8 of the 2020 Regulations (payments made in connection with early retirement) does not apply;
- (b) the relevant Scheme member's benefits must be adjusted in line with actuarial guidance issued by the Secretary of State.

(4) The extra charge on the fund resulting from retirement benefits payable by the employing authority under regulation 4 is reduced by the total of any payments made in respect of that employment under the redundancy payment provisions of the 1996 Act.

- (5) The employing authority must—
- (a) provide the relevant Scheme member with an estimate of that member's retirement benefits under this regulation no later than one month before the termination of that member's employment;
 - (b) provide at least one month for the relevant Scheme member to make a decision under paragraph (2);
 - (c) pay to the relevant administering authority within one month of the termination date an amount equivalent to the increased value of the pension benefits as calculated in line with actuarial guidance issued by the Secretary of State.

Policy statements

11.—(1) Each employing authority must formulate, publish in such manner as it thinks fit (which must include publication on the authority's website) and keep under review the policy that they apply in the exercise of their discretionary powers under regulations 8 and 9.

(2) If the authority decide to change their policy, they must publish a statement of the amended policy and may not give effect to any policy change until at least one month after the date of publication.

- (3) In formulating and reviewing their policy the authority must—
- (a) have regard to the extent to which the exercise of their discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service; and
 - (b) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

Payments and repayments

12.—(1) Any compensation payable under these Regulations is payable to or in trust for the person entitled to receive it.

- (2) Where any compensation is paid in error to any person—
- (a) the employing authority must, as soon as possible after the discovery of the error—
 - (i) inform the person concerned, by notice in writing, giving details of the relevant calculation,
 - (ii) where there has been an underpayment, make a further payment,
 - (iii) where there has been an overpayment, specify a reasonable period for repayment;
 - (b) a person who has received a notice under sub-paragraph (a) must repay any overpayment within the specified period; and
 - (c) the employing authority may take such steps as they consider appropriate to recover from the person to whom it was paid any overpayment which has not been repaid within the specified period.

(3) The employing authority must take into account the person's circumstances (so far as known or reasonably ascertainable) before taking steps under paragraph (2)(c).

Finance

13. The cost of any payment to be made by an employing authority under these Regulations must not be met out of any pension fund maintained under the 2013 Regulations.

Revocation of Regulations

14.—(1) The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006(a) are revoked.

(2) Anything done under or by virtue of any regulation revoked by these Regulations if it could have been done under or for the purpose of these Regulations, is deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under or by virtue of any such regulation may be continued under these Regulations as if begun under these Regulations.

Transitional and saving provision

15. Where a employing authority and a relevant Scheme member—

- (a) have entered into an agreement to terminate that member's employment before those Regulations came into force, and;
- (b) that agreement includes a termination date within 6 months of the date on which these Regulations come into force,

any provision made by or under the 2013 Regulations will continue to apply without the amendments made by these Regulations.

We consent to the making of these Regulations.

Name

Name

Date Two of the Lords Commissioners of Her Majesty's Treasury

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

Name

Minister of State

Date Ministry of Housing, Communities and Local Government

SCHEDULE

Regulation 1

Employing authorities

PART 1

1. In England, a county council, a district council, a London borough council, the Greater London Authority, the Common Council of the City of London and the Council of the Isles of Scilly.

2. In Wales, a county council or a county borough council.

3. A joint board, body or committee appointed under any Act or statutory order or statutory scheme, of which all the constituent authorities are councils of a description in paragraph 1 or 2 or a combination of such councils.

4. A Mayoral development corporation within the meaning of section 198 of the Localism Act 2011.

(a) S.I. 2006/2914.

5. A fire and rescue authority within the meaning of the Fire and Rescue Services Act 2004.
6. A police and crime commissioner.
7. A chief constable within the meaning of section 2 of the Police Reform and Social Responsibility Act 2011.
8. The Commission for Local Administration in England.
9. A probation trust established under section 5 of the Offender Management Act 2007 or a National Probation Service local board.
10. The Lee Valley Regional Park Authority.
11. An integrated transport authority within the meaning of Part 5 of the Local Transport Act 2008.
12. The Broads Authority.
13. The London Pensions Fund Authority.
14. The South Yorkshire Pensions Authority.
15. The Environment Agency.
16. A National Park Authority established under Part 3 of the Environment Act 1995.
17. A proprietor of an Academy within the meaning of section 579 (general interpretation) of the Education Act 1996 (102) who has entered into Academy arrangements within the meaning of section 1 (academy arrangements) of the Academies Act 2010.
18. The Valuation Tribunal Service established under section 105 of the Local Government Act 2003 (105) and the Valuation Tribunal for Wales established under regulation 4 of the Valuation Tribunal for Wales Regulations 2010.
19. A combined authority established by an order under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009.

PART 2

1. A parish council.
2. The Public Services Ombudsman for Wales.
3. Transport for London.
4. The Children and Family Court Advisory and Support Service.
5. The Secretary of State, in respect of persons specified in regulation 3A(1) of the 2013 Regulations (civil servants engaged in probation provision).
6. Transport for the North.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Pension Scheme Regulations 2013 and revoke the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (“the 2006 Regulations”).

Part 2 of these Regulations implements the requirements of the Restriction of Public Sector Exit Payments Regulations 2020 for the employing authorities specified in the Schedule to these

Regulations, to determine the amount of exit credit which should be payable to a relevant Scheme member.

Regulations 2 and 3 make provision for additional payments to the appropriate fund in respect of any extra charge on the fund resulting from retirements benefits becoming immediately payable to a member. Regulation 4 makes provision for the reduction of charges on funds resulting from retirement benefits. Regulation 5 amends the Local Government Pension Scheme Regulations 2013.

Regulation 6 amends the Restriction of Public Sector Exit Payments Regulations 2020 to apply those Regulations to the South Yorkshire Pensions Authority.

Part 3 of these Regulations provide a new, simplified framework for the payment of discretionary compensation to persons whose local government employment is terminated by reason of redundancy or in the interests of the service or where a joint appointment comes to an end because one of the holders leaves.

Regulation 7 states to whom the Regulations apply. Regulation 8 gives a power to increase a redundancy payment made under the Employment Rights Act 1996.

Regulation 9 allows an employer to award compensation in the form of a lump sum of an amount that must not exceed whichever is the lower of 3 weeks' maximum pay per year of continuous service under the Employment Act 1996, or 15 months' pay. The regulation sets out the basis for calculating a week's pay for an individual. Any redundancy payment under the 1996 Act or compensation paid under regulation 8 of these Regulations must be offset against compensation paid under regulation 9.

Regulation 10 provides employing authorities with a discretion to make payments to persons not awarded an additional pension under regulation 31 of the Local Government Pension Scheme Regulations 2013.

Regulation 11 requires each employing authority to have and publish a policy that they apply in the exercise of their discretionary powers under regulations 9 and 10.

Regulation 12 deals with how payments are made and any errors dealt with.

Regulation 13 provides that payments made under these Regulations must not be met out of any Local Government Pension Scheme funds.

Regulation 14 revokes the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, which are replaced by Part 3 of these Regulations.

Regulation 15 contains transitional provisions.

No impact assessment has been produced for these Regulations because no impact on the private or voluntary sectors is foreseen.