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STATUTORY INSTRUMENTS

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**2010 No. 0000**

**PENSIONS, ENGLAND AND WALES**

**The Local Government Pension Scheme (Miscellaneous)  
Regulations 2010**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

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

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

The Secretary of State makes the following Regulations:

**Citation, extent and commencement**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Miscellaneous) Regulations 2010.

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

(3) These Regulations shall come into force on [ 2010] but regulation 16(a) to (e); regulations 17, 18, 22, 23, 29, 30, 41, 43 and 44 shall have effect from 1st April 2008.

**Amendment of the Local Government Pension Scheme Regulations 1997**

2. The Local Government Pension Scheme Regulations 1997(c) are amended in accordance with regulations 3 and 4.

3. In regulation 154 (payment of benefits)(d)—

(a) in paragraph (1), for “A pension credit member” substitute “Subject to paragraph (4), a pension credit member”; and

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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: various regulations were revoked by S.I. 2008/238.

(d) Regulation 154 was inserted by S.I. 2000/3025 and saved from revocation by S.I.2008/238.

(b) after paragraph (3), add—

“(4) A pension credit member is entitled to benefits payable under paragraph (1) at age 60 and such benefits must be reduced by the amounts as shown to be appropriate in guidance issued by the Secretary of State.”.

4. In regulation 155 (death grants)(a), in paragraph (2) for “normal benefit age” substitute “retirement benefits come into payment,”.

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

5. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(b) are amended in accordance with regulations 6 to 26.

6. In regulation 1 (citation, commencement, interpretation and application)(c), in paragraph (4) for the definition of “the Scheme”, substitute—

““the Scheme” means the Local Government Pension Scheme 2008 constituted by these Regulations, the Local Government Pension Scheme (Transitional Provisions) Regulations 2008(d) and the Administration Regulations.”.

7. In regulation 2 (active members)(e), in paragraph (2) for “continues to be” substitute “is”.

8. In regulation 3 (contributions payable by active members)(f)—

(a) in paragraph (3) for “On 1st April 2009, and each subsequent anniversary”, substitute “On the first day of the pay period in which 1st April 2009 falls, and on the first day of the pay period in which each subsequent 1st April falls”;

(b) for paragraph (3A) substitute—

“(3A) In paragraph (3), “the appropriate increase” means the amount 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 2008 to which the Pensions (Increase) Act 1971 applied.”;

(c) in paragraph (9) for “after”, substitute “on and after”; and

(d) omit paragraph (11).

9. In regulation 7 (calculation of length of periods of membership)(g), in paragraph (3) for “Membership”, substitute “Subject to regulation 5(1)(a), membership”.

10. For regulation 11 (final pay: fees), substitute—

“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 or her final pay is calculated as the sum of —

(a) the average of all such fees for the three consecutive years (or the employee’s total period of membership if less) ending with the final pay period; and

(b) any sums falling within regulation 4(1), other than fees, for the final period.

(2) But a member’s employer may consent to the member having his or her final pay calculated by the substitution for paragraph (1)(a) of the average of all such fees for any

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(a) Regulation 155 was inserted by S.I. 2000/3025, and by virtue of regulation 14(2) of S.I. 2008/238, regulation 155(2) shall be construed as including a reference to rights accruing under the Local Government Pension Scheme 2008, as well as under the Local Government Pension Scheme 1997.

(b) S.I. 2007/1166, amended by S.I. 2008/1083, S.I. 2008/2425 and S.I. 2009/3150.

(c) Regulation 1 was amended by S.I. 2008/1083, S.I. 2008/2425 and S.I. 2009/3150.

(d) S.I. 2008/238.

(e) Regulation 2 was substituted by S.I. 2008/1083.

(f) Regulation 3 was amended by S.I. 2008/1083.

(g) Regulation 7 was amended by S.I. 2008/1083.

three consecutive years ending 31st March within the period of ten years ending with the last day he or she was an active member.”.

**11.** In regulation 14 (election in respect of additional pension), in paragraph (1) for “A member”, substitute “An active member”.

**12.** In regulation 15 (elections to pay AVCs), in paragraph (1) for “A member”, substitute “Subject to regulation 26 (use of accumulated value of AVCs and SCAVCs) of the Administration Regulations, a member”.

**13.** In regulation 16 (retirement benefits)—

- (a) in paragraph (1) for “A member”, substitute “Subject to paragraph (3), a member”; and
- (b) after paragraph (2), add—

“(3) Where a member chooses to defer immediate payment of retirement pension under regulation 50 (commencement of pensions) of the Administration Regulations, the member’s pension rights shall be enhanced in accordance with guidance issued by the Secretary of State.”.

**14.** In regulation 17 (retirement after the normal retirement date)—

- (a) in paragraph (1), after “remains in employment” insert “or who joins the Scheme”; and
- (b) in paragraph (3), for “The pension” substitute “Subject to regulation 50 of the Administration Regulations, the pension”.

**15.** In regulation 18 (flexible retirement)(a)—

- (a) after paragraph (3), insert—

“(3A) If the payment of benefits referred to in paragraph (1) takes effect after the member’s 65th birthday, the benefits payable shall be enhanced in accordance with guidance issued by the Secretary of State.”; and

- (b) in paragraph (5), after “17,” insert “18.”.

**16.** In regulation 20 (early leavers: ill-health)(b)—

- (a) in paragraphs (1)(b), (2), (5) and (8)(a)(ii), for “obtaining” substitute “undertaking”;
- (b) in paragraphs (3) and (4) for “obtain” substitute “undertake”;
- (c) in paragraph (4), for “within three years of leaving his employment” substitute “within three years of leaving his employment, or normal retirement age if earlier”;
- (d) in paragraph (7)—
  - (i) for paragraph (a) substitute—

“(a) Subject to paragraph (c), once benefits under paragraph (4) have been in payment to a person for 18 months, the authority shall make inquiries as to his current employment.”; and
  - (ii) after paragraph (b), insert—

“(c) paragraph (a) does not apply where a person attains normal retirement age.”;
- (e) in paragraph (8)—
  - (i) in paragraph (b), for “The authority” substitute “Subject to paragraph (bb), the authority”; and
  - (ii) after paragraph (b), insert—

“(bb) paragraph (b) does not apply where a person attains normal retirement age.”;
- (f) omit paragraph (11);

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(a) Regulation 18 was amended by S.I. 2008/1083.  
(b) Regulation 20 was substituted by S.I. 2008/1083.

(g) for paragraph (13), substitute—

“(13) But in the case of a person who is an active member before 1st April 2008 and who—

- (a) has had continuous membership before that date;
- (b) has not received any benefits in respect of that membership; and
- (c) has attained the age of 45 before that date,

if the period to be added under paragraph (2)(b) or (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.”.

**17.** In regulation 23 (death grants: active members)(a), in paragraph (4) for “But in calculating” substitute “But, and subject to regulation 20(12), in calculating”.

**18.** In regulation 24 (survivor benefits: active members)—

- (a) in paragraph (1), after “a pension” add “which shall come into payment on the day following death.”; and
- (b) for paragraph (2), substitute—

“(2) (a) Subject to the regulations listed in sub-paragraph (b), the pension is calculated by multiplying the member’s total membership, augmented as if regulation 20(2) applied, by his or her final pay and divided by 160;

- (b) (i) regulations 14, 14A, 15 and 20(12);
- (ii) regulations 20(4)(a) and 20A of the 1997 Regulations(b); and
- (iii) regulations 23 to 26 of the Administration Regulations.”.

**19.** In regulation 27 (children’s pensions)(c), for paragraph (2) substitute “The pension is payable on the day following death.”.

**20.** In regulation 29 (calculation on leaving early)(d), in paragraph (5) after “pension”, omit “, or any part of it,”.

**21.** In regulation 30 (choice of early payment of pension)(e)after paragraph (6), add—

“(7) Paragraph (6) only applies to a member whose employment has been continuous with that same employer throughout that period.

(8) For the purposes of paragraph (7), the employment of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006(f) apply shall be treated as being continuous employment with the transferee employer.”.

**22.** After regulation 30, insert—

**“Choice of early payment of pension: pensioner member with deferred benefits**

**30A.**—(1) Where a member is treated as a pensioner member with deferred benefits under regulation 20(9), once he or she has attained the age of 60, the member 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 the member’s former employing authority.

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(a) Regulation 23 was amended by S.I. 2008/2425.  
(b) Regulation 20(4)(a) and 20A of S.I. 1997/1612 were saved from revocation by regulation 2 of, and Schedule 1 to S.I. 2008/238.  
(c) Regulation 27 was amended by S.I. 2009/3150.  
(d) Regulation 29 was substituted by S.I. 2008/1083.  
(e) Regulation 30 was amended by S.I. 2008/1083.  
(f) S.I. 2006/246, to which there are amendments not relevant to these Regulations.

(3) If the member so chooses, he or she is entitled to a pension payable immediately.

(4) Subject to paragraph (5), the member's pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary.

(5) The member's former employing authority may determine on compassionate grounds that the member's retirement pension should not be reduced under paragraph (4)."

**23.** In regulation 31 (early payment of pension: ill-health)(a) for paragraph (2), substitute—

"(2) Before determining whether to agree to a request under paragraph (1), 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 suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he has a reduced likelihood of undertaking any gainful employment before reaching his normal retirement age, or for at least three years, whichever is the sooner."

**24.** In regulation 33 (survivor benefits: deferred members)(b)—

(a) in paragraph (1), after "a pension" add "which shall come into payment on the day following death."; and

(b) for paragraph (2), substitute—

"(2) (a) Subject to the regulations listed in sub-paragraph (b), the pension is calculated by multiplying the member's total membership by his or her final pay and divided by 160;

(b) (i) regulations 14, 14A or 15;

(ii) regulations 20(4)(a) and 20A of the 1997 Regulations; and

(iii) regulations 23 to 26 of the Administration Regulations."

**25.** In regulation 35 (death grant: pensioner members)(c)—

(a) for paragraph (3), substitute—

"(3) (a) The death grant is his pension in payment multiplied by 10, ignoring any reduction where abatement has been applied under regulation 71 (application of abatement policy to individual cases) of the Administration Regulations; but

(b) the amount so calculated is reduced by the amounts of any retirement pension paid to him, or that would have been paid to him had his pension not at any time been abated under regulation 71."; and

(b) after paragraph (3), add—

"(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—

(a) beginning with his death: or

(b) beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death,

they must pay an amount equal to the shortfall to the member's personal representatives."

**26.** In regulation 36 (survivor benefits: pensioners)(d)—

(a) in paragraph (1), after "a pension" add "which shall come into payment on the day following death."; and

(b) for paragraph (2), substitute—

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(a) Regulation 31 was substituted by S.I. 2008/1083.

(b) Regulation 33 was amended by S.I. 2008/1083.

(c) Regulation 35 was amended by S.I. 2008/1083.

(d) Regulation 36 was amended by S.I. 2008/1083.

“(2) (a) Subject to the regulations listed in sub-paragraph (b), the pension is calculated by multiplying the member’s total membership by his or her final pay and divided by 160;

- (b) (i) regulations 14, 14A or 15;
- (ii) regulations 20(4)(a) and 20A of the 1997 Regulations; and
- (iii) regulations 23 to 26 of the Administration Regulations.”.

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

**27.** The Local Government Pension Scheme (Transitional Provisions) Regulations 2008(a) are amended in accordance with regulations 28 to 31.

**28.** In regulation 1 (citation, commencement, interpretation and application), in paragraph (4) for the definition of “the Scheme”, substitute—

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

**29.** In regulation 3 (membership accrued before 1st April 2008: active members)(b), in paragraph (2)(b), for “16, 17, 19 and 20 of the Benefits Regulations” substitute “16, 17, 19, 20 and 31 of the Benefits Regulations”.

**30.** In regulation 10 (the 85 year rule), in paragraph (1)(b) for “the appropriate administering authority”, substitute “the employing authority”.

**31.** In Schedule 1 (regulations revoked)(c), for “regulation 108(A)”, substitute “regulation 108A”.

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

**32.** The Local Government Pension Scheme (Administration) Regulations 2008(d) are amended in accordance with regulations 33 to 47.

**33.** In regulation 7 (admission agreements – further provisions), omit paragraph (5).

**34.** In regulation 8 (eligibility for membership of employees of other bodies not listed in Schedule 2)(e), for paragraph (1) substitute—

“(1) A person may be an active member if the person is an employee of the governing body of—

- (a) a voluntary school within the meaning of the School Standards and Framework Act 1998(f);
- (b) a foundation school or foundation special school (within the meaning of that Act) maintained by a local authority; or
- (c) any technical institute or other similar institution which is for the time being assisted by a local authority under the Education Act 1996(g),

and subject to paragraph (1A), the local authority has, with the consent of the person’s employer designated the person, or a class of employees to which the person belongs, as being eligible for membership of the Scheme.

(1A) The consent of an employer in paragraph (1)(b) is not required.”.

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(a) S.I. 2008/238, amended by S.I. 2008/1083, S.I. 2008/2425 and S.I. 2009/3150.

(b) Regulation 3 was amended by S.I. 2009/3150.

(c) Schedule 1 was amended by S.I. 2008/1083 and S.I. 2008/2425.

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

(e) Regulation 8 was amended by S.I. 2010/? [reference to be inserted of LEA sub leg order]

(f) 1998 c. 31.

(g) 1996 c. 56. See section 579(6) for the meaning of “assisted by”.

**35.** In regulation 10 (supplementary provisions for certain members), in paragraph (1)(b) for “the Secretary of State” substitute “the Commissioners for Her Majesty’s Revenue and Customs(a)”.

**36.** In regulation 13 (joining the scheme), for paragraph (5) substitute—

“(5) A person referred to in paragraph (3) who is employed by a body listed in Part 1 of Schedule 2 may be an active member from the date that his employment began provided he—

- (a) applies to the body to be so;
- (b) pays contributions in respect of that earlier period at the appropriate contribution rate as provided in regulation 3 of the Benefits Regulations; and
- (c) applies within 3 months of becoming eligible to join the Scheme, or such longer period as the employer may allow.”.

**37.** In regulation 16 (re-employed and rejoining deferred members)(b), for paragraph (3) substitute—

“(3) But a member cannot choose to aggregate any period of former membership unless he does so before the expiry of the period mentioned in paragraph (4)(b).”

**38.** In regulation 17 (concurrent employments), for paragraph (1) substitute—

“(1) Where a person ceases to be an active member in one employment (“the first employment”)—

- (a) in respect of which he has at least three months’ total membership; or
- (b) in respect of which he has an entitlement to benefits under regulation 5 (benefits) of the Benefits Regulations; and

continues as an active member in another employment he held concurrently with the first employment, he may elect to have his former membership in respect of the first employment aggregated with his membership in that other employment.”.

**39.** In regulation 26 (use of accumulated value of AVCs and SCAVCs)—

- (a) in paragraph (1)(a)(ii), after “19” insert “29,”;
- (b) in paragraph (2), after “paragraph (1)(a)(i)” insert “or (b)”;
- (c) for paragraph (3), substitute—

“(3) The permissible ways are—

- (a) to subscribe to a registered pension scheme (other than the Scheme) but only if making a transfer under Part 9;
  - (b) to subscribe to the AVC or SCAVC scheme established by the person’s new administering authority where regulation 86(1) or (2) applies; or
  - (c) to purchase an appropriate policy from one or more insurance companies (within the meaning of section 275 of the Finance Act 2004).”;
- (d) omit paragraph (7); and
  - (e) in paragraph (8), omit “or with paragraph (7)(b)”.

**40.** In regulation 47 (exclusion of rights to return of contributions)—

- (a) in paragraph (1)(b), at the end omit “or”;
- (b) in paragraph (c), for “applies.” substitute “applies; or”; and
- (c) after paragraph (c), insert—

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(a) The functions of the Secretary of State were transferred to the Commissioners for Her Majesty’s Revenue and Customs by S.I. 2008/3134, art 3.

(b) Regulation 16 was amended by S.I. 2008/3245.

“(d) he continues as an active member in another employment held concurrently with the employment in which that person has ceased to be an active member.”.

**41. In regulation 50 (commencement of pensions)—**

(a) after paragraph (3), insert—

“(3A) The first period for which any retirement pension under regulation 30A (choice of early payment of pension: pensioner member with deferred benefits) of the Benefits Regulations is payable begins with the day on which the member chooses under paragraph (1) of that regulation.”; and

(b) for paragraph (4), substitute—

“(4) The first period for which any retirement pension under regulation 31 (early payment of pension: ill-health) of the Benefits Regulations is payable begins with the day on which the member makes a request under paragraph (1) of that regulation.”.

**42. In regulation 51 (interest on late payment of certain benefits), in paragraph (3)(b), for “the Transitional Regulations or regulation 21” substitute “the Transitional Regulations, the earlier Regulations or regulation 21”.**

**43. In regulation 56 (first instance determinations: ill health)(a)—**

(a) in paragraph (1), for “An independent registered medical practitioner” substitute “Subject to paragraph (1A), an independent registered medical practitioner”; and

(b) after paragraph (1), insert—

“(1A) Paragraph (1)(a) does not apply where a further certificate is requested for the purposes of regulation 20(7) of the Benefits Regulations.”.

(c) for paragraph (3), substitute—

“(3) The employing authority and the independent registered medical practitioner must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation, and furthermore;

(a) in the case of the employing authority, when making a determination under regulation 20 of the Benefits Regulations; and

(b) in the case of the independent registered medical practitioner, when expressing an opinion as to the matters set out in regulation 20(5) of those Regulations.”.

**44. In regulation 58 (applications to resolve disagreements)—**

(a) in paragraph (7)—

(i) in paragraph (a), omit “or”;

(ii) in paragraph (b), for “considers reasonable.”, substitute “considers reasonable; or”;

and

(iii) after paragraph (b), insert—

“(c) the period of 42 months beginning with the date notification is given of a determination under regulation 20(4) of the Benefits Regulations.”; and

(b) in paragraph (9), for “regulation 63(1)” substitute “regulation 63(2)”.

**45. For regulation 87 (changes of fund and variable time employees), substitute—**

**“Changes of fund and variable time employees**

**87.—(1)** An inter fund transfer under regulation 86(2) in respect of a member who is a variable time employee prior to the transfer and who remains a variable time employee after

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(a) Regulation 56 was amended by S.I. 2008/1083.

the transfer shall be on the basis that the member's period of membership transfers on a day for day basis.

(2) An inter-fund transfer under regulation 86(2) in respect of a member who is a variable time employee prior to the transfer and who becomes a whole time or part time employee after the transfer shall be on the basis that the member's period of membership transfers on a pro rata basis using the formula—

$$\frac{\text{annual rate of pay in the variable-time employment}}{\text{period of membership}} \times \frac{\text{annual rate of pay in the employment post transfer}}{\text{period of membership credited in the post transfer employment}}.$$

**46. In Schedule 2 (Scheme Employers), in Part 1—**

(a) for paragraph 21, substitute—

“**21.**—(1) A person who enters into an agreement with the Secretary of State to undertake to establish and maintain etc.(a) an Academy within the meaning of section 482(5) (Academies) of the Education Act 1996(b).

(2) An Academy established under section 482 of the Education Act 1996.

(3) An Academy by virtue of section 67 (conversion of city academies into Academies) of the Education Act 2002(c).

(4) An Academy by virtue of section 68 (city colleges) of the Education Act 2002.”.

(b) after paragraph 25, insert—

“**26.** The Greater London Authority.”.

**47. In Schedule 4 (Appropriate Funds), in Part 1—**

(a) in paragraph (2), for “paragraph 3 of Part 2 of the Table in Schedule 5 to the 1997 Regulations”, substitute “paragraph 3 of the Table in Part 2 of Schedule 5 to the 1997 Regulations”; and

(b) after the Table, in notes (1), (2) and (3), in each place where it occurs, omit the word “active”.

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

Date \_\_\_\_\_ Department for Communities and Local Government  
Name  
Minister of State

**EXPLANATORY NOTE**

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

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

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

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

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

(a) As to which see section 482(1)(a) of the Education Act 1996 c. 56; section 482 was substituted by section 65 (Academies) of the Education Act 2002 c. 32.

(b) 1996 c. 56.

(c) 2002 c. 32.

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

Section 12 of the Superannuation Act 1972 (“the 1972 Act”) provides that regulations made under section 7 may have effect from a date earlier than the making of the regulations.

The amendments made by regulation 16(a) to (e) and regulations 17, 18, 22, 23, 29, 30, 41, 43 and 44 have effect from 1st April 2008. The remainder of the regulations have effect from [ ].

Regulation 2 introduces the amendments set out in regulations 3 and 4 relating to the 1997 Regulations.

Regulation 5 introduces the amendments set out in regulations 6 to 26 relating to the Benefits Regulations.

Regulation 27 introduces the amendments set out in regulations 28 to 31 relating to the Transitional Regulations.

Regulation 32 introduces the amendments set out in regulations 33 to 47 relating to the Administration Regulations.

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

DRAFT