EXPLANATORY MEMORANDUM TO

The Local Government Pension Scheme (Amendment) Regulations (NI) 2019

SR 2019 No.206

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 1, 3, and 25 of, and Schedule 3 to, the Public Service Pensions Act (Northern Ireland) 2014 and is subject to the negative resolution procedure. The Department of Finance has consented to the making of these Regulations.

2. Purpose

2.1. These Regulations amend the Local Government Pension Scheme (Northern Ireland) (LGPS (NI)) Regulations to ensure that they comply with the UK Supreme Court Judgment on eligibility criteria for cohabitee's survivor benefits in the LGPS and to make other minor amendments and drafting improvements to the legal framework governing the LGPS (NI).

2.2. Part 1 of these amending Regulations make the changes necessary to ensure the LGPS (NI) Regulations comply with the UK Supreme Court Judgment by amending the following Regulations-

2.2.1. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulation (Northern Ireland) 2009 (S.R. 2009 No. 32) ("the Benefits Regulations");

2.2.2. The Local Government Pension Scheme (Administration) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 33) ("the Administration Regulations");

2.2.3. The Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 34) ("the 2009 Transitional Regulations");

2.2.4. The Local Government Pension Scheme Regulations (Northern Ireland) 2014 (S.R. 2014 No. 188) ("the Principal Regulations"); and

2.2.5. The Local Government Pension Scheme (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2014 (S.R. 2014 No. 189) ("the Transitional Regulations").

2.3. These Regulations are made under the powers contained in the Public Service Pensions Act (Northern Ireland) 2014 ("the 2014 Act"). Section 3(3)(b) of that Act provides that scheme regulations may make retrospective provision.

2.4. The amendments in Part 1 of these Regulations remove the requirement to complete a nomination form as part of the criteria which must be fulfilled to qualify for a survivor pension. The Benefits Regulations, the

Administration Regulations and the 2009 Transitional Regulations came into operation on 1 April 2009 and the amendments to those 3 sets of Regulations come into effect from that date, with the exception of regulation 4 (election to pay additional contributions: survivor benefits) which was introduced by amendment to the Benefits Regulations by S.R. 2010 No. 410 with an effect date of 31 December 2009.

2.5. The definition of "cohabiting partner" as substituted in regulation 31(a) includes a new sub-paragraph at (c)(ii) which removes the 2 year qualifying period as it applied to the member's ability to marry or enter a civil partnership on the date the member died. This modification will not have retrospective effect.

2.6. Part 2 of these amending Regulations make minor amendments and drafting improvements by amending the following Regulations-

2.6.1. The Local Government (Superannuation) Regulations (Northern Ireland) 1981 (S.R. 1981 No. 96) ("the 1981 Regulations");

2.6.2. The Local Government (Superannuation) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 547 ("the 1992 Regulations");

2.6.3. The Local Government Pension Scheme Regulations (Northern Ireland) 2000 (S.R. 2000 No. 177) ("the 2000 Regulations");

2.6.4. The Local Government Pension Scheme Regulations (Northern Ireland) 2002 (S.R. 2002 No. 352); ("the 2002 Regulations")

2.6.5. The Benefits Regulations (S.R. 2009 No. 32);

2.6.6. The Administration Regulations (S.R. 2009 No. 33);

2.6.7. The Principal Regulations (S.R. 2014 No. 188); and

2.6.8. The Transitional Regulations (S.R. 2014 No. 189).

2.7. All of the amending regulations in Part 2 come into operation on the same date as these Regulations with the exception of those listed within regulation 1(2).

2.8. Regulations 1 to 34 make amendments to bring the LGPS Regulations into line with the UK Supreme Court Judgment.

2.9. Regulation 35 introduces amendments to the 1981 Regulations in so far as they remain extant by virtue of the 2014 Transitional Regulations. This regulation and regulation 36 will have retrospective effect from 19 February 1990.

2.10. Regulation 36 substitutes regulation 13(4)(e) (admission of other persons to participation in superannuation benefits) to clarify and confirm the existing position that a grant maintained integrated school may be an admission body of the LGPS (NI).

2.11. Regulation 37 introduces amendments to the 1992 Regulations in so far as they remain extant by virtue of the 2014 Transitional Regulations. This regulation and regulation 38 will have retrospective effect from 1 March 1993.

2.12. Regulation 38 amends regulation B5(10)(e) (power to admit employees of other bodies) to clarify and confirm the existing position that a grant maintained integrated school may be an admission body of the LGPS (NI).

2.13. Regulation 39 introduces amendments to the 2000 Regulations in so far as they remain extant by virtue of the 2014 Transitional Regulations. This regulation and regulation 40(a) will have retrospective effect from 1 August 2000.

2.14. Regulation 40 amends regulation B6(3(g) (agreements to enable employees of non-LGPS employers to be members ("admission agreements")) to clarify and confirm the existing position that a grant maintained integrated school may be an admission body of the LGPS (NI). Regulation 40(b) will have retrospective effect from 2 April 2001.

2.15. Regulation 41 amends regulation D11 (entitlement to deferred retirement benefits) to remove the requirement for an employer to give consent for a member to elect for early payment of benefits where a member left with deferred benefits before 1 February 2003 and is aged 55 to 59. The consent of the LGPS (NI) the Committee – the Northern Ireland Local Government Officers' Superannuation Committee ("the Committee") remains a requirement. The member cannot be in the employment to which the deferred benefits relate, but can be in unrelated local government employment.

2.16. Regulation 42 amends regulation D13 (reduction of pensions payable early by virtue of elections etc.) to enable the early payment of pensions from age 55 subject to an actuarial reduction for early payment in line with guidance issued by the Government Actuary's Department.

2.17. Regulation 43 amends regulation N9 (payment of benefits) to allow a pension credit member to apply in writing to the Committee for the early payment of benefits from age 55. These benefits must be reduced for early payment in line with guidance issued by the Government Actuary's Department.

2.18. Regulation 44 introduces amendments to the 2002 Regulations in so far as they remain extant by virtue of the 2014 Transitional Regulations. This regulation and regulation 45(a) will have retrospective effect from 1 February 2003.

2.19. Regulation 45 amends regulation 4(3)(g) (employees of non-Scheme employers: community admission bodies) to clarify and confirm the existing position that a grant maintained integrated school may be an admission body of the LGPS (NI). Regulation 45(b) will have retrospective effect from 1 May 2005.

2.20. Regulation 46 omits regulation 41(7) (death grants) to remove the 2 year limit within which a death grant had to be paid in order to be considered an authorised payment.

2.21. Regulation 47 makes an amendment to regulation 140 (payment of benefits) to allow a pension credit member to apply in writing to the Committee for the early payment of benefits from age 55. These benefits

must be reduced for early payment in line with guidance issued by the Government Actuary.

2.22. Regulation 48 omits regulation 141(5) (death grants) to remove the 2 year limit within which a death grant had to be paid in order to be considered an authorised payment.

2.23. Regulation 49 introduces amendments to the Benefits Regulations in so far as they remain extant by virtue of the 2014 Transitional Regulations.

2.24. Regulations 50, 51 and 52 omit regulations 23(5) (death grants: active members), 32(4) (death grants: deferred members) and 35(4) (death grants: pensioner members), respectively, to remove the 2 year limit within which a death grant had to be paid in order to be considered an authorised payment.

2.25. Regulation 53 introduces amendments to the Administration Regulations in so far as they remain extant by virtue of the 2014 Transitional Regulations. This regulation and regulation 54 will have retrospective effect from 1 April 2009.

2.26. Regulation 54 amends regulation 4(2)(f) (employees of community admission bodies) to clarify and confirm the existing position that a grant maintained integrated school may be an admission body of the LGPS (NI).

2.27. Regulations 55 and 56 omit regulations 22(10) (use of accumulated value of AVCs and SCAVCs) and 92(3) (death grants: pension credit members), respectively, to remove the 2 year limit within which a death grant had to be paid in order to be considered an authorised payment.

2.28. Regulation 57 introduces amendments to the Principal Regulations by regulations 58 to 83 of these Regulations.

2.29. Regulation 58 inserts a new paragraph into regulation 10 (pension credit members and survivor members) clarifies that a reference to a pension credit member is always a reference to that member before benefits come into payment and at that point that member becomes a pensioner member.

2.30. Regulations 59, 60 and 61(b) amend regulation 13 (contributions during absence from work), insert a new regulation 16A (contributions during absences with permission) and amend regulation 17 (employing authority contributions during absences) respectively, to clarify the contributions that members and employers make during absences from work.

2.31. Regulation 61(a) amends regulation 17 (employing authority contributions during absences) to clarify that, where a member is absent on reserve forces service leave, it is the Ministry of Defence who pays the employer contribution.

2.32. Regulation 61(c) makes a minor amendment to regulation 17 (employing authority contributions during absences) to delete an incorrect reference to actuarial guidance.

2.33. Regulation 62 substitutes regulation 18(7) (additional pension contributions) to clarify the basis on which the Government Actuary's Department calculates the amount of contributions in respect of these arrangements by removing the gender of the member from consideration.

The age of the member at the time these arrangements commence remains a factor. Regulation 62 will have effect from 1 April 2020.

2.34. Regulation 63 deletes regulation 19(14) (additional voluntary contributions) to remove the 2 year limit within which a death grant had to be paid in order to be considered an authorised payment.

2.35. Regulation 64 amends regulation 22 (meaning of pensionable pay) to provide clarification that a non-consolidated non-pensionable payment made to a member resulting from the settlement of an annual pay award is excluded from pensionable pay.

2.36. Regulation 65 amends regulation 23 (assumed pensionable pay) to permit employers to adopt a revised reference figure for the calculation of assumed pensionable pay where it would otherwise be unfair. This provision will apply retrospectively from 10 February 2016.

2.37. Regulation 66 amends regulation 31 (retirement benefits) to clarify that a member must receive their pension from age 75 even if they remain in local government employment and regulation 31(7)(b) (retirement benefits) to clarify that only active membership relating to that employment in relation to a post being made redundant is allowed to be considered in the calculation of early access to pension as part of a redundancy payment.

2.38. Regulation 67 amends regulation 34 (election for lump sum instead of pension) by updating the rules regarding election for lump sum instead of pension to reflect the Finance Act 2004. It ensures that where a pension in payment is split through a pension sharing order, the person who is provided with the pension credit will not be able to take a tax-free lump sum from the benefit rights that are acquired. This is on the basis that when the member's ex-spouse or former civil partner's benefits first came into payment, that ex-spouse or former civil partner will have taken (or had the opportunity to take) a tax-free lump sum in respect of the benefits, so it would not be appropriate to allow a lump sum to be taken free of income tax from the pension credit rights. This applies regardless of whether a lump sum was actually taken by the pension debit member.

2.39. Regulation 68 omits regulation 40(4) (death grants: active members) to remove the 2 year limit within which a death grant had to be paid in order to be considered an authorised payment.

2.40. Regulation 69(a) amends regulation 46 (death grants: deferred members and pensioner credit members) to remove the 2 year limit within which a death grant had to be paid in order to be considered an authorised payment and regulation 69(b) substitutes regulation 46(5) to clarify the formula used for the calculation of the death grant payable to a pension credit member. This provision will apply retrospectively from 1 April 2015.

2.41. Regulation 70 amends regulation 51 (death grants: pensioner members) to remove the 2 year limit within which a death grant had to be paid in order to be considered an authorised payment.

2.42. Regulation 71 amends regulations 52(4)(a), 54(3)(a), 54(4)(a), 55(3)(a) and 55(4)(a) (survivor benefits: partners and children of pensioner

members) to ensure that the calculation of survivor benefits for partners and children of pensioner members include any ill-health enhancement under regulations 39(1)(a) or 39(2)(a) (tier 1 or tier 2 ill-health benefits).

2.43. Regulation 72 amends regulation 57 (limit on total amount of benefits payable) to correct references which apply in respect of lifetime allowance statements.

2.44. Regulation 73 amends regulation 70 (special circumstances where revised actuarial valuations and certificates shall be obtained) to provide for an amendment of the rates and adjustments certificate between valuations where there is material change in the employer's circumstances.

2.45. Regulation 74 amends regulation 80 (first instance decisions – general) to make it clear that it is the employing authority's responsibility to determine which of the employee's emoluments are remuneration on which contributions are payable.

2.46. Regulation 75 amends regulation 90 (exchange of information) to accommodate the faster exchange of information between the Committee and employing authorities.

2.47. Regulation 76 amends regulation 92 (payments due in respect of deceased persons) to clarify the recipients to which payments may be made under the scheme when a person dies.

2.48. Regulation 77 substitutes regulation 96 (annual allowance charge) to clarify that voluntary scheme pays may be offered to members who qualify. This provision will apply retrospectively from 17 August 2018.

2.49. Regulations 78-81 (except regulation 81(b)) amend regulations 108 (rights to payments out of the fund), 112 (inward transfers of pension rights), 113 (effect of acceptance of transfer value) and Schedule 1 (interpretation) to make provision for the Scheme to comply with its membership obligations of the Public Sector Transfer Club.

2.50. Regulation 81(b) amends the definition of "partner" in Schedule 1 (interpretation).

2.51. Regulation 82(a) amends Schedule 2 (admission agreements with admission bodies) to clarify and confirm the existing position that a grant maintained integrated school may be an admission body of the LGPS (NI). This provision will apply retrospectively from 1 April 2015. Regulation 82(b) inserts a new sub-paragraph to clarify the existing position which is that an admission agreement may take effect on a day before it is executed.

2.52. Regulation 83 amends Part 3 (expense and allowances payable to the Committee) of Schedule 3 (the committee: preliminary provisions) to remove a reference to a repealed provision.

2.53. Regulation 84 introduces amendments to the 2014 Transitional Regulations.

2.54. Regulation 85 amends regulation 3 (membership before 1 April 2015) to clarify that the normal pension age in relation to deferred benefits in respect of membership that ceased before 1 October 2006, is age 65.

2.55. Regulation 86 amends regulation 5 (membership of the scheme) to clarify that a person who has been a deferred member accruing final salary benefits under previous LGPS (NI) Regulations, who then becomes an active member of the reformed LGPS (NI) without a disqualifying break in membership, may continue to accrue final salary benefits under the statutory underpin arrangements, if notification is given to the Committee within a certain period of time.

2.56. Regulation 87 amends regulation 9 (transfers) to ensure that members of other public service pension schemes who are entitled to transitional protection under those schemes and who are continuing to accrue final salary benefits can obtain final salary benefits within the Local Government Pension Scheme if they transfer those benefits in and can benefit from the statutory underpin. This provision will apply retrospectively from 1 April 2015.

2.57. Regulation 88 amends regulation 9A (aggregation adjustments etc.) to introduce a 12 month time limit (which may be extended at the discretion of the Committee) if a former member of the Earlier Schemes takes up active membership of the Scheme and wishes to aggregate the benefits.

2.58. Regulation 89 amends regulation 13 (contributions) to clarify that the term "contributions" includes additional contributions.

2.59. Regulation 90 amends regulation 14 (additional contributions) to alter the administration of AVC benefits in regulation 19 (additional voluntary contributions) of the 2014 Regulations, so that the date the AVC arrangement was established is disregarded.

2.60. Regulation 91 substitutes regulation 15(1) (annual allowance) to enable the Committee to offer members, at its discretion, the voluntary scheme pays facility where the value of the member's accrued benefits exceeds the annual allowance.

2.61. Regulation 92 makes an amendment to the provisions in Schedule 3 to the Transitional Regulations ("the 85 year rule") to remove the requirement for employer consent for members aged between 55 and 60 to draw benefits.

3. Background

3.1. The 2014 Act sets out the framework for public service pensions from 1 April 2015. Section 3(3)(b) of the 2014 Act provides that scheme regulations may make retrospective provision. The retrospective provisions contained in these Regulations do not appear to the Department to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme, or members of previous schemes. Accordingly, the procedures set out in section 23 of the 2014 Act are not applicable in relation to these Regulations.

3.2. The Principal Regulations were made under Article 9 of, and Schedule 3 to the Superannuation (Northern Ireland) Order 1972 ("the 1972 Order"). Section 28 of the 2014 Act provides for regulations made under Article 9 of the 1972 Order in respect of a person's pensionable service on or after 1 April 2015, to have effect as if they were scheme regulations under the

2014 Act, provided the Regulations could have been made under the powers contained in the 2014 Act. Article 9 of the 1972 Order provide that regulations may include all or any of the provisions (including transitional provisions) referred to in Schedule 3 to that Order.

4. Consultation

4.1. As required by section 21 of the 2014 Act, the Department has consulted with such persons or representatives of such persons as appeared to the Department to be appropriate. A total of 5 responses were received. Of those 5 responses received, 2 were from employing authorities, 1 from a district council, 1 from a representative organisation and 1 from the administering authority.

5. Equality Impact

5.1. The Department has not conducted a screening exercise to identify any significant discriminatory or negative differential impact on any particular Section 75 group because the Regulations do not contain significant policy changes.

6. Regulatory Impact

6.1. The Department has carried out a preliminary screening exercise in terms of the regulatory impact and has determined that they will have no direct or indirect adverse impact on businesses, the voluntary/community sector (including charities) and the social economy sector.

7. Financial Implications

7.1. No Executive expenditure required.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that the Regulations comply with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Not applicable.

11. Additional Information

11.1. Not applicable.