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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 199**

**PENSIONS**

**The Local Government Pension Scheme  
(Scotland) Amendment Regulations 2000**

*Made - - - - 15th June 2000*  
*Laid before the Scottish*  
*Parliament - - - - 16th June 2000*  
*Coming into force in accordance with regulation 1*

The Scottish Ministers, in exercise of the powers conferred upon them by sections 7 and 12 of the Superannuation Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, after consultation with such associations of local authorities as appeared to them to be concerned and such representatives of other persons likely to be affected by the Regulations as appeared to them to be appropriate, in accordance with section 7(5) of that Act, and not having considered consultation with any individual local authority desirable, hereby make the following Regulations:

**Citation, commencement, effect and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) Amendment Regulations 2000.

(2) These Regulations shall come into force as follows:—

- (a) except for regulation 40, on 7th July 2000, but subject to paragraph (3);
- (b) regulation 40 on 1st September 2000.

(3) The following provisions shall have effect from the following dates:—

- (a) regulations 3 to 7, 12, 16, 24, 25, 26, 35 and 47(b) and (c) from 1st April 1998;
- (b) regulation 10(a) from 1st April 1999;
- (c) regulations 9, 10(d), 22, 34, 46, 47(a) and 48 from 13th January 2000.

(4) These Regulations extend to Scotland only.

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<sup>(1)</sup> 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I.1999/1750), Schedule 1.

## **Amendment of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998**

2. The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998(2), shall be amended in accordance with regulations 3 to 7.

### **Membership before 1st April 1972**

3. In regulation 8(1)–
- (a) omit “who was then a married member”; and
  - (b) in sub-paragraph (b) before “made a relevant election” insert “, being eligible to do so,”.

### **Continuity of rights within regulation 12(1)**

4. Omit paragraph (3) of regulation 15.

### **Civil servants transferred to the Scottish Environment Protection Agency**

5. In regulation 21(3), insert after sub-paragraph (a) as a new sub-paragraph:–
- “(aa) After paragraph (1) add the following as a new paragraph:–
- “(1A) If a member leaves a local government employment (or is treated for these Regulations as if he had done so) on or after age 50 he may elect to receive payment of his retirement benefits immediately.”.”

### **Former members of NHS Superannuation Scheme for Scotland**

6. In regulation 22(4), omit “but for no other purpose”.

### **Re-employment of members**

7. In Schedule 2–
- (a) In paragraph 1, before the definition of “active pensioner” insert–  
““active deferred member” means any person who was a deferred member and an active member immediately before the commencement date and continues as an active member on that date by virtue of regulation 3;”;
  - (b) in paragraph 4(1), at the beginning insert “An active deferred member,”;
  - (c) in paragraph 5(1), for “a rejoining pensioner or” substitute “a rejoining pensioner, an active deferred member or a”;
  - (d) in paragraph 8(1), after “a rejoining pensioner” insert “, an active deferred member”; and
  - (e) in paragraph 8(2), after “ceases to apply to” insert “an active deferred member or,”.

## **Amendment of the Local Government Pension Scheme (Scotland) Regulations 1998**

8. The Local Government Pension Scheme (Scotland) Regulations 1998(3) shall be amended in accordance with regulations 9 to 47.

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(2) S.I. 1998/364.  
(3) S.I. 1998/366.

## Agreements to enable employees of non-Scheme employers to be members (“admission agreements”)

9. For regulation 4 substitute the following:–

“4.—(1) An administering authority may make an admission agreement with any admission body.

(2) An admission agreement is an agreement that all or any specified class of the admission body’s employees may be members.

(3) These are admission bodies–

(a) a body which provides a public service in the United Kingdom otherwise than for the purposes of gain and which either–

(i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest, whether because the operations of the admission body are dependent on the operations of the Scheme employer or otherwise; or

(ii) is approved by the Scottish Ministers for the purpose of admission to the Scheme;

(b) a body to the funds of which any Scheme employer contributes;

(c) a body representative–

(i) of local authorities;

(ii) of local authorities and officers of local authorities;

(iii) of officers of local authorities; or

(iv) of Scheme employers;

(d) a voluntary organisation engaged in the provision of services under–

(i) Part III of the National Health Service (Scotland) Act 1978(4);

(ii) Part III of the National Assistance Act 1948(5);

(iii) the Disabled Persons (Employment) Act 1958(6);

(iv) the Mental Health (Scotland) Act 1984(7); or

(v) section 14 of the Social Work (Scotland) Act 1968(8);

(e) a body which exercises the function referred to in a relevant arrangement.

(4) Approval under paragraph (3)(a)(ii) may be subject to such conditions as the Scottish Ministers think fit and they may withdraw approval at any time if such conditions are not met.

(5) It must be a term of an admission agreement made with a non-associated admission body within paragraph (3)(b) that the Scheme employer who provides funding (and, if more than one, all of them) guarantees the liability of the admission body to pay all amounts due from it under the Regulations.

(6) In the case of an admission agreement with a transferee admission body–

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(4) 1978 c. 29.

(5) 1948 c. 29.

(6) 1958 c. 33.

(7) 1984 c. 36.

(8) 1968 c. 49; section 14 was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 10, and the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 10(6).

- (a) the transferor Scheme employer, if not also the administering authority, must be a party to the admission agreement;
- (b) only those employees of the transferee admission body who are employed in connection with the function referred to in a relevant arrangement are eligible to be members of the Scheme;
- (c) it shall require an indemnity or bond in an approved form and with an authorised insurer or a relevant institution; and
- (d) provision shall be made for the matters set out in Schedule 2A.

(7) Where a transferor Scheme employer and a transferee admission body undertake to meet the requirements of paragraph (6), an administering authority must admit to the Scheme the eligible employees of the transferee admission body and, where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

(8) An admission agreement must terminate if the admission body ceases to be such a body.

(9) An admission agreement may make such other provision about its termination as the parties consider appropriate.

(10) When an administering authority make an admission agreement, they must promptly inform the Scottish Ministers of the date the agreement takes effect, the admission body's name and, in the case of an admission agreement with a transferee admission body, the name of the relevant transferor Scheme employer.

(11) An administering authority must notify the Commissioners of Inland Revenue of the admission of an admission body within the time prescribed in regulations made under section 605 of the Taxes Act<sup>(9)</sup> and provide such information as may be so prescribed.

(12) An administering authority and an admission body may make an admission agreement despite the fact that they do not exercise their functions or provide or make available services or assets in areas which overlap or adjoin each other.

(13) Any question which may arise between the administering authority and any other party to an admission agreement relating to the construction of the agreement or to the rights and obligations under that agreement shall be referred in writing for determination to the Scottish Ministers.

(14) An employee of an admission body may not be a member if he is a member of another occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993<sup>(10)</sup>) other than where the accrual of benefits under that pension scheme would not affect approval of the Scheme as an approved scheme.

(15) These Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the body were a Scheme employer.

(16) In this regulation, regulation 5 and Schedule 2A (where applicable)–

- (a) “authorised insurer” means–
  - (i) an insurance company authorised under section 3 or 4 of the Insurance Companies Act 1982<sup>(11)</sup> to carry on general business; or
  - (ii) an EC company which is lawfully carrying on general business, or providing insurance of an appropriate class within general business, in the United Kingdom,

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<sup>(9)</sup> 1988 c. 1; section 605 was amended by section 105 of the Finance Act 1994 (c. 9). For the regulations, see S.I. 1995/3103.

<sup>(10)</sup> 1993 c. 41.

<sup>(11)</sup> 1982 c. 50; section 2, which contains definitions, was amended by S.I. 1994/1696, regulations 4 and 45 and Schedule 6.

and expressions used in this definition and the Insurance Companies Act 1982 have the same meaning as in that Act;

- (b) “indemnity or bond in an approved form” means an indemnity or bond to meet a level of risk exposure arising on premature termination of a relevant arrangement actuarially assessed to the satisfaction of the administering authority and the transferor Scheme employer;
- (c) “non-associated admission body” means a body described in—
  - (i) paragraph (3)(a)(ii); or
  - (ii) paragraph (3)(b) where, at the date that the admission agreement is made, the total contribution from any one or more Scheme employers to its funds equals less than 50% of funding contributed by third parties;
- (d) “relevant arrangement” means a contract or other arrangement made with a transferor Scheme employer for the provision of, or making available of, services or assets, for the purposes of or in connection with the exercise of a function of that transferor Scheme employer;
- (e) “relevant institution” means—
  - (i) an institution authorised under Part I of the Banking Act 1987<sup>(12)</sup> (regulation of deposit-taking business);
  - (ii) a person to whom the restriction on acceptance of deposits in section 3 of that Act does not apply because he is specified in Schedule 2 to that Act (Central banks etc.); or
  - (iii) a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits,and “European authorised institution” has the same meaning as in the Banking Co-ordination (Second Council Directive) Regulations 1992<sup>(13)</sup>;
- (f) “transferee admission body” means an admission body described in paragraph (3)(e); and
- (g) “transferor Scheme employer” means an authority or body which is a Scheme employer.”.

### Further restrictions on eligibility

#### 10. In regulation 5—

- (a) after paragraph (2) add as a new paragraph—

“(2A) A person who is not eligible for membership of a teachers scheme because of the provisions of regulation B5(5) of the Teachers' Superannuation (Scotland) Regulations 1992<sup>(14)</sup> (re-employed teachers) is not entitled to be a member.”;
- (b) in paragraph (8) for “(3)” substitute “(4)”;
- (c) omit paragraphs (3), (6) and (7); and
- (d) add as a new paragraph—

“(10) A person who is a member and is an employee of a transferee admission body is treated as leaving a local government employment when he ceases to be employed in connection with the function referred to in a relevant arrangement.”.

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<sup>(12)</sup> 1987 c. 22.

<sup>(13)</sup> S.I. 1992/3218.

<sup>(14)</sup> S.I. 1992/280; relevant amending instrument is S.I. 1997/676.

**Periods of membership: “total membership”**

11. In regulation 8, after paragraph (1), insert as a new paragraph–

“(1A) A person who remains in service after his 65th birthday as referred to in regulation 24A(1) may not count as a period of membership any period of service between age 65 and the date of his retirement from service but he shall be treated as an active member for the purposes of regulations 39 to 45 (surviving spouse’s and children’s pensions).”.

**Meaning of “pay”**

12. In regulation 12 in paragraph (2), for sub-paragraph (f) substitute–

“(f) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision (but see paragraphs (8) and (9));”.

**Members with lower rate rights**

13. In regulation 13–

(a) in paragraph (1), for “paragraphs (2) and (3)” substitute “paragraph (2)”; and

(b) in paragraph (2)(b), for paragraph (ii) substitute–

“(ii) he falls within paragraph (3).”.

**Obligatory contributions during absences**

14. In regulation 16–

(a) for paragraph (1) substitute–

“(1) If a member–

(a) is away from his employment with permission (otherwise than because of illness or injury); and

(b) is receiving reduced or no pay,

he must during the period of the first 30 days of his absence make contributions at the standard contribution rate on the pay he would have received during that period but for his absence.”; and

(b) after paragraph (1), add as a new paragraph–

“(1A) If a member is away from his employment on jury service for any period he must make contributions at the standard contribution rate on the pay he would have received during that period but for his absence.”.

**Optional contribution during absences**

15. In regulation 17 for paragraph (1) substitute–

“(1) If a member–

(a) is away from his employment with permission (otherwise than because of illness or injury) for a continuous period of more than 30 days; and

(b) is receiving reduced or no pay,

he may make contributions at the standard rate for the period after the first 30 days of his absence or, if it exceeds 36 months, for 36 months, on the pay he would have received but for his absence.”.

### **General qualifications for benefits**

16. In regulation 18(2)(a) for “regulation 27(3)” substitute “regulation 26(3)”.

### **Calculations**

17. In regulation 19, after paragraph (4), insert as a new paragraph–

“(4A) Benefits payable to a person who remains in service after his 65th birthday as referred to in regulation 24A(1) shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary in respect of each day that payment of benefit is delayed between his 65th birthday and the date of his retirement.”.

### **Final pay**

18. In regulation 20(4), for “actual pay in part time employment is to be used” substitute “in part-time employment, the member’s final pay is his actual pay for his final pay period.”.

### **Retirement after age 65**

19. After regulation 24, insert a new regulation–

#### **“Retirement after age 65**

**24A.**—(1) A member who with the consent of his employing authority remains in service after his 65th birthday is entitled to a pension and retirement grant when he retires from service.

(2) The pension and retirement grant are payable immediately on retirement.”.

### **Ill-Health**

20. In regulation 26–

(a) in paragraph (1), after “the duties of that employment” insert “or any other comparable employment with his employing authority”;

(b) add as a new paragraph (5)–

“(5) In paragraph (1)–

“comparable employment” means employment in which, when compared with the member’s employment–

(a) the contractual provisions as to capacity either are the same or differ only to an extent that is reasonable given the nature of the member’s ill-health or infirmity of mind or body; and

(b) the contractual provisions as to place, remuneration, hours of work, holiday entitlement, sickness or injury entitlement and other material terms do not differ substantially from those of the member’s employment; and

“permanently incapable” means incapable until, at the earliest, the member’s 65th birthday.”.

### **Amounts of ill-health pension and grant**

21. In regulation 27(9) for “13 121/365” substitute “13 122/365”.

### **Re-employed and rejoining deferred members**

22. In regulation 31, add at the end–

“(11) In the case of a member who first becomes a member on or after 13th January 2000 any period of membership in the employment of a non-associated admission body (as defined in regulation 4(16)(c)) shall not be aggregated with any other periods of membership for the purpose of calculating his retirement grant.”.

### **Death grants**

23. In regulation 37–

- (a) in paragraph (1) after “the administering authority” insert “at their absolute discretion”;
- (b) after paragraph (8) insert as a new paragraph–

“(8A) The multiplier for the death grant of a member who remains in service after his 65th birthday as referred to in regulation 24A(1) is whichever of–

- (a) 2; or
- (b) 
$$\frac{3 \times \text{the member's total membership}}{80}$$

gives the greater amount.”.

### **Surviving spouse's short-term pension**

24. In regulation 39, for paragraph (4) substitute–

“(4) Where the deceased was an active member, the short-term pension is the deceased's final pay.”.

### **Reduction of some surviving spouses' pensions**

25. In regulation 41(3), add at the end–

“where the widower was married to the member at some time while she was in local government employment after 31st March 1972.”.

### **Children's short-term pensions**

26. In regulation 44–

- (a) for paragraph (4) substitute–

“(4) Where the deceased was an active member, the pension is the deceased's final pay.”;

- (b) In paragraph (6), add at the end “if the child is in the care of the surviving spouse.”

### **Commutation: small pension**

27. In regulation 48, for paragraph (1) substitute–

“(1) If the aggregate of the annual rate of the retirement pension and the actuarial equivalent as an annual pension of any retirement grant payable under these Regulations which a member is entitled to be paid is not more than £260 or such higher sum as may be prescribed from time to time by regulations made under section 21(1) of the Pensions



Schemes Act 1993(15), the appropriate administering authority may pay him a lump sum representing the capital value of the pension.”.

**Power of employing authority to increase total membership of members leaving employment at or after 50.**

28. In regulation 51(9) after “under regulation 8” insert “, or been paid compensation under regulation 34.”.

**Power of employing authority to increase total membership of new members**

29. In regulation 52(7) insert “payment of” after “immediately entitled to”.

**Election for pension in lieu of retirement grant**

30. In regulation 57(2) for “not later than the date on which the member becomes so entitled” substitute “not later than six months after becoming so entitled”.

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

31. In regulation 58(2) for “not later than the date on which the member becomes so entitled” substitute “not later than six months after becoming entitled”.

**Elections to pay AVCs**

32. In regulation 59–

- (a) In paragraph (2) for “his pay” substitute “his total remuneration”.
- (b) after paragraph (10), add as a new paragraph–

“(11) A member who is in active service may elect to transfer into an additional voluntary contribution scheme constituted under this Chapter the accumulated value of any other additional voluntary contributions scheme to which he has subscribed.”.

**Changes of employment in which membership is continued**

33. In regulation 70(6) for “must apply and invest the sum received as mentioned in regulation 63” substitute “must, in accordance with regulation 63, apply and invest the sum received by virtue of regulation 70(5)”.

**Special circumstances where revised actuarial valuations and certificates must be obtained**

34. In regulation 77–

- (a) in paragraph (2)(a), for “of the admission body” substitute “of the fund in respect of current and former employees of the admission body”; and
- (b) after paragraph (2), insert as new paragraphs–

“(2A) However, where it is not possible for any reason to obtain revised contributions from the outgoing admission body, or from an insurer or any other person providing a guarantee or indemnity on behalf of that admission body, the administering authority may obtain a further revision of any rates and adjustments certificate for the fund, showing the revised contributions due from each employing authority who contributes to that fund.

(2B) An administering authority may obtain from the fund actuary a certificate specifying, in the case of an admission body, the percentage or amount by which, in the actuary's opinion—

- (a) the contribution at the common rate should be adjusted; or
- (b) any prior individual adjustment should be increased or reduced,

with a view to providing that the value of the assets of the fund in respect of current and former employees of that admission body is neither materially more nor materially less than the anticipated liabilities of the fund in respect of those employees at the date that the admission agreement is to end.”.

### **Employer's further payments**

**35.** In regulation 79, add as paragraphs (5), (6) and (7)–

“(5) Where, on leaving local government employment, a pension and retirement grant becomes payable to a member under regulation 25 (redundancy etc.) or regulation 30 (other early leavers etc) the appropriate administering authority may require the employing authority to make additional payments to the appropriate fund in respect of the extra cost of the immediate payment of the pension and retirement grant together with the cost of providing any increase under Part I of the Pensions (Increase) Act 1971.

(6) Whereon such a pension and retirement grant becoming payable, a pension and retirement grant also become payable to the member in respect of service with one or more other employing authorities, the employing authority in relation to whom the redundancy arose or by whom the consent to early retirement was given shall be responsible for making any additional payments in accordance with paragraph (5) in respect of all such service.

(7) Any additional payments that are due under paragraph (5) shall be made, if the administering authority agree by–

- (a) a single payment of an amount determined by the administering authority on the advice of the fund actuary; or
- (b) instalments, each of an amount determined by the administering authority on the advice of the fund actuary, covering a period not exceeding the period between the member's leaving local government employment and reaching NRD, or a period not exceeding 5 years, the first and subsequent instalments becoming payable as agreed between the administering authority and the employing authority.”.

### **Interest**

**36.** In regulation 81–

- (a) in paragraph (2), for “regulation 93(1)” substitute “regulation 86(1) and (3), 88(5) or 93”; and
- (b) omit paragraph (3).

### **Rights to return of contributions**

**37.** In regulation 86–

- (a) in paragraph (1) for “he is entitled to be repaid his contributions from the appropriate fund with interest” substitute “he is entitled to be repaid his contributions from the appropriate fund and, if repayment has not been made before the expiry of the period of one year beginning with the date when active membership ceases, is entitled to interest from that expiry.”;

- (b) in paragraph (2) after “ceased to be a member” insert “by reason of a notification under regulation 7(2) or”;
- (c) for paragraph (3) substitute—
  - “(3) A person who is entitled to a repayment of contributions under paragraph (1) may waive his entitlement for any period and, if he becomes an active member again before the expiry of that period, he shall cease to be so entitled (but without prejudice to any entitlement arising later under that paragraph in respect of those contributions.)”;
  - and
- (d) in paragraph (4) for “an amount equal to the repayment to be treated as contributions to the scheme” substitute “a transfer”.

### **Deduction and recovery of member’s contributions**

#### **38.** In regulation 88—

- (a) for paragraph (5) substitute—
  - “(5) If—
    - (a) an employing authority deduct any amount in error from a person’s pay or any other sum due to him in respect of contributions, other than contributions due to be repaid to him by virtue of his having left without any rights under the Scheme (which are dealt with under regulation 86); and
    - (b) the amount has not been repaid to him before expiry of the period of one month beginning with the date of deduction,the appropriate body must pay him interest on that amount calculated as provided in regulation 81(2), the due date being the date of deduction.”; and
- (b) add as paragraphs (5A) and (6)—
  - “(5A) Where the employee’s contributions have been paid into the appropriate fund, the repayment and interest shall be made out of that fund.
  - (6) “The appropriate body” for the purpose of paragraph (5) is—
    - (a) the appropriate administering authority where the employee’s contributions have been paid into the appropriate fund; and
    - (b) the person’s employing authority where the employee’s contributions have not yet been paid into the appropriate fund.”.

### **Interest on late payment of certain benefits**

#### **39.** In regulation 93—

- (a) in paragraph (1)—
  - (i) for “on the due date” substitute “by the end of the relevant period after the due date”;
  - (ii) after “payable” insert “calculated from the due date as provided in regulation 81(2).”;
  - (iii) omit sub-paragraphs (a) and (b);
- (b) as a new paragraph (1A) insert—
  - “(1A) The relevant period—
    - (a) in the case of a pension is one year;
    - (b) in the case of a payment made under regulation 37(1), is the period ending one month after the date on which the administering authority receives notification of the member’s death; and

- (c) otherwise is one month.”;
- (c) in paragraph (2) for “one month after the amount” substitute “the date on which it”; and
- (d) in paragraph (4) for sub-paragraphs (a) and (b) substitute “the member dies.”.

#### **First instance decisions**

##### **40. In regulation 96–**

- (a) in paragraph (3), for “the employment ends” substitute “the earlier of the date the employment ends or the date specified in the notification mentioned in regulation 7(3)”;
- (b) in paragraph (9), after “independent registered medical practitioner” insert “who is qualified in occupational health medicine”;
- (c) in paragraph (10), for “that authority’s approval” substitute “the approval of the appropriate administering authority to their choice of registered medical practitioner”; and
- (d) after paragraph (13), add as a new paragraph–
  - “(14) In paragraph (9)–
    - (a) “permanently incapable” has the meaning given by regulation 26(5); and
    - (b) “qualified in occupational health medicine” means holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in a EEA State (which has the meaning given by the European Specialist Medical Qualification Order 1995(16)), or being an Associate, a Member, or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.”.

#### **Statements of policy concerning exercise of discretionary functions**

**41.** In regulation 105(3), add at the end “and each such employer or authority shall publish that statement.”.

#### **Statements of policy concerning abatement of retirement pension in new employment**

**42.** In regulation 109(3), before “authority” insert “administering”.

#### **Credited periods for transferring members with mis-sold pension rights**

##### **43. In regulation 124–**

- (a) in paragraph (4) for sub-paragraph (a) substitute–
  - “(a) the amount that would be necessary (as at the date on which the request for the calculation of the restitution amount is received by the appropriate administering authority) to purchase a period of membership for the purposes of these Regulations equal to the length of the personal pension period on the basis of a transfer from a scheme which is not a club scheme (including the value of rights under the Pensions (Increase) Act 1971(17) and the Pensions (Increase) Act 1974(18));”.
- (b) in paragraph 4(c) omit “on a daily basis”;
- (c) in paragraph (5) for “value” substitute “amount”; and

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(16) S.I. 1995/3208, amended by S.I. 1997/2928.

(17) 1971 c. 56.

(18) 1974 c. 9.

(d) add the following new paragraphs:–

“(7) Where a transfer value has been accepted in relation to a woman to whom this regulation applies and in respect of whom a transfer value had been paid previously by an administering authority to a personal pension scheme any part of which transfer value was attributable to membership before 5th April 1988, then the credited period shall be apportioned as membership before 6th April 1988 and as membership after 5th April 1988 in the same proportions as it would have been had the woman become or remained a member of the scheme throughout the personal pension period.

(8) If in the opinion of the appropriate administering authority the transfer value does not satisfy the conditions specified in paragraph (2) for the reason only that it is less than the restitution amount, the appropriate administering authority may accept the transfer value on the basis that the credited period which the member may count is such proportion of the personal pension period as the appropriate administering authority determine.”.

### **Separate employment etc**

44. For regulation 130(2)(b) substitute the following:–

“(b) as a returning officer (including employment in the duties of a returning officer, or local returning officer, at a European Parliamentary election which are required by regulations made under paragraph 2 of Schedule 1 to the European Assembly Elections Act 1978(19) to be discharged by a returning officer.”.

### **Interpretation**

45. In Schedule 1, in the definitions of “admission agreement employee” and “Scheme employer” for “regulation 4(10)” substitute “regulation 4(15)”.

### **Admission agreements**

46. After Schedule 2, add as Schedule 2A the Schedule set out in the Schedule to these Regulations.

### **Revenue restrictions**

47. In Schedule 4–

(a) In paragraph 1(1)–

(i) in the definition of “Class B member” in sub-paragraph (b), after “since before 1st June 1989” insert “and has not had a continuity break”;

(ii) in the definition of “Class C member” in sub-paragraph (a) after “17th March 1987” insert “and has not had a continuity break”; and

(iii) after the definition of “Class C member” inserting the following definition:–

““continuity break” is a change of employment from a Scheme employer (including an admission body) to a non-associated or transferee admission body (as defined in regulation 4(16)(c) and (f) but does not include a change in the case of a person who was a member of the Scheme on 13th January 2000;”;

(b) in paragraphs 1(4), 2(2), 2(10) and 2(12) and 8(3), 8(4), and 8(5) for “retained benefits” insert “retained rights”.

- (c) In paragraph 9(5) for “Paragraph 1(3)(a) and (4)” substitute “Paragraph 1(4) and (5)”.

### **Savings**

**48.** The amendments made by regulations 9, 10(d), 22, 34, 46 and 47(a) shall not affect any admission agreements made in accordance with the Local Government Pension Scheme (Scotland) Regulations 1998(20) before 13th January 2000.

### **Right to opt out**

**49.**—(1) Where—

- (a) apart from this regulation, the amendments made by these Regulations would place any relevant beneficiary in a worse position than he would otherwise be; and
- (b) that relevant beneficiary so elects by notice in writing given to the appropriate administering authority within the period of six months beginning with the date on which these Regulations come into force,

then the local Government Pension Scheme (Scotland) Regulations 1998 shall have effect in relation to him as if those amendments had never been made.

(2) For the purposes of paragraph (1), a relevant beneficiary is a person to whom any benefit is or may become payable being a benefit payable to or in respect of a person who—

- (a) ceased to hold an employment in respect of which he was a member (whether or not he had subsequently recommenced any such employment); or
- (b) died while in such employment,

before the date on which these Regulations came into force.

St Andrew’s House, Edinburgh  
15th June 2000

*SAM GALBRAITH*  
A member of the Scottish Executive

## SCHEDULE

### SCHEDULE TO BE ADDED TO THE LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) REGULATIONS 1998

#### “SCHEDULE 2A

Regulation 4(6)(d)

#### MATTERS TO BE INCLUDED IN AN ADMISSION AGREEMENT IN CERTAIN CASES

A reference to the date of the relevant arrangement.

A requirement for the transferee admission body to pay to the administering authority all contributions and payments due under the Regulations.

A provision whereby the transferor Scheme employer may set off against any payments due to the transferee admission body an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Regulations) due from the transferee admission body as an employing authority.

A reference to the indemnity or bond in the approved form.

A warranty from the transferee admission body that such an indemnity or bond is in place.

A provision requiring the transferee admission body to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and in any employer’s guide published by the administering authority and provided to the transferee admission body.

An undertaking from the transferee admission body to the administering authority that it shall not do anything to prejudice the status of the Scheme as an exempt approved scheme within the meaning given by section 592(1) of the Taxes Act(21).

A representation and warranty from the transferee admission body to the administering authority and to the transferor Scheme employer that all the transferee admission body’s employees or class of employees who are specified as members are employed in connection with the services, assets or function referred to in the relevant arrangement.

An undertaking from the transferee admission body that it will promptly notify the administering authority and the transferor Scheme employer in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for its employees who are members and of any terminations of employment by virtue of redundancy or in the interests of efficiency.

A requirement that the transferee admission body notifies the administering authority and the transferor Scheme employer of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion.

A requirement that the transferee admission body notifies the administering authority and the transferor Scheme employer of any matter which may affect, or is likely to affect, its participation in the Scheme and that it gives immediate notice of any actual or proposed change in its status which may give rise to a termination, including take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution.

A minimum period of three months notice to terminate the admission agreement but automatic termination, as required by regulation 4(8) of the Regulations, in the event that the transferee admission body ceases to be such.

A right for the administering authority to terminate the agreement in the event of—  
the insolvency, winding up or liquidation of the transferee admission body;

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(21) 1998 c. 1.

a breach by the transferee admission body of any of its obligations under the admission agreement (but where the breach is capable of remedy only where it has not been remedied within a reasonable time);

the withdrawal of approval by the Commissioners of Inland Revenue to the participation of the transferee admission body as a Scheme employer; or

a failure by the transferee admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the administering authority requiring it to do so.

A requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the transferor Scheme employer and the administering authority (if different).”

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## EXPLANATORY NOTE

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

These Regulations make various amendments to the Local Government Pension Scheme (Scotland) Regulations 1998 (“the principal Regulations”), which regulate the Local Government Pension Scheme in Scotland (“the Scheme”), and the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998 (“the Transitional Regulations”). Certain of the provisions take effect on various dates before the Regulations come into force (as set out in regulation 1). Section 12 of the Superannuation Act 1972 provides that regulations made under section 7 of that Act may have retrospective effect.

Regulation 5 amends the provision in the Transitional Provisions relating to civil servants who were transferred to the Scottish Environment Protection Agency. The amendment provides that they may elect on leaving local government employment on or after age 50 to receive immediate payment of their retirement benefits.

Regulation 7 introduces a definition of and references to an “active deferred member” in relation to re-employed members. An “active deferred member” is a person who has accrued pension rights in relation to an earlier local government employment and who is also an active member in relation to a current local government employment.

Regulation 9 amends the principal Regulations by substituting a new regulation 4 which provides for administering authorities to make admission agreements to enable employees of non-Scheme employers to be members of the Scheme. The new regulation 4 of the principal Regulations widens the categories of bodies which are admission bodies. It also adds procedural requirements in connection with admission agreements with certain categories of admission bodies and provides that questions arising in connection with admission agreements shall be determined by the Scottish Ministers.

The principal change is to allow employees of transferee admission bodies to be members. Transferee admission bodies are bodies who provide services or assets to a local authority.

The substituted regulation 4 also includes a body representative of Scheme employers as an admission body.

Regulation 10(a) provides that re-employed teachers who are not eligible to join the Teachers' Pension Scheme in Scotland are also not eligible to join the Scheme.



Regulations 10(c), 11, 17, 19 and 23(b) make special provision in connection with the payment of retirement benefits and death grants for persons who retire after age 65. Regulation 11 provides that any period of service after age 65 may not be counted as a period of membership, although it will be treated as such for the purposes of calculating surviving spouses' and children's pensions. The other regulations make consequential amendments. Copies of the guidance referred to in regulation 19(4A) of the principal Regulations as inserted by regulation 17 can be obtained free of charge from the Scottish Public Pensions Agency, Room 5.11, St. Margaret's House, 151 London Road, Edinburgh EH8 7TG.

Regulation 10(d) makes a consequential amendment to regulation 5 of the principal Regulations, to provide when employees of transferee admission bodies are treated as leaving local government employment for the purposes of the Scheme.

Regulation 12 amends the definition of "pay". The amendment extends the list of emoluments which do not count for pensions purposes to include any amount paid in lieu of the money value of the provision of a car.

Regulation 13 clarifies the provisions dealing with members' lower rate contributions to provide that there must be continuity of employment for the right to contribute at the lower rate of 5% to carry forward from before the commencement date of the principal Regulations.

Regulations 14 and 15 clarify the position regarding contributions where a member is on leave of absence (otherwise than because of illness or injury) by providing that in all cases the member must contribute for the first 30 days of absence.

Regulation 18 clarifies the definition of final pay. It provides that, in calculating a death grant or the rate of surviving spouse's or children's short term pension payable on the death of an active member, in the case of a part-time employee it is the actual pay in the final pay period which is used.

Regulations 20 and 40 make provision in connection with ill-health retirements. Regulation 20 introduces a requirement that a person must be incapable of carrying out not only the duties of the job he holds but also those of any comparable employment with his employing authority. It also introduces a definition of comparable employment and makes clear that the term "permanently incapable" means until, at the earliest, age 65. Regulation 40 introduces a requirement that the independent registered medical practitioner who certifies about a member's permanent incapacity must be qualified in occupational health medicine, and provides a definition of that term.

Regulation 21 makes a minor adjustment to regulation 27 of the principal Regulations for consistency with other provisions of that regulation.

Regulation 22 amends regulation 31 of the principal Regulations, which covers re-employed and rejoining deferred members, to provide that for members who have accrued Scheme membership with certain admission bodies, specified periods of such membership may not be aggregated in calculating lump sum benefits.

Regulation 23(a) amends the provision dealing with death grants to make clear that the administering authority has absolute discretion in deciding to whom the death grant should be paid.

Regulation 25 clarifies the fact that, in calculating a widower's pension in relation to past retirement marriages, the relevant additional membership applies only where the widower was married to the member at some time during her local government employment after 31st March 1972.

Regulation 28 amends the provision in connection with the increase of membership of members leaving employment after age 50 to provide that no increase may be made where the person is paid lump sum compensation under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (as amended).

Regulations 30 and 31 extend the time limits for elections for pension in lieu of lump sum and for lump sum in lieu of pension.

Regulation 32 substitutes the term “total remuneration” for “pay”. It also makes a change to allow the transfer into a member’s additional voluntary contribution scheme of the accumulated value from other additional voluntary contribution schemes.

Regulation 34 makes changes in connection with the revision of actuarial valuations and certificates when an admission body ceases to be a Scheme employer.

Regulation 35 inserts two further options relating to meeting the costs of early payment of benefits in cases of early retirement on grounds of efficiency or redundancy.

Regulation 36 amends the principal Regulations to the effect that the rate of interest for all overdue payments is 1% above base rate on a day to day basis with three monthly rests.

Regulations 37, 38 and 39 make changes concerning when and from which date interest is payable in connection with the repayment to members of contributions and the payment of benefits.

Regulation 41 requires employers and administering authorities to publish any policy statements concerning their exercise of discretionary functions under the principal Regulations.

Regulation 43 makes amendments to provisions in the principal Regulations relating to transferring members with mis-sold pension rights. The purpose of the amendments is to clarify the method of calculation to be used in determining the sum necessary to reinstate the person in the Scheme as if the mis-selling had not occurred. They also add a provision to allow a transfer value from a personal pension provider to be apportioned between membership before and after 6 April 1988 (the date widowers pensions were introduced). A further provision allows the administering authority to accept a transfer value which is less than the restoration amount, the credited period being of such proportion of the personal pension period as the administering authority may determine.

Regulation 46 introduces a new schedule as Schedule 2A to the principal Regulations which sets out conditions to be included in an admission agreement with a transferee admission body.

Regulation 47 makes a consequential amendment to Schedule 4 to the principal Regulations which sets out Inland Revenue restrictions on benefits under the Scheme.

Regulation 48 provides that the amendments made by these Regulations do not affect admission agreements entered into before 13 January 2000.

Regulation 49 allows persons who would be placed in a worse position by amendments made in these Regulations to elect for the amendments not to apply in their case.

The remaining provisions of the Regulations make minor corrections and clarifications.