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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 349**

**PENSIONS**

**The Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2011**

*Made* - - - - 28th September 2011  
*Laid before the Scottish Parliament* - - - - 30th September 2011  
*Coming into force* - - 14th November 2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 7, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972(1) and of all other powers enabling them to do so.

In accordance with section 7(5) of that Act, they have consulted such associations of local authorities as appeared to them to be concerned, such local authorities with whom consultation appeared to them to be desirable, and such representatives of other persons likely to be affected by the proposed regulations as appeared to them to be appropriate.

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2011.

(2) These Regulations come into force on 14th November 2011 and, subject to paragraphs (3) to (7), have effect from that date(2).

(3) Regulation 35 in so far as it inserts section 82A into the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008(3) has effect from 31st March 2010.

(4) Regulation 35 in so far as it inserts section 82B into the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 has effect from 30th April 2010.

(5) Regulation 35 in so far as it inserts section 82C into the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 has effect from 30th September 2008.

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(1) 1972 c.11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), section 10. The functions of the Secretary of State were transferred to the Scottish Ministers as regards Scotland by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.  
(2) Section 12(1) of the Superannuation Act 1972 provides that regulations may be framed so as to have effect from a date earlier than that of their making.  
(3) S.S.I. 2008/228, as amended by S.S.I. 2009/93, S.S.I. 2009/187 and S.S.I. 2010/234.

(6) Regulation 35 in so far as it inserts section 82D into the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 has effect from 31st March 2011.

(7) Regulation 35 in so far as it inserts section 82E into the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 has effect from the dates referred to in paragraphs (3) to (6) in respect of the persons covered by sections 82A to 82D of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

### **Amendments of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998**

2. The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998(4) are amended in accordance with regulations 3 to 7.

3. In regulation 2 (general interpretation)(5)—

- (a) in paragraph (3), for “Benefit” substitute “Benefits”; and
- (b) in paragraph (4), for “Benefit” substitute “Benefits”.

4. In regulation 17 (cessation of new employment)—

- (a) in paragraph (1)(b)(i), after “assumptions” insert “but ignoring any such effective service falling on or after age 65”; and
- (b) in paragraph (1)(b), in the full out, for “his 65th birthday” substitute “and including the day before his 65th birthday”.

5. In regulation 18 (reduction of annual compensation on cessation of new employment)(6), in paragraph (4) for “Benefit” substitute “Benefits”.

6. In regulation 35 (determination to pay and computation of compensation)(7), in paragraph (1), after “or regulation 12” insert “or 13”.

7. In regulation 46 (death in service gratuities)(8), in paragraph (5) for “Benefit” substitute “Benefits”.

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

8. The Local Government Pension Scheme (Scotland) Regulations 1998(9) are amended in accordance with regulation 9.

9. In regulation 150 (“appropriate rights”/“pension credit benefits” under the scheme)—

- (a) in paragraph (5), for “A pension credit member” substitute “Subject to paragraph (7), a pension credit member”; and
- (b) after paragraph (6), insert—

“(7) A pension credit member may elect in writing to the appropriate administering authority for benefits payable under paragraph (5) to be paid at or after age 60 (but before normal benefit age), and the appropriate administering authority shall commence payment of such benefits in accordance with the election but the benefits must be reduced by the amounts as are shown to be appropriate in guidance issued by the Government Actuary’s Department.”.

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(4) [S.I. 1998/192](#).

(5) Regulation 2 was relevantly amended by [S.S.I. 2009/187](#).

(6) Regulation 18(4) was relevantly amended by [S.S.I. 2009/187](#).

(7) Regulation 35(1) was relevantly amended by [S.S.I. 2009/187](#).

(8) Regulation 46(5) was relevantly amended by [S.S.I. 2009/187](#).

(9) [S.I. 1998/366](#); regulation 150 was revoked, subject to transitional provisions and savings, by [S.S.I. 2008/229](#).

## **Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008**

10. The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008(10) are amended in accordance with regulations 11 to 19.

11. In regulation 5 (meaning of “pensionable pay”)—

(a) in paragraph (2)(d), omit “or”;

(b) after paragraph (2)(e), insert—

“(f) the amount of any supplement paid to an employee whose employment was transferred on 1st April 2010, under a staff transfer scheme, from the Scottish Administration to Learning and Teaching Scotland(11), in recognition of the difference in contribution rates between members of the principal civil service pension scheme(12) and the Scheme;

(g) the amount of any supplement paid to an employee whose entitlement to a pension was transferred on 1st May 2010 from the SDS Scheme to the Scheme, in recognition of the difference in contribution rates between members of the SDS Scheme and the Scheme;

(h) the amount of any supplement paid to an employee whose employment was transferred on 1st October 2008, under a staff transfer scheme, from the Scottish Legal Services Ombudsman(13) to the Scottish Legal Complaints Commission(14) in recognition of the difference in contribution rates between members of the principal civil service pension scheme(15) and the Scheme; or

(i) the amount of any supplement paid to an employee whose employment was transferred on 1st April 2011, under a staff transfer scheme, from the Scottish Administration to Social Care and Social Work Improvement Scotland(16), in recognition of the difference in contribution rates between members of the principal civil service pension scheme(17) and the Scheme(18).”;

(c) after paragraph (3), insert—

“(4) In this regulation “the SDS Scheme” has the same meaning as in regulation 16B.”.

12. In regulation 6 (benefits), in paragraph (1)—

(a) in sub-paragraph (a), omit “or”;

(b) in sub-paragraph (b), for “.” substitute “; or”;

(c) after sub-paragraph (b), insert—

“(c) regulation 82A, 82B 82C or 82D (bulk transfers in) or 16A, 16B, 16C or 16D (normal retirement age etc) of the Administration Regulations applies to the member.”.

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(10) S.S.I. 2008/230, as amended by S.S.I. 2009/93, S.S.I. 2009/187 and S.S.I. 2010/234.

(11) A company limited by guarantee (company number SC200241).

(12) For the definition of the principal civil service pension scheme, see section 2(10) of the Superannuation Act 1972 (c.11).

(13) The Scottish Legal Services Ombudsman was established by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 34 and abolished by S.S.I. 2008/352.

(14) The Scottish Legal Complaints Commission was established by the [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), section 1.

(15) For the definition of the civil service pension scheme, see section 2(10) of the Superannuation Act 1972 (c.11).

(16) Social Care and Social Work Improvement Scotland was established under the [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), section 44.

(17) For the definition of the civil service pension scheme, see section 2(10) of the Superannuation Act 1972 (c.11).

(18) Learning and Teaching Scotland and The Skills Development Scotland Co. Limited are, and the Scottish Legal Complaints Commission and Social Care and Social Work Improvement Scotland will be, community admission bodies in terms of regulation 4(2) of S.S.I. 2008/228.

13. In regulation 7 (periods of membership), in paragraph (c), for “82 (changes of fund and variable time employees)” substitute “82D (bulk transfers in)”.

14. In regulation 13 (power of employing authority to award additional pension), in paragraph (1), for “a member” substitute “an active member”.

15. After regulation 14 (election in respect of additional pension), insert—

**“Election to pay additional contributions: survivor benefits**

14A.—(1) An active member may elect to pay additional contributions in respect of any period of membership occurring prior to 6th April 1988, in order to be credited with additional survivor benefits in respect of a surviving nominated cohabiting partner (within the meaning of regulation 25).

(2) An election to pay additional survivor benefits contributions (“ASBCs”) under paragraph (1), must be made no later than 30 June 2012, or in the case of a nomination being made under regulation 25, within 12 months from the date of the nomination.

(3) ASBCs may be paid—

(a) in respect of the whole of any period of membership occurring before 6th April 1988 (whether or not that period constitutes a period of complete years of membership); or

(b) in respect of complete years of membership only.

(4) The amount of ASBCs to be paid under paragraph (1) shall be calculated in accordance with actuarial guidance published by the Scottish Ministers.

(5) If an active member elects to pay ASBCs under paragraph (1), a surviving nominated cohabiting partner’s entitlement to a pension by virtue of regulation 24, 33 or 36 as the case may be, will be based on the period of membership occurring after 5th April 1988 plus any period of membership occurring before that date in respect of which the active member chooses to pay ASBCs and in respect of which the member has made completed payments, or is deemed to have completed payments in accordance with regulation 21A(9), 21B(2) or 21B(3).”.

16. In regulation 16 (retirement benefits), for paragraph (2) substitute—

“(2) Subject to regulations 16A, 16B, 16C and 16D, the normal retirement age of the Scheme is 65.”.

17. After regulation 16 insert—

**“Normal retirement age: staff of Learning and Teaching Scotland**

16A.—(1) Subject to paragraphs (2) and (3), the normal retirement age of a person to whom this regulation applies is 60 and—

(a) regulations 16, 20, 29 and 31 of these Regulations and sections 21A(4) and 46(2) of the Administration Regulations shall be construed accordingly;

(b) references to 55 in regulation 19(1) shall be construed as references to 50 (“the age 50 protections”); and

(c) references to 65th birthday in regulations 18(3) and 20(7) shall be construed as references to 60th birthday.

(2) Any increases and enhancements under regulations 14(2) and 29(5) shall not apply to such a person in relation to benefits coming into payment before the age of 65.

(3) Regulation 30(2) shall not apply to such a person.

- (4) Subject to paragraph (5), this regulation applies to a person who on 31st March 2010 was an employee of the Scottish Administration, and who on that date—
- (a) was an active member of the 1972 Section or the 2002 Section of the principal civil service pension scheme (“PCSPS”), or was eligible to join one of those Sections;
  - (b) ceased to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of their employment on 1st April 2010 from the Scottish Administration to Learning and Teaching Scotland; and
  - (c) became an active member of the Scheme.
- (5) The age 50 protections and paragraph (3) shall only apply if the person either—
- (a) became an active member of the 1972 Section or the 2002 Section of the PCSPS before 6th April 2006;
  - (b) became an active member of the 1972 Section of the PCSPS after 5th April 2006, and rule 3.10aa (termination of pensionable service on registration or option out of the scheme) of that Section did not apply to such a person; or
  - (c) became an active member of the 2002 Section of the PCSPS after 5th April 2006, and paragraph (3) of rule D.3 (early payment of pensions with actuarial reduction) of that Section applied to such a person.
- (6) In this regulation—
- (a) “the principal civil service pension scheme” has the same meaning as in section 2(10) of the Superannuation Act 1972;
  - (b) “the 1972 Section” means Section II of the PCSPS; and
  - (c) “the 2002 Section” means Section 1 of the PCSPS.

**Normal retirement age: staff formerly entitled to a pension under the SDS Scheme**

- 16B.**—(1) Subject to paragraphs (2) and (3), the normal retirement age of a person to whom this regulation applies is 60 and—
- (a) regulations 16, 20, 29 and 31 of these Regulations and sections 21A(4) and 46(2) of the Administration Regulations shall be construed accordingly;
  - (b) references to 55 in regulation 19(1) shall be construed as references to 50 (“the age 50 protections”); and
  - (c) references to 65th birthday in regulations 18(3) and 20(7) shall be construed as references to 60th birthday.
- (2) Any increases and enhancements under regulations 14(2) and 29(5) shall not apply to such a person in relation to benefits coming into payment before the age of 65.
- (3) Regulation 30(2) shall not apply to such a person.
- (4) Subject to paragraph (5), this regulation applies to a person who on 30th April 2010—
- (a) was an active member of the SDS Scheme, or was eligible to join the SDS Scheme and on 1st May 2010 became an active member of the Scheme; or
  - (b) is a member of the Scheme employed by The Skills Development Scotland Co. Limited to whom the member’s employing authority and the appropriate administering authority agree that regulation 16B(1) shall apply.
- (5) The age 50 protections and paragraph (3) shall only apply if the person either—
- (a) became an active member of the SDS Scheme before 6th April 2006; or

- (b) has a protected pension age (from which the member has an actual and prospective right to a pension) of 50.
- (6) In this regulation the “SDS Scheme”(19) means any of:
  - (a) The Skills Development Scotland Co. Limited Retirement Benefit Scheme established by Declaration of Trust dated 19 May 2000;
  - (b) the Scottish Enterprise Pension and Life Assurance Scheme governed by a Deed of Agreement and Trust dated 10th June 2010 and subsequent dates with Rules, Tables and Appendix attached; or
  - (c) the Highlands and Islands Enterprise Superannuation Scheme established by Interim Trust Deed dated 3rd April 1967.

**Normal retirement age: staff of the Scottish Legal Complaints Commission**

**16C.**—(1) Subject to paragraphs (2) and (3), the normal retirement age of a person to whom this regulation applies is 60 and—

- (a) regulations 16, 20, 29 and 31 of these Regulations and sections 21A(4) and 46(2) of the Administration Regulations shall be construed accordingly;
  - (b) references to 55 in regulation 19(1) shall be construed as references to 50 (“the age 50 protections”); and
  - (c) references to 65th birthday in regulations 18(3) and 20(7) shall be construed as references to 60th birthday.
- (2) Any increases and enhancements under regulations 14(2) and 29(5) shall not apply to such a person in relation to benefits coming into payment before the age of 65.
- (3) Regulation 30(2) shall not apply to such a person.
- (4) Subject to paragraph (5), this regulation applies to a person who on 30th September 2008, was an employee of the Scottish Legal Services Ombudsman, and who on that date—
- (a) was an active member of the 1972 Section or the 2002 Section of the principal civil service pension scheme (“PCSPS”), or was eligible to join one of those Sections;
  - (b) ceased to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of their employment on 1st October 2008 from the Scottish Legal Services Ombudsman to the Scottish Legal Complaints Commission; and
  - (c) became an active member of the Scheme.
- (5) The age 50 protections and paragraph (3) shall only apply if the person either—
- (a) became an active member of the 1972 Section or the 2002 Section of the PCSPS before 6th April 2006;
  - (b) became an active member of the 1972 Section of the PCSPS after 5th April 2006, and rule 3.10aa (termination of pensionable service on resignation or option out of the scheme) of that Section did not apply to such a person; or
  - (c) became an active member of the 2002 Section of the PCSPS after 5th April 2006, and paragraph (3) of rule D.3 (early payment of pensions with actuarial reduction) of that Section applied to such a person.
- (6) In this regulation—

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(19) The Skills Development Scotland Co. Limited (SDS) is a company limited by guarantee (Company Number SC202659) and registered in Scotland.

- (a) “the principal civil service pension scheme” has the same meaning as in section 2(10) of the Superannuation Act 1972;
- (b) “the 1972 Section” means Section II of the PCSPS; and
- (c) “the 2002 Section” means Section 1 of the PCSPS.

**Normal retirement age: staff of Social Care and Social Work Improvement Scotland**

**16D.**—(1) Subject to paragraphs (2) and (3), the normal retirement age of a person to whom this regulation applies is 60 and—

- (a) regulations 16, 20, 29 and 31 of these Regulations and sections 21A(4) and 46(2) of the Administration Regulations shall be construed accordingly;
- (b) references to 55 in regulation 19(1) shall be construed as references to 50 (“the age 50 protections”); and
- (c) references to 65th birthday in regulations 18(3) and 20(7) shall be construed as references to 60th birthday.

(2) Any increases and enhancements under regulations 14(2) and 29(5) shall not apply to such a person in relation to benefits coming into payment before the age of 65.

(3) Regulation 30(2) shall not apply to such a person.

(4) Subject to paragraph (5), this regulation applies to a person who on 1st April 2011 was an employee of the Scottish Administration, and who on that date—

- (a) was an active member of the 1972 Section or the 2002 Section of the principal civil service pension scheme (“PCSPS”), or is eligible to join one of those Sections;
- (b) ceased to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of their employment on 1st April 2011 from the Scottish Administration to Social Care and Social Work Improvement Scotland; and
- (c) became an active member of the Scheme.

(5) The age 50 protections and paragraph (3) shall only apply if the person either—

- (a) became an active member of the 1972 Section or the 2002 Section of the PCSPS before 6th April 2006;
- (b) became an active member of the 1972 Section of the PCSPS after 5th April 2006, and rule 3.10aa (termination of pensionable service on resignation or option out of the scheme) of that Section did not apply to such a person; or
- (c) became an active member of the 2002 Section of the PCSPS after 5th April 2006, and paragraph (3) of rule D.3 (early payment of pensions with actuarial reduction) of that Section applied to such a person.

(6) In this regulation—

- (a) “the principal civil service pension scheme” has the same meaning as in section 2(10) of the Superannuation Act 1972;
- (b) “the 1972 Section” means Section II of the PCSPS; and
- (c) “the 2002 Section” means Section 1 of the PCSPS.”.

**18.** In regulation 22 (limit on total amount of benefits), at the end of the cross-heading, insert “and liability to tax”.

**19.** In regulation 27 (children’s pensions), after paragraph (4) insert—

“(5) The appropriate administering authority may pay the whole of a children’s pension to a person other than an eligible child, to be applied for the benefit of such one or more eligible children as the authority may direct.”.

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

**20.** The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008(20) are amended in accordance with regulations 21 to 37.

**21.** In regulation 10 (joining the scheme)—

(a) for paragraph (5) substitute—

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

(a) applies to the body to pay contributions in respect of that earlier period at the appropriate contribution rate as provided in regulation 4 of the Benefits Regulations; and

(b) does so within 3 months of becoming eligible to join the Scheme, or such longer period as the employer may allow.”; and

(b) in paragraph (7), after “(payment of additional regular contributions)” insert “and regulation 21A(7) (payment of additional contributions: survivor benefits (ASBCs))”.

**22.** In regulation 13 (re-employed and rejoining deferred members)—

(a) in paragraph (6)(a), after “regulation” insert “or regulation 4 of the Transitional Regulations”;

(b) omit paragraph (7);

(c) after paragraph (7) insert—

“(7A) A member, who was prohibited by paragraph (7)(21) of this regulation from choosing to aggregate any period of former membership, may give notice for the purposes of paragraph (1) in respect of that period of former membership before the expiry of the period mentioned in paragraph (8)(aa) or before 30 September 2012, whichever is later”;

(d) after paragraph (8)(a) insert—

“(aa) before the expiry of—

(i) the period of 12 months beginning with the date on which he became an active member in that employment; or

(ii) such longer period as the employer may allow.”; and

(e) after paragraph (10) insert—

“(11) But paragraph (10) does not apply to a member who is the subject of a transfer

(a) to which the Transfer of Undertakings (Protection of Employment) Regulations 2006(22) (“the TUPE Regulations”) apply; or

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(20) S.S.I. 2008/228, as amended by S.S.I. 2009/93, S.S.I. 2009/187 and S.S.I. 2010/234.

(21) Paragraph (7) of regulation 13 of the Administration Regulations is omitted by these Regulations.

(22) S.I. 2006/246, to which there are amendments not relevant to these Regulations.

(b) which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.”

23. In regulation 14 (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 the person has at least two years’ total membership; or
- (b) in respect of which the person has an entitlement to benefits under regulation 6 (benefits) of the Benefits Regulations; and

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

24. In regulation 15 (contributions during child-related leave), in paragraph (8), after “under” insert “regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations or”.

25. In regulation 16 (contributions during reserve forces service leave), in paragraph (4), after the second “under” insert “regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations or”.

26. In regulation 17 (contributions during trade dispute absence), in paragraph (5)(b), after “under” insert “regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations,”.

27. In regulation 18 (contributions during absences with permission)—

- (a) in paragraph (2)(b), after “under” insert “regulations 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations,”; and
- (b) in paragraph (5)(b), after “under” insert “regulation 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations,”.

28. After regulation 21 (discontinuance of ARCs), insert—

**“Payment of additional contributions: survivor benefits (ASBCs)**

**21A.—**(1) A member who wishes to pay additional contributions under regulation 14A of the Benefits Regulations must make a request to do so, in writing, to the appropriate administering authority.

(2) A copy of the request must be sent to the member’s employing authority (if different) and must state the length of the period (“the ASB payment period”) over which the member wishes to pay the additional survivor benefits contributions (“ASBCs”).

(3) Before agreeing to the request, the member’s administering authority may pass a resolution requiring the member—

- (a) to satisfy it that the member is in reasonably good health; and
- (b) to produce to it a report by a registered medical practitioner of the results of a medical examination (obtained at the member’s own expense),

and if the administering authority is not so satisfied, it may refuse the member’s request.

(4) The ASB payment period must end before the member’s normal retirement age.

(5) The member may only pay ASBCs if the appropriate administering authority notifies the member in writing that it agrees to the request.

(6) The scheme actuary shall from time to time determine the amount of ASBCs required for any given amount of increased pension and may determine different amounts of ASBCs

(a) for—

- (i) persons of different ages; or
- (ii) men or women; or

(b) by reference to the length of different payment periods.

(7) Where the appropriate administering authority agrees to the member's request—

- (a) it must notify the member and the member's employing authority (if different) of the amount of ASBCs payable in accordance with the actuary's determination, expressed as an amount in pounds sterling; and
- (b) the member must pay those ASBCs from the next payment period (as defined in regulation 10(7)) following the date of the administering authority's notification under paragraph (5).

(8) The actuary may at any time redetermine any amount determined under paragraph (6) and if the actuary does so, the member must pay the redetermined ASBCs from 1st April next following the redetermination.

(9) If the member pays (or is treated under regulation 21B as having paid) ASBCs for the whole of the ASB payment period, the member must be credited with the additional survivor benefits of the amount that those ASBCs purchase.

### **Discontinuance of ASBCs**

**21B.**—(1) A member—

- (a) may stop paying ASBCs before the end of the ASB payment period if the member notifies the appropriate administering authority and the employing authority (if different) in writing; and
- (b) must stop doing so if the member ceases to be an active member.

(2) If a member stops paying ASBCs before the end of the ASB payment period—

- (a) on leaving their employment on the grounds of ill-health where the employing authority makes a determination under regulation 20(2) or (3) of the Benefits Regulations; or
- (b) on the member's death,

the member is to be treated as having paid ASBCs up to the end of that period.

(3) If a member stops paying ASBCs and paragraph (2) does not apply, the member must be credited with additional survivor benefits of an amount determined by the scheme actuary, having regard to the ASBCs that were paid before the member stopped paying them.”.

**29.** In regulation 27 (governance compliance statement)(**23**), in paragraph (2), for “31st March 2011” substitute “14th December 2011”.

**30.** In regulation 31A(1)(c), after “funds” insert “including details of any borrowings of the funds outstanding at the end of the accounting period”.

**31.** In regulation 43 (permanent reductions in pay: certificates of protection of pension benefits)

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(23) Regulation 27(2) was amended by [S.S.I. 2010/234](#).

- (a) in paragraph (1)(a)—
  - (i) in head (i), omit “in” and “and”;
  - (ii) in head (ii), for “or” substitute “and”; and
  - (iii) after head (ii), insert—
    - “(iii) of which the first day is a day no earlier than three years prior to the date of the reduction or, as the case may be, restriction specified in the certificate; or”.
- (b) in paragraph (1)(b)—
  - (i) in head (i), omit “and”;
  - (ii) in head (ii), for “.” substitute “; and”; and
  - (iii) after head (ii), insert—
    - “(iii) beginning with a day no earlier than three years prior to the date of the reduction or, as the case may be, restriction specified in the certificate.”.
- (c) in paragraph (3)—
  - (i) omit “(including the member’s ill health)”; and
  - (ii) for “date” substitute “rate”.
- (d) after paragraph (10), insert—
  - “(11) If the member ceases to be an active member with the employing authority that issued the certificate, the certificate does not carry forward in relation to any further period of membership with another employing authority except where the member transfers employment from the employing authority that issued the certificate to employment with another employing authority as a result of a transfer—
    - (a) to which the Transfer of Undertakings (Protection of Employment) Regulations 2006<sup>(24)</sup> (“the TUPE Regulations”) apply; or
    - (b) which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.”.

32. After regulation 46 (commencement of pensions), insert—

**“Guaranteed minimum pensions**

**46A.**—(1) Where a member’s local government employment is contracted-out employment and he or she has a guaranteed minimum, the member is entitled from the date he or she attains pensionable age to payment of a pension at a weekly rate equal to not less than that guaranteed minimum.

(2) But if the member attains pensionable age while in local government employment, the member is not so entitled until he or she leaves that employment, unless paragraph (5) applies.

(3) If the member attains pensionable age while in local government employment but subsequently changes employment to employment which is not local government employment, the member is so entitled.

(4) If the member changes employment to employment which is not local government employment and the member attains pensionable age while in that employment, the member is so entitled.

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(24) S.I. 2006/246, to which there are amendments not relevant to these Regulations.

(5) If the member—

- (a) continues in local government employment for a further period of five years after attaining pensionable age; and
- (b) does not then leave that employment,

the member is entitled from the end of the period mentioned in sub-paragraph (a) to payment of so much of his or her retirement pension as equals that guaranteed minimum.

(6) Where paragraph (3), (4) or (5) applies the member may consent to a postponement of the entitlement for any period prior to the day before attaining age 75 during which the member remains in employment beyond pensionable age.

(7) For the purposes of this regulation, a person has a guaranteed minimum if they have such a minimum under section 14 (earner’s guaranteed minimum) of the Pension Schemes Act 1993<sup>(25)</sup> in relation to benefits under these Regulations or the Benefits Regulations, and references to entitlement are to the entitlement to payment of a pension in accordance with paragraph (1).

(8) In this regulation—

- (a) “contracted-out employment” shall be construed in accordance with section 8 of the Pension Schemes Act 1993; and
- (b) “pensionable age” shall be construed in accordance with section 181 of that Act.”.

**33.** In regulation 68 (recovery or retention where former member has misconduct obligation), for paragraph (3) substitute—

“(3) The rights specified in paragraph (2)(b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of ARCs, ASBCs, AVCs or SCAVCs.”.

**34.** In regulation 81 (changes of fund), in paragraph (4)(a), for “the President of the Scottish Faculty of Actuaries” substitute “the President of the Institute and Faculty of Actuaries”.

**35.** After regulation 82 (changes of fund and variable time employees), insert—

## “PART 9A

### SPECIAL CASES

#### **Bulk transfers in: Learning and Teaching Scotland**

**82A.**—(1) This regulation applies to a person who on 31st March 2010 was in the employment of the Scottish Administration, and—

- (a) was an active member of the principal civil service pension scheme (“PCSPS”)<sup>(26)</sup>;
- (b) ceased to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of his or her employment on 1st April 2010, from the Scottish Administration to Learning and Teaching Scotland;
- (c) on 1st April 2010 became an active member of the Scheme; and
- (d) opts to transfer his or her accrued rights from the PCSPS to the Scheme under special transfer arrangements.

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<sup>(25)</sup> 1993 c.48.

<sup>(26)</sup> For the definition of the principal civil service pension scheme, see section 2(10) of the Superannuation Act 1972.

(2) The actuaries representing the PCSPS and the actuaries representing the appropriate administering authorities must agree—

- (a) the transfer value payment in respect of a person to whom this regulation applies; and
- (b) the special transfer arrangements mentioned in paragraph (1)(d).

**Bulk transfers in: staff formerly entitled to a pension under the SDS Scheme**

**82B.**—(1) This regulation applies to a person who on 30th April 2010—

- (a) was an active member of the SDS Scheme;
- (b) ceased to be a member of the SDS Scheme as a consequence of the transfer of his or her pension entitlement on 30th April 2010, from the SDS Scheme to the Scheme;
- (c) on 1st May 2010 became an active member of the Scheme; and
- (d) opts to transfer his or her accrued rights from the SDS Scheme to the Scheme under special transfer arrangements.

(2) The actuaries representing the SDS Scheme and the actuaries representing the appropriate administering authorities must agree—

- (a) the transfer value payment in respect of a person to whom this regulation applies; and
- (b) the special transfer arrangements mentioned in paragraph (1)(d).

(3) In this regulation the “SDS Scheme” means any of:

- (a) The Skills Development Scotland Co. Limited Retirement Benefit Scheme established by Declaration of Trust dated 19th May 2000;
- (b) the Scottish Enterprise Pension and Life Assurance Scheme governed by a Deed of Agreement and Trust dated 10th June 2010 and subsequent dates with Rules, Tables and Appendix attached;
- (c) the Highlands and Islands Enterprise Superannuation Scheme established by Interim Trust Deed dated 3rd April 1967.

**Bulk transfers in: Scottish Legal Complaints Commission**

**82C.**—(1) This regulation applies to a person who on 30th September 2008 was in the employment of the Scottish Legal Services Ombudsman, and—

- (a) was an active member of the principal civil service pension scheme (“PCSPS”)(**27**);
- (b) ceased to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of his or her employment on 1st October 2008, from the Scottish Legal Services Ombudsman to the Scottish Legal Complaints Commission;
- (c) on 1st October 2008 became an active member of the Scheme; and
- (d) opts to transfer his or her accrued rights from the PCSPS to the Scheme under special transfer arrangements.

(2) The actuaries representing the PCSPS and the actuaries representing the appropriate administering authorities must agree—

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(27) For the definition of the principal civil service pension scheme, see section 2(10) of the Superannuation Act 1972.

- (a) the transfer value payment in respect of a person to whom this regulation applies; and
- (b) the special transfer arrangements mentioned in paragraph (1)(d).

**Bulk transfers in: Social Care and Social Work Improvement Scotland**

**82D.**—(1) This regulation applies to a person who on 31st March 2011 was in the employment of the Scottish Administration, and—

- (a) was an active member of the principal civil service pension scheme (“PCSPS”)(**28**);
- (b) ceased to be a member of the PCSPS as a consequence of being named in a staff transfer scheme, providing for the transfer of his or her employment on 1st April 2011, from the Scottish Administration to Social Care and Social Work Improvement Scotland;
- (c) on 1st April 2011 becomes an active member of the Scheme; and
- (d) opts to transfer his or her accrued rights from the PCSPS to the Scheme under special transfer arrangements.

(2) The actuaries representing the PCSPS and the actuaries representing the appropriate administering authorities must agree—

- (a) the transfer value payment in respect of a person to whom this regulation applies; and
- (b) the special transfer arrangements mentioned in paragraph (1)(d).

**Staff of Learning and Teaching Scotland, staff formerly entitled to a pension under the SDS Scheme, staff of the Scottish Legal Complaints Commission and staff of Social Care and Social Work Improvement Scotland**

**82E.** Except for the purposes of regulation 79(4), the normal retirement age of a person to whom regulation 16A (normal retirement age: staff of the Learning and Teaching Scotland), 16B (normal retirement age: staff formerly entitled to a pension under the SDS Scheme), 16C (normal retirement age: staff of the Scottish Legal Complaints Commission) and 16D (normal retirement age: staff of Social Care and Social Work Improvement Scotland) of the Benefits Regulations applies is 60; and

- (a) regulations 16(7), 20(4) and 62(3) shall be construed accordingly; and
- (b) in regulation 46(2) the reference to 65th birthday shall be construed as a reference to 60th birthday.”.

**36.** In regulation 95 (“appropriate rights”/“pension credit benefits” under the scheme)—

- (a) in paragraph (4), omit “23 (death grants: active members),”;
- (b) in paragraph (5), for “A pension credit member” substitute “Subject to paragraph (7), a pension credit member”; and
- (c) after paragraph (6), insert—

“(7) A pension credit member may elect in writing to the appropriate administering authority for benefits payable under paragraph (5) to be paid at or after age 60 (but before normal benefit age), and the appropriate administering authority shall commence payment of such benefits in accordance with the election but the benefits must be

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(28) For the definition of the principal civil service pension scheme, see section 2(10) of the Superannuation Act 1972.

reduced by the amounts as are shown to be appropriate in guidance issued by the Government Actuary's Department.”.

**37.** In Schedule 1 (interpretation)—

(a) for the definition of “actuary” substitute—

““actuary” means a Fellow of the Institute and Faculty of Actuaries;”;

(b) after the definition of “ARCs” insert—

““ASBCs” means additional survivor benefits contributions as referred to in regulation 21A;”; and

(c) for the definition of “normal retirement age” substitute—

““normal retirement age”, except in regulation 82E, is 65;”.

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

**38.** The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008(**29**) are amended in accordance with regulation 39.

**39.** In regulation 4 (membership accrued before 1st April 2009: rejoining deferred members)—

(a) in paragraph (1)—

(i) in sub-paragraph (a), after “member of the” insert “1987 Scheme or the”; and

(ii) in sub-paragraph (c), for “under the 1998 Scheme” substitute “under the 1987 Scheme or the 1998 Scheme”; and

(b) for paragraph (2) substitute—

“(2) The person may, by notice in writing to the appropriate administering authority before the expiry of—

(a) the period of 12 months beginning with the date on which he became an active member in that employment; or

(b) such longer period as the employer may allow,

choose to be treated as if regulation 3 applied.”.

St Andrew's House, Edinburgh  
28th September 2011

*JOHN SWINNEY*  
A member of the Scottish Executive

## EXPLANATORY NOTE

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

These Regulations amend the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (“the Discretionary Regulations”), the Local Government Pension Scheme (Scotland) Regulations 1998 (“the 1998 Regulations”), the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (“the Benefits Regulations”), the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (“the Administration Regulations”) and the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 (“the Transitional Regulations”).

Regulation 1(2) provides that the Regulations come into force on 14th November 2011 and regulations 1(3) to (6) provide for certain provisions to have effect from a date earlier than that (which is authorised in terms of section 12 of the Superannuation Act 1972 (c.11)). These provisions have effect as follows:

- those relating to the transfer of staff from the Scottish Legal Services Ombudsman (SLSO) to the Scottish Legal Complaints Commission (SLCC) have effect from 30th September 2008;
- those relating to the transfer of staff from the Scottish Administration to Learning and Teaching Scotland (LTS) have effect from 31st March 2010;
- those relating to the transfer of pension entitlement from the SDS Scheme (as defined in new regulation 16B) to the Local Government Pension Scheme (“LGPS”) have effect from 30th April 2010; and
- those relating to the transfer of staff from the Scottish Administration (HMIE/SWIA) to Social Care and Social Work Improvement Scotland (SCSWIS) have effect from 31st March 2011.

Regulations 2 to 7 amend the Discretionary Regulations.

Regulation 3, 5 and 7 correct certain references to “Benefit” (within the title to the Benefits Regulations) to read “Benefits”.

Regulation 4 amends regulation 17 (cessation of new employment) to provide that the reduction applicable to Compensatory Added Years awarded under the Discretionary Regulations on the termination of the member’s subsequent re-employment should only be based upon service up to age 65.

Regulation 6 adds a reference to regulation 13 of the Benefits Regulations to regulation 35 of the Discretionary Regulations. The effect is to add additional pension awarded by an employer under regulation 13 to augmentation of service under either regulation 51 of the 1998 Regulations or regulation 12 of the Benefits Regulations, as factors which would disallow the award of lump sum compensation under regulation 35.

Regulations 8 to 9 amend the 1998 Regulations.

Regulation 9 amends regulation 150 (“appropriate rights”/“pension credit benefits” under the scheme) which deals with the application of Pension Sharing Orders. The amendment provides that a pension credit member, who previously could not access their share of the benefits until they reached the scheme’s normal retirement age of 65, will now be able to access their share of the benefits at any time on or after age 60, but on an actuarially reduced basis.

Regulations 10 to 19 amend the Benefits Regulations.

Regulation 11 amends regulation 5 of the Benefits Regulations (meaning of “pensionable pay”) by inserting into the list of exclusions to the meaning of “pensionable pay”, the pay uplift paid to former staff of the Scottish Administration who have transferred to LTS in recognition of the higher contribution rates paid under the LGPS compared to the principal civil service pension scheme (“PCSPS”). Regulation 11 also makes equivalent provision for staff formerly entitled to a pension under the SDS Scheme, staff of the SLCC and staff of SCSWIS.

Regulation 12 amends regulation 6 (benefits) by inserting a reference to regulation 82A, 82B, 82C and 82D (bulk transfers in) of the Benefits Regulations, so that staff of LTS, those staff who were entitled to a pension under the SDS Scheme, staff of SLCC and staff of SCSWIS are not subject to an initial qualifying period before entitlement to benefits under the LGPS.

Regulation 13 amends regulation 7 (periods of membership) by inserting a reference to regulation 82A, 82B, 82C and 82D (bulk transfers in) of the Benefits Regulations, so that the bulk transfer in of LTS staff, those staff who were entitled to a pension under the SDS Scheme, staff of the SLCC and staff of SCSWIS will enable their membership of the PCSPS or, as the case may be, the SDS Scheme, to be counted towards their period of membership in the LGPS.

Regulation 14 amends regulation 13 (power of employing authority to award additional pension) to make it clear that only an active member can be awarded additional pension (not a deferred or a pensioner member).

Regulation 15 inserts new regulation 14A (election to pay additional contributions: survivor benefits). Survivor benefits for nominated cohabiting partners were first provided within the Local Government Pension Scheme by virtue of regulations 24 and 25 of the Benefits Regulations. However, regulation 3(4) of the Transitional Regulations specifies that only periods of membership after 5th April 1988 should be taken into account when calculating the survivor benefit. This date was chosen to be in line with previous improvements to the LGPS which allowed for survivor benefits to be paid to the surviving partner of a civil registered same sex partnership based only on membership accruing since April 1988.

Regulation 16 makes a minor amendment to regulation 16 (retirement benefits) by introducing a reference to new regulation 16A, 16B, 16C and 16D.

Regulation 17 inserts a new regulation 16A into the Benefits Regulations, to enable staff of LTS, on transfer to the LGPS, to retain the benefit of the normal retirement age of 60 offered under the PCSPS to which they previously belonged. Regulation 17 also inserts regulation 16B into the Benefits Regulations (which makes equivalent provision in relation to those staff formerly entitled to a pension under the SDS Scheme), regulation 16C (which makes equivalent provision in relation to staff of the SLCC and regulation 16D (which makes equivalent provision in relation to staff of SCSWIS).

Regulation 18 amends the title to regulation 22 (limit on total amount of benefits) to add the words “and liability to tax” to clarify the fact that the provision gives the fund administering authority the power to deduct tax on refunds of contributions.

Regulation 19 amends the title to regulation 27 (children’s pensions) to provide that the administering authority may pay all or part of a child’s pension to a person other than an eligible child.

Regulations 20 to 37 amend the Administration Regulations.

Regulation 21 amends regulation 10 (joining the scheme). This is a tidying-up amendment to allow those members whose enrolment into the LGPS takes place subsequently to their first taking up employment with an LGPS employer, to allow them to count their earlier period of employment as part of their Scheme membership, provided they apply to their employer to pay their arrears of contributions within three months of becoming eligible to join the Scheme, or such longer period as the employer may allow.

Regulation 22 amends regulation 13 (re-employed and rejoining deferred members) by inserting a new sub-paragraph (7A) to allow members to aggregate any of their previous periods of membership, not just the immediately preceding one, provided that they elect to do so within the first 12 months of their new period of membership or within 12 months of the coming into force of these Regulations, whichever is later.

Regulation 23 amends regulation 14 (concurrent employments). This amendment also gives certain employees more freedom to aggregate membership, in this case those who have in the past held Scheme membership in respect of more than one employment at the same time. Such members are now able to aggregate membership if they have an entitlement to benefits under Regulation 6 (benefits) of the Benefits Regulations, without necessarily having at least three months membership in respect of that employment.

Regulations 24 to 27 amend regulations 15 (contributions during child-related leave), 16 (contributions during reserve forces leave), 17 (contributions during trade dispute absence) and 18 (contributions during absences with permission) to insert a reference to regulation 14A of the Benefit Regulations.

Regulation 28 inserts new regulations 21A (payment of additional contributions: survivor benefits (ASBCs)) and 21B (discontinuance of ASBCs). Regulation 21A provides that a member who wishes to pay additional contributions under regulation 14A of the Benefits Regulations must make a request to do so in writing to the appropriate administering authority. Regulation 21B makes provision for persons who wish to stop paying ASBCs.

Regulation 29 amends regulation 27 (governance compliance statement) to change the date by which Administering Authorities must have published such a statement to 14th December 2011.

Regulation 30 amends regulation 31A(1)(c) to provide that in the pension fund annual report the report of the arrangements for the administration of each fund should include details of any borrowings of the funds outstanding at the end of the accounting period.

Regulation 31 amends regulation 43 (permanent reductions in pay: certificates of protection of pension benefits) to reduce the period that a member may take into account in the calculation of pensionable pay to a period of no more than three years prior to the date of reduction in the person's rate of pay. The regulation also removes the words "(including the member's ill-health)" in sub-paragraph (3) and for "date" substitutes the word "rate".

The regulation also adds new paragraph (11) which clarifies that if the member ceases to be an active member with the employing body that issued the certificate, the certificate does not carry forward in relation to any further period of membership, except where the transfer to another employing authority is as a result of a transfer to which TUPE applies or which is treated as if it were a relevant transfer.

Regulation 32 inserts after regulation 46 (commence of pensions) new regulation 46A (guaranteed minimum pensions) ("GMPs"). This amendment is being made in order to bring the scheme in Scotland into line with a similar change which was introduced to the LGPS in England and Wales on 31st December 2009. The amendment deals with the postponement of GMP payments for the increasing number of members who continue working beyond normal pensionable age. Those who change their employment and leave local government may now elect for the payment of their GMP to be suitably postponed if they choose thus enabling them to enjoy actuarial increases and avoid unfair restrictions on access to tax-free lump sums.

Regulation 33 amends regulation 68 (recovery or retention where former member has misconduct obligation) to include among the rights which are not protected service credited by virtue of ARCs or ASBCs.

Regulation 34 amends regulation 81 (changes of fund) to update a reference to the President of the Scottish Faculties of Actuaries to refer to the President of the Institute and Faculty of Actuaries.

Regulation 35 inserts Part 9A comprising five new regulations 82A, 82B, 82C, 82D and 82E.

Regulation 82A and 82D provide for the bulk transfer in of the pension rights of former Scottish Administration staff (LTS, SWIA and HMIE), accrued under the PCSPS. Regulation 82B provides for the bulk transfer in of the pension rights of those staff formerly entitled to a pension under the SDS Scheme, accrued under the SDS Scheme. Regulation 82C provides for the bulk transfer in of pension rights of former SLSO staff, accrued under the PCSPS.

Regulation 82E provides that references to normal retirement age in relation to staff of LTS, those staff formerly entitled to a pension under the SDS Scheme, staff of the SLCC and staff of SCSWIS, are references to 60 instead of 65. There is an exception relating to regulation 84(4), where normal retirement age is still 65.

Regulation 36 amends regulation 95 (“appropriate rights”/“pension credit benefits” under the scheme) to provide that a pension credit member may elect to receive their benefits from age 60, but that such benefits would be reduced as calculated by the Government Actuary’s Department.

Regulation 37 amends Schedule 1 (interpretation) to insert a definition of ASBCs (additional survivor benefits contributions), to update the definition of “actuary” to read “a Fellow of the Institute and Faculty of Actuaries”, and to define “normal retirement age” as age 65 (except in regulation 82E).

Regulations 38 to 39 amend the Transitional Regulations.

Regulation 39 amends regulation 4 (membership accrued before 1st April 2009: rejoining deferred members) of the Transitional Regulations to insert a reference to the 1987 Scheme and to substitute for paragraph (2) that a member can choose within 12 months of becoming an active member that any service prior to 1st April 2009 should be treated as post 1st April 2009 service.