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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 230**

**PENSIONS**

**The Local Government Pension Scheme (Benefits,  
Membership and Contributions) (Scotland) Regulations 2008**

<i>Made</i>	- - - -	<i>4th June 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th June 2008</i>
<i>Coming into force</i>		
<i>For the purpose of regulation 4(3)</i>		<i>1st April 2010</i>
<i>For all other purposes</i>		<i>1st April 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 7 and 12 of and Schedule 3 to the Superannuation Act 1972<sup>(1)</sup> 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 and commencement**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008.

(2) Subject to paragraph (3) these Regulations come into force on 1st April 2009.

(3) Regulation 4(3) comes into force on 1st April 2010.

**Interpretation**

2. In these Regulations—

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(1) 1972 c. 11. The functions of the Secretary of State exercised in the making of these Regulations 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, article 2 and Schedule 1 (S.I.1999/1750).

“the 1998 Regulations” means the Local Government Pension Scheme (Scotland) Regulations 1998(2);

“the 1998 Scheme” means the occupational pension scheme constituted by the 1998 Regulations;

“active member” has the same meaning as in section 124(1) of the Pensions Act 1995(3) as applied by regulation 3 (active members);

“administering authority” has the meaning given in Schedule 1 to the Administration Regulations;

“the Administration Regulations” means the Local Government Pensions Scheme (Administration) (Scotland) Regulations 2008(4);

“appropriate administering authority” means the body maintaining the appropriate fund;

“appropriate fund”, in relation to a member, means the fund into which the member pays contributions and from which the member receives benefits;

“deferred member” has the same meaning as in section 124(1) of the Pensions Act 1995;

“eligible child” has the meaning given by regulation 26 (meaning of “eligible child”);

“employing authority” means a body employing an employee who is eligible to be a member;

“financial year” means the year ending 31st March;

“member” has the same meaning as in section 124(1) of the Pensions Act 1995;

“nominated cohabiting partner” has the meaning given by regulation 25 (meaning of “nominated cohabiting partner”);

“part-time employee” means an employee whose contract of employment provides—

- (a) that the employee is a part-time employee for the purposes of the Scheme; or
- (b) that the employee is neither a whole-time employee nor a variable-time employee;

“pensionable pay” has the meaning given in regulation 5 (meaning of “pensionable pay”);

“pension member” has the same meaning as in section 124(1) of the Pensions Act 1995;

“the Scheme” means the Local Government Pension Scheme (Scotland) 2009 constituted by these Regulations;

“scheme actuary” means the actuary appointed from time to time by the Scottish Ministers to provide a consulting service on actuarial matters relevant to these Regulations;

“total membership” means the aggregate of periods of membership which count as such under regulation 7 (periods of membership);

“variable-time employee” means an employee whose contract of employment provides that the employee is a variable-time employee for the purposes of the Scheme and—

- (a) whose pay is calculated by reference to the variable-time employee’s duties (rather than necessarily by reference to the number of hours the variable-time employee has worked); or
- (b) whose duties only have to be performed on an occasional basis; and

“whole-time employee” means an employee whose contract of employment provides—

- (a) that the employee is a whole-time employee for the purposes of the Scheme; or

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(2) S.I. 1998/366; relevant amending instruments are S.S.I. 2000/199, 2001/23, 2002/311, 2005/293, 315 and 554, 2006/123, 468 and 514, and 2007/71.

(3) 1995 c. 26.

(4) S.S.I. 2008/228

- (b) that the whole-time employee's contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis.

### Active members

3.—(1) Subject to paragraphs (2) and (3), the term “active member” in relation to the Scheme is to be construed in accordance with regulation 3(1) of, and Schedule 1 to, the Administration Regulations.

(2) An active member of the 1998 Scheme is an active member of the Scheme for as long as the member continues to be in employment which makes the member eligible to be such in accordance with Part 2 of the Administration Regulations.

(3) A person is not an active member unless the person is employed under a contract of employment of more than three months' duration.

### Contributions payable by active members

4.—(1) Subject to paragraph (9), each active member shall make contributions to the Scheme at the contribution rate from that member's pensionable pay in each employment in which the member is an active member.

(2) Subject to paragraph (4), the annual contribution rate to be applied to a person who becomes an active member is determined by the person's employing authority at the commencement of the person's membership on the basis of the person's pensionable pay—

- (a) in accordance with the following table; and  
(b) having regard to guidance issued by the Scottish Ministers.

<i>Band</i>	<i>Range</i>	<i>Contribution Rate</i>
1	On earnings up to and including £18,000	5.5%
2	On earnings above £18,000 and up to £22,000	7.25%
3	On earnings above £22,000 and up to £30,000	8.5%
4	On earnings above £30,000 and up to £40,000	9.5%
5	On earnings above £40,000	12%

- (3) The figures in the second column of the table in paragraph (2) (“Range”) are—  
(a) increased as if they were pensions to which the Pensions (Increase) Act 1971<sup>(5)</sup> applied and rounded down to the nearest £100; and  
(b) treated, for the purposes of sub-paragraph (a), as if they were pensions beginning on 1st April 2009.

(4) Where there has been a permanent material change to the terms and conditions of a member's employment which affect the member's pensionable pay in the course of a financial year, the member's employing authority may determine that the contribution rate to be applied in that case is not to be calculated in accordance with paragraph (2); and

(5) 1971 c. 56.

(b) in such a case, the authority shall inform the member of the contribution rate applicable to the member, and the date from which it is to be applied.

(5) Where an active member is a part-time employee, the member's contributions shall be calculated by multiplying the contributions the member would have paid had the member been a full-time employee (calculated in accordance with paragraph (2)) by the proportion that the number of the member's weekly hours bears to the number of weekly hours that the member would have worked had the member been a full-time employee.

(6) But a whole time term-time worker is not a part-time employee for the purposes of this regulation.

(7) In this regulation, "term-time worker" means a person whose contract of employment provides for a regular pattern of periods of work and periods of no work so as to result in a recognisable cycle of work consisting of one year (but is not limited to persons working in educational establishments).

(8) The amount of an employee's pensionable pay for the purposes of this regulation is calculated in accordance with regulation 5 (meaning of "pensionable pay").

(9) An active member does not make contributions after the day before the member's 75th birthday.

(10) A person who is an active member in more than one employment must make contributions for each of those employments at the rate applicable to the sum of the person's pensionable pay in each such employment.

(11) The active member's appropriate employing authority may decide the intervals at which the contributions are made.

(12) For the purposes of this regulation any reduction in pensionable pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work shall be disregarded.

**Meaning of "pensionable pay"**

5.—(1) An employee's pensionable pay is the total of—

- (a) all the salary, wages, fees and other payments paid to the employee for his or her own use in respect of the employee's employment; and
- (b) any other payment or benefit specified in the employee's contract of employment as being a pensionable emolument.

(2) But an employee's pensionable pay does not include—

- (a) payments for non-contractual overtime;
- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate the employee's contract of employment; or
- (e) any payment as an inducement not to terminate the employee's employment before the payment is made.

(3) No sum may be taken into account in calculating pensionable pay unless income tax liability has been determined on it.

## **Benefits**

6.—(1) Membership of the Scheme only entitles the member to benefits under these Regulations if—

- (a) the member's total membership is at least two years; or
- (b) a transfer value is credited to the member.

(2) But paragraph (1) does not apply to benefits in respect of a member under regulation 23 (death grants: active members), regulation 24 (survivor benefits: active members), or regulation 28 (children's pensions: active members).

(3) Subject to paragraph (4), a member who has satisfied one of the conditions in paragraph (1) need not satisfy either of them again if the member ceases to be an active member and subsequently becomes such a member again before drawing benefits under regulation 16, 17, 19, 20, 30 or 31.

(4) Paragraph (3) does not apply to a member in respect of whom a transfer payment has been made under regulations 74 to 77 of the Administration Regulations.

## **Periods of membership**

7. These are the periods that count as periods of membership (and which may accordingly be aggregated under regulation 13 (re-employed and rejoining deferred members), or as the case may be, 14 (concurrent employments) of the Administration Regulations)—

- (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 4 (contributions payable by active members);
- (b) any period added under regulations 12 (power of employing authority to increase total membership of active members) or 20 (early leavers: ill-health); and
- (c) any period added following a transfer in of pension rights under regulations 78 (inward transfers of pension rights) to 82 (changes of fund and variable time employees) of the Administration Regulations<sup>(6)</sup>.

## **Calculation of length of periods of membership**

8.—(1) In calculating the length of a period of membership, fractions of years of membership count.

(2) The numerator of such fractions is the number of complete days of membership and the denominator is 365.

(3) Membership in part-time service is counted as the appropriate fraction of the duration of membership.

(4) The numerator of that fraction is the number of contractual hours during the part-time service and its denominator is the number of contractual hours of that employment if it were on a whole-time basis.

(5) The amount of any annual pension payable to a member as a result of membership is the member's total period of membership multiplied by the member's final pay and divided by 60.

## **Final pay: general**

9.—(1) Subject to regulations 10 (final pay: reserve forces, maternity leave etc.) and 11 (final pay: fees), a member's final pay for an employment is the member's pensionable pay for as much of the final pay period as the member is entitled to count as an active member in relation to that employment.

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<sup>(6)</sup> See also regulation 79(1) of the Administration Regulations.

(2) A member's final pay period is the year ending with the day on which the member stops being an active member.

(3) But a member may choose instead to treat as the member's final pay period either of the two preceding years ending with a day that is the anniversary of the last day the member was an active member.

(4) In the case of part-time employment, the final pay is the pay that would have been paid for a single comparable whole-time employment.

(5) Any reduction or suspension of a member's pensionable pay during the final pay period because of the member's absence from work owing to illness or injury is disregarded.

**Final pay: reserve forces, maternity leave etc.**

**10.**—(1) If a member's final pay period includes reserve forces service leave, the member's final pay is—

- (a) in a case where the member has continued to pay contributions in respect of it, the amount it would have been if the member's reserve forces pay were pay received in the member's former local government employment; or
- (b) otherwise, the amount it would have been if the member had continued to be employed in the member's former employment during the period of that leave.

(2) For the purposes of these Regulations, a member's final pay for any period of maternity, paternity or adoption absence during the final period in respect of which the member pays or is treated as paying contributions is the pay the member would have received had the member not been absent.

(3) If a member is absent from work for any other reason during the member's final pay period, the member is only to be treated for these Regulations as having received the pensionable pay the member would otherwise have received if the member has continued to pay contributions in respect of it for the period the member is absent.

(4) If a member is only entitled to count part of the year specified in regulation 9(2) (final pay: general) as a period of active membership in relation to the employment which the member ceases to hold, the member's final pay is the member's pensionable pay during that part multiplied by 365 and divided by the number of days in that part.

(5) Final pay does not include any pension in payment.

**Final pay: fees**

**11.**—(1) Subject to paragraph (2), where a variable-time employee's pensionable pay for the purposes of regulation 9(1) (final pay: general) consists of or includes fees, the employee's final pay is calculated as the sum of—

- (a) the average of all such fees for the three consecutive years ending with the final pay period; and
- (b) any sums falling within regulation 5(1) (meaning of "pensionable pay"), other than fees, for the final pay period.

(2) But a member's employing authority may consent to the member having his or her final pay calculated as the average of all such fees for any three consecutive years ending 31st March within the period of ten years ending with the last day the member was an active member.

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

**12.**—(1) An employing authority may resolve to increase the total membership of an active member.

(2) A member's total additional membership under this regulation (including additional membership in respect of different employments) must not exceed 10 years.

### **Power of employing authority to award additional pension**

**13.**—(1) An employing authority may resolve to award a member additional pension of not more than £5000 a year payable from the same date as the member's pension payable under any other provision of these Regulations.

(2) Additional pension may be paid in addition to any increase of total membership resolved to be made under regulation 12 (power of employing authority to increase total membership of active members).

### **Election in respect of additional pension**

**14.**—(1) An active member may choose to pay additional contributions in order to be credited with additional pension, in respect of the member alone or in respect of the member and any survivor, of £250 a year or multiples thereof to a maximum of £5000.

(2) If the member chooses to take the additional pension referred to in paragraph (1) earlier or later than the member's normal retirement age, it is reduced or, as the case may be, increased.

(3) The amount of the additional contributions to be paid under paragraph (1), and the reduction or increase referred to in paragraph (2), is calculated in accordance with guidance issued by the scheme actuary.

### **Elections to pay AVCs**

**15.**—(1) A member who has entered into an agreement to pay additional voluntary contributions ("AVCs") or to contribute to a shared cost AVC in addition to any other contributions the member may pay under these Regulations is entitled to additional benefits in accordance with one of the permissible ways specified in regulation 23(3) of the Administration Regulations (use of accumulated value of AVCs and SCAVCs).

(2) Where a member chooses to take some or all of the benefits referred to in paragraph (1) in the form of a lump sum, that sum forms part of the total amount referred to in regulation 21(2) (election for lump sum in lieu of pension).

(3) In this regulation, a "shared cost AVC" means an arrangement established and maintained by an employing authority for the purpose of enabling contributions to be paid by and for active members.

### **Retirement benefits**

**16.**—(1) A member who has attained the Scheme's normal retirement age and ceases to be employed in local government employment is entitled to immediate payment of retirement pension without reduction.

(2) The normal retirement age of the Scheme is 65.

### **Retirement after the normal retirement date**

**17.**—(1) A member who remains in employment after the member's 65th birthday is entitled to a pension when the member retires from that employment.

(2) The member's pension rights accrued at that date, and any rights accruing between that date and the date of the member's retirement or the day before the member's 75th birthday, whichever is earlier, shall be enhanced in accordance with guidance issued by the scheme actuary.

(3) The pension is payable immediately on retirement.

(4) But it must begin to be paid not later than the day before the member's 75th birthday even if the member has not retired.

### **Flexible retirement**

**18.**—(1) A member who—

- (a) has attained the age of 55; and
- (b) with the member's employing authority's consent, reduces the hours the member works, or the grade in which the member is employed,

may, subject to paragraph (2), make a request in writing to the appropriate administering authority to receive all or part of the member's benefits under these Regulations, and the administering authority must pay those benefits to the member notwithstanding that the member has not retired from that employment.

(2) Where the member has not attained the age of 60, the member must obtain the employing authority's consent before making the request.

(3) If the payment of benefits referred to in paragraph (1) takes effect before the member's 65th birthday, the benefits payable are reduced in accordance with guidance issued by the scheme actuary.

(4) But the employer may agree to waive, in whole or in part, any such reduction as is referred to in paragraph (3).

(5) Subject to paragraph (6), in the case of a person who is a member on 31st March 2009, and who makes a request before 31st March 2010, paragraph (1) applies as if "the age of 50" were substituted for "the age of 55".

(6) Paragraph (5) only applies to a member whose employment has been continuous with the same employer throughout that period.

(7) For the purposes of paragraph (6), the employment of a member who has been the subject of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006(7) apply shall be treated as being continuous employment with the transferee employer.

(8) Where a member is receiving benefits under this regulation, the period of membership used to calculate those benefits is not taken into account in any subsequent calculation of such benefits to which the member is entitled under these Regulations.

(9) The value of any benefits paid to a member under paragraph (1) shall be taken into account in any subsequent calculation of the member's benefits under regulation 16, 17, 19, 20, 30 or 31 in accordance with guidance issued by the scheme actuary.

### **Early leavers: business efficiency and redundancy**

**19.**—(1) Where—

- (a) a member is dismissed by reason of redundancy; or
- (b) the member's employing authority has decided that, on the grounds of business efficiency, it is in their interest that the member should leave their employment; and
- (c) in either case, the member has attained the age of 55,

the member is entitled to immediate payment of retirement pension without reduction.

(2) In the case of a person who is a member on 31st March 2009, and to whom paragraph (1) applies before 31st March 2010, that paragraph applies as if "the age of 50" were substituted for "the age of 55".

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(7) S.I. 2006/246.

(3) In the case of a person who was a member of the 1998 Scheme on 5th April 2006, paragraph (1) applies as if “the age of 50” were substituted for “the age of 55”.

### **Early leavers: ill-health**

**20.**—(1) If an employing authority determines, in the case of a member who has at least 2 years' total membership or has a transfer value credited to the member—

- (a) to terminate the member's local government employment on the grounds that the member's ill-health or infirmity of mind or body renders the member permanently incapable of discharging efficiently the duties of the member's current employment; and
- (b) that the member has a reduced likelihood of obtaining gainful employment (whether in local government or otherwise) before the member's normal retirement age,

the member's administering authority shall pay the member benefits under this regulation.

(2) If the authority determines that there is no reasonable prospect of the member obtaining gainful employment before the member's normal retirement age, the member's benefits are increased—

- (a) as if the date on which the member left local government employment was the member's normal retirement age; and
- (b) by adding to the member's total membership at that date the whole of the period between that date and the member's actual normal retirement age.

(3) If the authority determines that there is a reasonable prospect of the member obtaining gainful employment before the member's normal retirement age, the member's benefits are increased—

- (a) as if the date on which the member left local government employment was the member's normal retirement age; and
- (b) by adding to the member's total membership at that date 25% of the period between that date and the member's actual normal retirement age.

(4) In the case of a member in part-time service, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is calculated in accordance with regulation 8(3) (calculation of length of periods of membership) as if the member had remained in such part-time service until the member's normal retirement age.

(5) But if, in the case of a person who is a member before 1st April 2009, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is less than the period that would have been added had regulation 27 (amounts of ill-health pension and grant) of the 1998 Regulations applied, the member's benefits are increased by adding the latter period.

(6) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in the independent registered medical practitioner's opinion the member is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body and, if so, as to the likelihood of the member being able to obtain other gainful employment before reaching the member's normal retirement age.

(7) In this regulation—

“gainful employment” means paid employment for not less than 30 hours in each week for a period of not less than 12 months;

“permanently incapable” means that the member will, more likely than not, be incapable until, at the earliest, the member's 65th birthday”; and

“qualified in occupational health medicine” means—

- (a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, “competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003<sup>(8)</sup>; or
- (b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

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

**21.**—(1) A member in respect of whom a benefit crystallisation event within the meaning of Chapter 5 of Part IV of the Finance Act 2004 occurs on or after 1st April 2009 may choose in writing to the appropriate administering authority before any benefits become payable to commute the member’s pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered.

(2) But the total amount of the member’s commuted sum, including any sum received as benefits provided in the form of a lump sum in accordance with regulation 15 (elections to pay AVCs) shall not exceed 25% of the capital value of the member’s accrued rights.

(3) For the purposes of this regulation, a member’s accrued rights include rights accrued in respect of any payments made by or for the member in accordance with the 1998 Regulations.

(4) The capital value of a member’s accrued rights shall be calculated in accordance with guidance issued by the scheme actuary.

(5) And for the purposes of paragraph (1), a member’s pension is the member’s pension after any reduction pursuant to regulation 18 (flexible retirement) or 30 (choice of early payment of pension).

### **Limit on total amount of benefits**

**22.**—(1) A member and any dependant of the member shall not be entitled, under any provision of these Regulations, to receive benefits the capital value of which exceeds the member’s lifetime allowance increased, where applicable, by the member’s primary protection or the member’s enhanced protection except in accordance with guidance issued by the scheme actuary.

(2) In this regulation, “lifetime allowance”, “primary protection” and “enhanced protection” are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004<sup>(9)</sup>.

(3) Any calculation of the capital value of a member’s benefits for the purposes of this or any other of these Regulations is to be carried out in accordance with guidance issued by the scheme actuary.

(4) The appropriate administering authority is responsible for deducting from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.

### **Death grants: active members**

**23.**—(1) If an active member dies, a death grant is payable.

(2) The appropriate administering authority at its discretion may make payments in respect of the death grant to or for the benefit of the member’s nominee or executors, or any person appearing to the authority to have been the member’s relative or dependant at any time.

(3) The death grant is the member’s final pay multiplied by 3.

(4) But in calculating death grant in respect of a part-time employee, actual pensionable pay in part-time employment is to be used.

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<sup>(8)</sup> S.I. 2003/1250.

<sup>(9)</sup> 2004 c. 12.

(5) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of 2 years beginning with the member's death, it must pay an amount equal to the shortfall to the member's executors.

#### **Survivor benefits: active members**

**24.**—(1) If an active member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension payable from the member's date of death.

(2) The pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) (early leavers: ill-health) applied, by the member's final pay and dividing by 160.

(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

#### **Meaning of "nominated cohabiting partner"**

**25.**—(1) "Nominated cohabiting partner" means a person nominated by a member in accordance with the terms of this regulation.

(2) A member (A) may nominate another person (B) to receive benefits under the Scheme by giving to the member's administering authority a declaration signed by both A and B that the condition in paragraph (3) has been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(3) The condition is that—

- (a) A is able to marry, or form a civil partnership with, B;
- (b) A and B are living together as if they were husband and wife or as if they were civil partners;
- (c) neither A nor B is living with a third person as if they were husband and wife or as if they were civil partners; and
- (d) either B is financially dependent on A or A and B are financially interdependent.

(4) But a nomination has no effect if the condition in paragraph (3) has not been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(5) A nomination ceases to have effect if—

- (a) either A or B gives written notice of revocation to the administering authority;
- (b) A makes a subsequent nomination under this regulation;
- (c) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or as if they were civil partners; or
- (d) B dies.

(6) B is A's surviving nominated partner if—

- (a) the nomination has effect at the date of A's death; and
- (b) B satisfies the administering authority that the condition in paragraph (3) was satisfied for a continuous period of at least 2 years immediately prior to A's death.

(7) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.

(8) In this regulation, "member" means an active member or a former active member who has become a deferred or pensioner member in accordance with these Regulations.

### **Meaning of “eligible child”**

**26.**—(1) Subject to paragraph (3), the child of a deceased member is an eligible child if the child is wholly or mainly dependent on the member, and is less than 17 years of age, at the date of the member’s death.

(2) But a child who is born on or after the first anniversary of the date of the member’s death is not an eligible child.

(3) A dependent child who has reached the age of 17 but has not reached the age of 23 and is in full time education or undertaking vocational training at the date of the member’s death is an eligible child.

(4) An appropriate administering authority may treat a dependent child who commences full time education or vocational training after the date of the member’s death as an eligible child after the child reaches the age of 17 and until the child reaches the age of 23.

(5) In the case of a dependent child falling within paragraph (4), an appropriate administering authority may—

- (a) treat education or training as continuous despite a break; and
- (b) suspend payment of any entitlement to benefits under regulation 28 (children’s pensions: active members), 34 (children’s pensions: deferred members) or 37 (children’s pensions: pensioner members) during such a break.

(6) An appropriate administering authority may treat a dependent child who is disabled within the meaning of the Disability Discrimination Act 1995(10) as an eligible child.

### **Children’s pensions**

**27.**—(1) If a member dies leaving one or more eligible children, they are entitled to a children’s pension.

(2) The pension is payable from the date of the death of the member.

(3) An eligible child ceases to be entitled to a pension when the child ceases to be a child within the meaning of regulation 26 (meaning of “eligible child”).

(4) The amount of that pension is calculated in accordance with regulation 28 (children’s pensions: active members), 34 (children’s pensions: deferred members) or 37 (children’s pensions: pensioner members) as the case may be.

### **Children’s pensions: active members**

**28.**—(1) The amount of the pension of an eligible child of a deceased active member is calculated as follows.

(2) If a survivor benefit is payable under regulation 24 (survivor benefits: active members)—

- (a) where there is only one such child, the pension is calculated by multiplying the member’s total membership, augmented as if regulation 20(2) (early leavers: ill-health) applied, by the member’s final pay, and dividing by 320; and
- (b) where there is more than one such child—
  - (i) the pension is calculated by multiplying the member’s total membership, augmented as if regulation 20(2) applied, by the member’s final pay, and dividing by 160; and
  - (ii) those children are jointly entitled in equal shares.

(3) If no survivor benefit is payable under regulation 24 (survivor benefits: active members)—

- (a) where there is only one such child, the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by the member's final pay, and dividing by 240; and
- (b) where there is more than one such child—
  - (i) the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by the member's final pay, and dividing by 120; and
  - (ii) those children are jointly entitled in equal shares.

### **Calculation on leaving early**

**29.**—(1) This regulation applies in the case of a member who leaves his or her employment or otherwise ceases to be a member and is not entitled to immediate payment of retirement pension under any of regulations 16 (retirement benefits) to 20 (early leavers: ill-health).

(2) The member's entitlement to benefits that would, apart from any other provision of these Regulations, become payable on the member's attaining normal retirement age, is calculated in accordance with regulation 8 (calculation of length of periods of membership) as at the date of the member leaving such employment.

(3) Subject to regulation 30 (choice of early payment of pension) and 31 (early payment of pension: ill-health), the member's retirement pension becomes payable on attaining normal retirement age.

(4) But that entitlement is extinguished if an aggregation takes place under regulation 7(2) (periods of membership) or if a transfer out takes place under regulation 74 (rights to payment out of fund authority's pension fund), 75 (contracting out requirements affecting transfers out) or 76 (bulk transfers (transfers of undertakings etc.)) of the Administration Regulations.

(5) Where a member chooses not to receive payment of his or her retirement pension, or any part of it, immediately on attaining normal retirement age, the member's entitlement is enhanced in accordance with guidance issued by the scheme actuary.

### **Choice of early payment of pension**

**30.**—(1) If a member leaves a local government employment or otherwise ceases to be a member before the member is entitled to the immediate payment of retirement benefits (apart from this regulation), once the member has attained the age of 55 the member may choose to receive payment of them immediately.

(2) A choice made by a member aged less than 60 is ineffective without the consent of the member's employment authority or former employing authority.

(3) If the member so chooses, the member is entitled to a pension payable immediately calculated in accordance with regulation 29.

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

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

(6) In the case of a person who is an active member on 31st March 2009, and who makes an election before 1st April 2010, paragraph (1) applies as if "the age of 50" were substituted for "the age of 55".

### **Early payment of pension: ill-health**

**31.**—(1) Subject to paragraph (2), if a member who has left his or her employment before the member is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body the member may request to receive payment of the retirement benefits immediately, whatever the member’s age.

(2) Before determining whether to agree to a request under paragraph (1), an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in that practitioner’s opinion the member is permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether that condition is likely to prevent the member from obtaining gainful employment (whether in local government or otherwise) before reaching the member’s normal retirement age, or for at least three years, whichever is the sooner.

(3) A request under paragraph (1) must be made in writing to the member’s administering authority.

(4) In this regulation “gainful employment”, “permanently incapable” and “qualified in occupational health” have the same meaning given in regulation 20(7).

### **Death grants: deferred members**

**32.**—(1) If a deferred member dies, a death grant is payable.

(2) The administering authority at their discretion may make payments in respect of the death grant to or for the benefit of the member’s nominee or executors, or any person appearing to the authority to have been the member’s relative or dependant at any time.

(3) The death grant is the member’s retirement pension multiplied by 5.

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member’s death grant before the expiry of 2 years beginning with the member’s death, it must pay an amount equal to the shortfall to the member’s executors.

### **Survivor benefits: deferred members**

**33.**—(1) If a deferred member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.

(2) The pension is calculated by multiplying the member’s total membership by the member’s final pay and divided by 160.

(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

### **Children’s pensions: deferred members**

**34.**—(1) The amount of the pension of an eligible child of a deceased deferred member is calculated as follows.

(2) If a survivor benefit is payable under regulation 33 (survivor benefits: deferred members)—

(a) where there is only one such child, the pension is calculated by multiplying the member’s total membership, calculated in accordance with regulation 29 (calculation on leaving early), by the member’s final pay, and dividing by 320; and

(b) where there is more than one such child—

- (i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by the member's final pay, and dividing by 160; and
  - (ii) those children are jointly entitled in equal shares.
- (3) If no survivor benefit is payable under regulation 33–
  - (a) where there is only one such child, the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by the member's final pay, and dividing by 240; and
  - (b) where there is more than one such child–
    - (i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by the member's final pay, and dividing by 120; and
    - (ii) those children are jointly entitled in equal shares.

#### **Death grants: pensioner members**

- 35.**—(1) If a pensioner member dies before the member's 75th birthday, a death grant is payable.
- (2) The administering authority at its discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or executors, or any person appearing to the authority to have been the member's relative or dependant at any time.
- (3) The death grant is the member's pension in payment multiplied by 10, but the amount so calculated is reduced by the amounts of any retirement pension paid to the member.

#### **Survivor benefits: pensioner members**

- 36.**—(1) If a pensioner member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.
- (2) The pension is calculated by multiplying the member's total membership by the member's final pay and dividing by 160.
- (3) If there is more than one surviving spouse or civil partner, they become jointly entitled in equal shares under paragraph (1).

#### **Children's pensions: pensioner members**

- 37.**—(1) The amount of the pension of an eligible child of a deceased pensioner member is calculated as follows.
- (2) If a survivor benefit is payable under regulation 36 (survivor benefits: pensioners)–
  - (a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating the member's benefits under these Regulations by the member's final pay, and dividing by 320; and
  - (b) where there is more than one such child–
    - (i) the pension is calculated by multiplying the member's total membership used in calculating the member's benefits under these Regulations by the member's final pay, and dividing by 160; and
    - (ii) those children are jointly entitled in equal shares.
- (3) If no survivor benefit is payable under regulation 36–

- (a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating the member's benefits under these Regulations by the member's final pay, and dividing by 240; and
- (b) where there is more than one such child—
  - (i) the pension is calculated by multiplying the member's total membership used in calculating the member's benefits under these Regulations by the member's final pay, and dividing by 120; and
  - (ii) those children are jointly entitled in equal shares.

### **Pension increases under the Pensions (Increase) Acts**

**38.** Where a pension to which the Pensions (Increase) Act 1971(**11**) applies is payable out of an appropriate fund, any increase under that Act or the Pensions (Increase) Act 1974(**12**) must be paid from that fund.

### **Commutation: small pensions**

**39.**—(1) A lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act may be paid in accordance with the rules relating to the payment of such benefits under that Act.

(2) Any payment under paragraph (1) is calculated in accordance with guidance issued by the scheme actuary.

(3) The benefits referred to in paragraph (1) do not include any survivor benefit that is being paid to the member.

### **Commutation: exceptional ill-health**

**40.**—(1) If, when a retirement pension first becomes payable to a member, the administering authority is satisfied that the member's life expectancy is less than one year, it may pay the member a lump sum equal to 5 times the amount of the member's annual rate of retirement pension, notwithstanding that such lump sum may exceed the member's lifetime allowance.

(2) An administering authority cannot be satisfied as mentioned in paragraph (1) unless it has first obtained a certificate from a fully registered person within the meaning of the Medical Act 1983(**13**) to the effect that the member's life expectancy is less than one year.

(3) Such a payment discharges the authority's liability for that provision and for any lump sum death grant calculated by reference to that pension under the Scheme.

### **Guidance on future costs**

**41.** Administering authorities and employing authorities shall have regard to guidance issued by the Scottish Ministers, before 31st March 2010, as to the manner in which the costs of the Scheme will be met after 31st March 2011.

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(11) 1971 c. 56.

(12) 1974 c. 9

(13) 1983 c. 54.

### **Pension debits**

**42.** Administering authorities shall have regard to guidance issued by the scheme actuary as to reduction of benefits payable under these Regulations in consequence of a pension debit created under section 29 of the Welfare Reform and Pension Act 1999<sup>(14)</sup>.

### **No double entitlement**

**43.—(1)** Where (apart from this regulation) any member would be entitled to a pension or retirement grant under 2 or more regulations by reason of the same period of membership—

- (a) the member shall be entitled to benefits under only one regulation;
- (b) the member may choose under which provision he or she is to be paid those benefits; and
- (c) if the member does not choose, the administering authority may notify the member in writing of the provision.

(2) A member's choice must be by notice in writing, given to the administering authority before the expiry of 3 months beginning with the day on which the member becomes entitled to choose under which provision the member's pension or retirement grant is to be paid.

(3) Paragraph(1) does not affect the member's rights under the Pension Schemes Act 1993<sup>(15)</sup>.

(4) This regulation also applies to any survivor benefits payable under regulation 24 (survivor benefits: active members), 27 (children's pensions), 33 (survivor benefits: deferred members), 34 (children's pensions: deferred members), 36 (survivor benefits: pensioner members) or 37 (children's pensions: pensioner members).

### **Members of local authorities**

**44.** These Regulations apply to councillor members in respect of their councillor membership with the modifications set out in the Schedule.

St Andrew's House,  
Edinburgh  
4th June 2008

*JOHN SWINNEY*  
A member of the Scottish Executive

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(14) 1999 c. 30.

(15) 1993 C.48.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

Regulation 44

### Councillor Members

## CONTRIBUTIONS

### *Pay*

#### 1. For regulation 5 (meaning of “pensionable pay”) substitute—

“5.—(1) A councillor member’s pensionable pay in any year is the total of all payments of remuneration to the councillor by the local authority under the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007(16), including any payments made in respect of a councillor’s functions as convenor or vice convenor of a joint board.

(2) All references to “pay” in these Regulations and in the Administration Regulations in respect of a councillor member and the councillor membership shall be construed in accordance with paragraph (1).

(3) “Career average pay” in these Regulations shall mean an amount equal to the total of a councillor member’s pay for each year or part year of the member’s active membership divided by the number of those years or part years.

(4) All references to “final pay” in these Regulations and in the Administration Regulations shall, in respect of a councillor member and councillor membership, be taken to mean “career average pay”.

(5) When calculating a councillor member’s career average pay, the pay for any year other than the final year shall be increased in proportion to the increase in the Retail Price Index from the last day of that year up to the last day of the month in which the councillor member’s active membership ends.

(6) “Year” means the 12 months ending with 31st March.

(7) “Final year” means the year during which, or at the end of which, the councillor member’s active membership ends.

(8) “Retail Price Index” means the index of retail prices for the United Kingdom published by the Office of National Statistics.

(9) No sum may be taken into account in calculating pensionable pay unless income tax liability has been determined on it.”

## BENEFITS

### *Preliminary*

#### 2. For regulation 8(5) (calculation of length of periods of membership) substitute—

“8.—(5) The amount of any benefit payable as a result of a councillor’s membership is calculated by multiplying the councillor’s career average pay by the appropriate multiplier.

(6) The appropriate multiplier for a pension is—  
total councillor membership<sup>60</sup>”

#### 3. Omit regulations 9 (final pay: general) and 11 (final pay: fees).

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(16) S.S.I. 2007/183.

#### *Retirement benefits*

4. Omit regulation 19 (early leavers: business efficiency and redundancy).
5. In regulation 20 (early leavers: ill health) for paragraph (1) substitute—

“(1) Where a councillor member ceases to be a member of the member’s local authority by reason of being permanently incapable of discharging efficiently the duties of that office because of ill health or infirmity of mind or body, the member is entitled to an ill health benefit.”.

#### *Death grants*

6. In regulation 23 (death grant: active members), for paragraphs (3) to (4) substitute—

“(3) The death grant of a councillor member the councillor member’s career average pay multiplied by 3.”
7. In regulation 32 (death grants: deferred members), for paragraph (3) substitute—

“(3) The death grant of a councillor member is 5 times the pension that would have been payable to the councillor member if the councillor member had retired at the date of death.”.
8. In regulation 35 (death grants: pensioner members), for paragraph (3) substitute—

“(3) The death grant for a councillor member is an amount equal to 10 times the councillor member’s pension less the amount of any pension paid to the councillor member.”.

### **OPTIONAL ADDITIONAL BENEFITS**

#### *Increases of membership and pensions*

9. Omit regulations 12 (power of employing authority to increase total membership of active members) and 13 (power of employing authority to award additional pension).

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### **EXPLANATORY NOTE**

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

These Regulations set out provisions relating to benefits, membership and contributions in the new Local Government Pension (Scotland) Scheme (“the Scheme”) which is to come into existence on 1st April 2009 and replace the Local Government Pension (Scotland) Scheme 1998 (“the 1998 Scheme”).

Regulation 2 contains definitions.

Regulation 3 sets out who is a member of the Scheme: broadly speaking, this is anyone who is, or could have been, had it continued in existence, a member of the 1998 Scheme.

Regulation 4 contains a table of rates of contributions on pensionable pay, and makes provisions for part-time and term-time workers. “Pensionable pay” is defined in regulation 5.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Regulation 6 provides for a minimum membership of 2 years for entitlement to benefits in most cases, and regulations 7 and 8 explain how length of membership is calculated.

Regulations 9 to 12 provide for the calculation of final pay.

Regulations 12 and 13 respectively provide power for employing authorities to increase membership or award additional pension.

Regulations 14 and 15 respectively provide for voluntary additional payments to increase pension, and for AVCs.

Regulation 16 provides for the normal retirement age (65), regulation 17 for retirement after this age, and regulation 18 for flexible retirement.

Regulation 19 makes provision relating to redundancy and business efficiency, and regulation 20 makes provision relating to ill-health retirement.

Regulation 21 provides for commutation of pension, and regulation 22 places a limit on the total amount of benefits.

Regulations 23, 24 and 28 (active members), 32, 33 and 34 (deferred members) and 35, 36 and 37 (pensioner members) provide for death grants, survivor benefits and children's pension for the respective classes of member. Regulation 25 contains a definition of "nominated cohabiting partner" and regulation 26 of "eligible child" for these purposes. Regulations 27 and 28 make further provision about children's pensions.

Regulations 29 to 31 make provision relating to early payment of pension.

Regulation 38 provides for payment of increases under the Pensions (Increase) Act 1971, regulations 39 and 40 for commutation of small pensions and in the case of exceptional ill-health, and regulation 41 requires administering and employing authorities to have regard to guidance issued by the Scottish Ministers about future costs of the Scheme.

Regulation 42 deals with pension debits.

Regulation 43 prevents double entitlement.

Regulation 44 introduces the Schedule dealing with councillor members.

A regulatory impact assessment has not been produced for these Regulations as they have no impact on the costs of businesses, charities or voluntary bodies and do not have a significant financial impact on any public bodies