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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No.293**

**PENSIONS**

**The Local Government Pension Scheme  
(Scotland) Amendment Regulations 2005**

<i>Made</i>	- - - -	<i>31st May 2005</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>2nd June 2005</i>
<i>Coming into force</i>	- -	<i>30th June 2005</i>

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

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) Amendment Regulations 2005.

(2) These Regulations shall come into force on 30th June 2005 but regulation 3 shall have effect from 8th December 2002.

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

2. The Local Government Pension Scheme (Scotland) Regulations 1998<sup>(2)</sup> (referred to in these Regulations as “the principal Regulations”) are amended in accordance with regulations 3 to 47 below.

**Paternity and adoption**

3. The principal Regulations are amended in accordance with Schedule A to these Regulations.

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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 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).

(2) S.I. 1998/366, as amended by S.I. 1998/1129 and 1999/787 and S.S.I. 2000/199, 2001/23 and 460, 2002/311; and as modified for particular purposes by S.I. 1998/364.

**General eligibility for membership: employees of Scheme employers etc.**

4. In regulation 3(1), after “regulation 4” insert “, regulation 4A”.

**Employees of non-Scheme employers: community admission bodies**

5. For regulation 4 substitute–

**“Employees of non-Scheme employers: community admission bodies**

4.—(1) Subject to the requirements of this regulation and regulation 4B, an administering authority may make an admission agreement with any community admission body.

(2) Community admission bodies are–

- (a) a body which provides a public service in the United Kingdom otherwise than for the purpose of gain and which either–
- (i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest, whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise, or
  - (ii) is approved by the Scottish Ministers for the purposes of admission to the Scheme;
- (b) a body to the funds of which any Scheme employer contributes;
- (c) a body representative–
- (i) of local authorities;
  - (ii) of local authorities and officers of local authorities;
  - (iii) of officers of local authorities which is formed for the purpose of consultation as to the common interests of local authorities and the discussion of matters relating to local government; or
  - (iv) of Scheme employers; and
- (d) a voluntary organisation engaged in the provision of services under–
- (i) Part III of the National Health Service (Scotland) Act 1978(3);
  - (ii) Part III of the National Assistance Act 1948(4);
  - (iii) the Disabled Persons (Employment) Act 1958(5);
  - (iv) the Mental Health (Scotland) Act 1984(6) or the Mental Health (Care and Treatment) (Scotland) Act 2003(7); or
  - (v) section 14 of the Social Work (Scotland) Act 1968(8) (which places a duty on local authorities to provide domiciliary services and laundry facilities to certain households).

(3) Approval under paragraph (2)(a)(ii) may be subject to such conditions as the Scottish Ministers think fit and they may withdraw approval at any time if such conditions are not met.

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(3) 1978 c. 29.  
(4) 1948 c. 29.  
(5) 1958 c. 33.  
(6) 1984 c. 36.  
(7) 2003 asp 13.  
(8) 1968 c. 49.

(4) Where, at the date that the admission agreement is made with a body within paragraph (2)(b), the contributions paid to the body by any one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, it must be a term of the admission agreement that the Scheme employer who provides funding (and, if more than one, all of them) guarantees the liability of the body to pay all amounts due from it under the Regulations.

#### **Employees of non-Scheme employers: transferee admission bodies**

**4A.—**(1) Subject to the requirements of this regulation and regulation 4B, an administering authority may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing, or will provide—

- (a) a service or assets in connection with the exercise of a function of a Scheme employer as a result of—
  - (i) the transfer of the service or assets by means of a contract or other arrangement; or
  - (ii) guidance provided under section 2 of the Local Government in Scotland Act 2003<sup>(9)</sup> (requiring a local authority to have regard to guidance provided by the Scottish Ministers on performance of its duties) or a statement of findings under section 3 of that Act (which allows the Accounts Commission for Scotland to take certain actions following a report on a local authority by the Controller of Audit); or
- (b) a public service and which is approved by the Scottish Ministers for the purposes of admission to the Scheme.

(3) Only those employees of the transferee admission body who are employed in connection with the provision of the service or assets referred to in paragraph (2) are eligible to be members of the Scheme.

(4) In the case of an admission agreement with a transferee admission body under paragraph (2)(a) the Scheme employer, if it is not also the administering authority, must be a party to the admission agreement.

(5) Approval under paragraph (2)(b) may be subject to such conditions as the Scottish Ministers think fit and they may withdraw approval at any time if such conditions are not met.

(6) An admission agreement with a transferee admission body shall require that—

- (a) in the case of a body under—
  - (i) paragraph (2)(a), the Scheme employer; or
  - (ii) paragraph (2)(b), the transferee admission body, to the satisfaction of the administering authority,

shall carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee admission body; and

- (b) that where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.

- (7) The indemnity or bond must be with—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000<sup>(10)</sup> to accept deposits or to effect and carry out contracts of general insurance;
  - (b) an EEA firm of the kind mentioned in paragraph (5)(b) and (d) of Schedule 3 to that Act, which has permission under paragraph (15) of that Schedule (as a result of qualifying for authorisation under paragraph (12) of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or
  - (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.
- (8) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 2A.
- (9) Where a transferee admission body undertakes to meet the relevant requirements of this regulation, and—
- (a) in the case of a body under paragraph (2)(a), the Scheme employer undertakes to meet the relevant requirements of this regulation; or
  - (b) in the case of a body under paragraph (2)(b), the Scottish Ministers approve the body for admission to the Scheme and the conditions, if any, to which the approval is subject have been met,
- an administering authority must admit to the Scheme the eligible employees of the transferee admission body specified by the body and where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

#### **Requirements for admission agreements**

- 4B.**—(1) In regulations 4 and 4A an admission agreement is an agreement that all or any specified class of the admission body’s employees may be members.
- (2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.
- (3) When an administering authority makes an admission agreement, it must promptly inform the Scottish Ministers of the date the agreement takes effect, the admission body’s name and, in the case of an admission agreement with a transferee admission body under paragraph 4A(2)(a), the name of the relevant Scheme employer.
- (4) An administering authority must notify the Commissioners of the Inland Revenue of the admission of an admission body within the time prescribed in regulations made under section 605 of the Taxes Act 1988<sup>(11)</sup> (which provides for regulations to be made regarding the provision of information) and provide such information as may be so prescribed.
- (5) An administering authority and an admission body may make an admission agreement despite that the fact that they do not exercise their functions or provide services or assets in areas that overlap or adjoin each other.
- (6) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing for determination to the Scottish Ministers.

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<sup>(10)</sup> 2000 c. 8.

<sup>(11)</sup> 1988 c. 1. The current regulations are the Retirement Benefit Schemes (Information Powers) Regulations 1995, S.I. 1995/3103, as amended.

(7) An employee of an admission body may not be a member if he is a member of another occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993<sup>(12)</sup>) other than where the accrual of benefits under the occupational pension scheme would not affect approval of the Scheme as an approved scheme.

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

### **Further restriction on eligibility**

#### **6. In Regulation 5–**

##### **(a) for regulation 5(10) substitute–**

“(10) A person who is a member and is an employee of a transferee admission body is treated as leaving a local government employment when he ceases to be employed in connection with the provision of the service or assets under regulation 4A(2) as a result of which employment he became eligible to join the Scheme.”; and

##### **(b) after paragraph (5)(10) insert–**

“(11) A person may be a member of the Scheme notwithstanding that he is entitled to be a member of the National Health Service Superannuation Scheme for Scotland<sup>(13)</sup> (the “NHS Scheme”) if–

- (a)** his entitlement to be a member of the NHS Scheme is by reason of his employment by an NHS Scheme employing authority as a result of a prescribed arrangement under section 15 of The Community Care and Health (Scotland) Act 2002<sup>(14)</sup> (delegation etc. between local authorities and NHS bodies);
- (b)** he is specified in, or within a class of employees specified in, an admission agreement made between an administering authority and an NHS Scheme employing authority; and
- (c)** he was an active member of the Scheme immediately before his employment by the NHS Scheme employing authority.”.

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

**7.** In regulation 8(2), for “regulations 9, 10 and 31” insert “regulations 9, 10, 28, 31A and Schedule 4”.

### **Meaning of “pay”**

**8.** In regulation 12, omit paragraphs (5), (6) and (7).

### **Calculations**

**9.** In regulation 19(6), omit sub-paragraph (a).

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<sup>(12)</sup> 1993 c. 48.

<sup>(13)</sup> The National Health Service Superannuation Scheme for Scotland is set up under section 10 of the Superannuation Act 1972. The current regulations are The National Health Service Superannuation Scheme (Scotland) Regulations 1995, S.I. 1995/365, as amended.

<sup>(14)</sup> 2002 asp 5.

### **Final pay**

10. Omit regulation 20(8).

### **Normal retirement**

11. In regulation 24–
- (a) in paragraph (3) omit “who was not a member immediately before the commencement date”; and
  - (b) for paragraph (4) substitute–
    - “(4) But the NRD of a member who was a member immediately before the commencement date is–
    - (a) his 60th birthday if on the day before that day he has total membership of at least 25 years; or
    - (b) the day after the date on which he first has such total membership if that date is on or after his 60th birthday but before his 65th birthday.”.

### **Ill-health**

12. In regulation 26(5), for the definition of “permanently incapable” substitute–  
““permanently incapable” means that the member will, more likely than not, be incapable, until, at the earliest, his 65th birthday.”.

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

13. In regulation 27–
- (a) for paragraphs (4) and (5) substitute–
    - “(4) Where a member becomes entitled to a further ill-health pension and grant (because of having been a member in two or more employments), the multiplier for the further ill-health pension and grant will be the total membership without enhancement.
    - (5) But paragraph (4) does not apply to a member who becomes entitled to a further ill-health pension and grant as a result of being in concurrent employments which cease simultaneously.”;
  - (b) in paragraph (6)–
    - (i) after the words “the resulting period” insert “by multiplying it”; and
    - (ii) for “but see paragraph (9)” substitute “but see paragraphs (6A) and (9)”;
  - (c) after paragraph (6), insert the following paragraph–
    - “(6A) The member’s enhanced membership period must not be reduced below that which is calculated by reference to his membership in whole-time employment, disregarding his membership in part-time employment.”.

### **Re-employed pensioners**

14. For regulation 28, substitute–
- “28.—(1) Where a pensioner member becomes an active member again, his former membership shall be taken into account only for the purpose of calculating–
  - (a) whether he has the necessary total membership referred to in–
    - (i) regulation 18(1)(a) to be entitled to benefits under this Chapter; and

- (ii) regulation 27(1) to be entitled to calculate his ill-health pension and grant by reference to the enhanced membership period; and
- (b) total membership in regulation 51 (power of employing authority to increase total membership).”.

### **Further provisions about elections under regulation 28**

- 15. Omit regulation 29.

### **Other early leavers: deferred retirement benefits and elections for early payment**

16. In regulation 30(7), for “payable from his NRD without reduction” substitute “without reduction, payable from his NRD or such earlier date on or after his 60th birthday as the member elects provided that the sum of the items referred to in sub-paragraphs (a) to (c) of paragraph (4) is 85 years or more”.

### **Concurrent employments**

- 17. After regulation 31, insert–

#### **“Concurrent employments**

**31A.**—(1) Where a person–

- (a) ceases to be an active member in one employment in respect of which he had at least two years' total membership (“the first employment”); and
- (b) continues as an active member in another employment he held concurrently with the first employment,

he may elect to have his former membership in respect of the first employment aggregated with his membership in that other employment.

(2) If he so elects, the provisions of regulation 31 shall apply as if references to–

- (a) his former membership or former active membership were references to his membership from his first employment;
- (b) the new employment were references to his concurrent employment; and
- (c) the employment in which he becomes an active member again were references to that concurrent employment.

(3) If no election is received within one month of a notification by an administering authority to a person of his right to elect under paragraph (1), the administering authority may aggregate his former membership in respect of the first employment with his membership in the other employment.

(4) In the case of a person to whom this regulation applies, the period of membership which will be aggregated with his membership from the concurrent employment will be equal to his membership from his first employment, as reduced under regulation 10(4) if the first employment was part-time, multiplied by the fraction–

$$\frac{\text{whole – time rate of pay in the first employment}}{\text{whole – time rate of pay in concurrent employment}}$$

where

the rate of pay in each case is the annual pay as defined in regulation 12 on the last day of employment in the employment which has ceased.”.

**Reduction of death grants: re-employed pensioners**

18. Omit regulation 38.

**Meaning of “eligible child”**

19. For regulation 43(1), substitute—

“(1) The eligible child of a deceased member is—

- (a) the deceased’s legitimate or adopted child; or
- (b) a child who was wholly or mainly dependent on the deceased at the time of his death or, where the child is born after the member’s death, who would have been so dependent if he had been born before or on the date of the deceased member’s death;

but does not include a child who was born on or after the first anniversary of the date of the deceased’s death.”.

**Dependants of re-employed pensioners**

20. Omit regulation 47.

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

21. In regulation 51—

- (a) in the heading, omit “of members leaving employment at or after 50”;
- (b) in paragraph (1), for “a member who leaves his employment on or after his 50th birthday” substitute “an active member”;
- (c) for paragraph (2) substitute—
  - “(2) A member’s total additional membership (including additional membership in respect of different employments) must not exceed—
  - (a) 6 243/365 years;
  - (b) the period by which the member’s total membership falls short of 40 years; or
  - (c) the period by which the member’s total membership falls short of the total membership the member will have if he continues as an active member until he is 65,whichever is the shortest.”;
- (d) omit paragraphs (3), (4) and (5);
- (e) in paragraph (7), for sub-paragraph (b) substitute—
  - “(b) such longer period as the employing authority and the administering authority agree.”; and
- (f) omit paragraph (9).

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

22. Omit regulation 52.



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

23. In regulation 57(1), omit “has attained the age of 50 and”.

### **Retirement benefits**

24. In regulation 63(2), for “as soon as reasonably practicable” substitute “at any time prior to the 75th birthday of the member”.

### **Elections as to use of accumulated value of AVCs**

25. For regulation 65, substitute—

“65.—(1) Subject to paragraph (8), this regulation applies where a person—

- (a) leaves his employment with the employer who was his employing authority when he made an election under regulation 59(1) or 59(11) without entitlement to the immediate payment of retirement benefits;
- (b) stops being an active member without leaving that employment;
- (c) leaves his employment with the employer who was his employing authority when he made an election under regulation 59(1) or 59(11) with entitlement to the immediate payment of retirement benefits—

- (i) under regulation 24 (normal retirement) or 25 (redundancy etc.); or
- (ii) by virtue of an election under regulation 30 (early payment); or

(d) becomes entitled to an ill-health pension under regulation 26.

(2) Subject to paragraph (7), a person must elect to have the accumulated value used—

- (a) where paragraph (1)(a) applies to him, in one or more of the permissible ways; and
- (b) where paragraph (1)(b) applies to him, in the way mentioned in paragraph (3)(b).

(3) The permissible ways are—

- (a) to subscribe to an occupational pension scheme (other than the Scheme);
- (b) to subscribe to a personal pension scheme (including an additional voluntary contributions scheme, other than an FSAVC scheme);
- (c) to subscribe to a self-employed pension arrangement; or
- (d) to purchase an appropriate policy from one or more AVC insurance companies.

(4) Where paragraph (1)(c) or (d) applies to a person, he may elect for the accumulated value to be used to provide additional pension for him under the Scheme, or partly to provide such pension for him.

(5) Where a member makes an election under paragraph (4), he becomes entitled to such additional pension as is shown as appropriate in guidance issued by the Government Actuary.

(6) The accumulated value may not be used to provide an additional lump sum benefit to the member unless it arises out of contributions made under any voluntary contributions scheme where the payments began before 8th April 1987.

(7) Where a person who has stopped being employed by an employing authority or being a member receives—

- (a) a repayment of contributions under regulation 86; or
- (b) a payment under regulation 87(2),

he must immediately be paid the accumulated value.

(8) A person who made an election under regulation 59(1) or 59(11) prior to 30th June 2005 shall continue to have the rights to make elections as to the use of the accumulated value as under the provisions of this regulation prior to its amendment by The Local Government Pension Scheme (Scotland) Amendment Regulations 2005 and accordingly, so far as is necessary to give effect to those rights and to make provision for any matters incidental to them, those provisions shall be treated as if they had continued in effect.

(9) In this regulation, “the accumulated value” means the accumulated value of the additional contributions invested under regulation 63(1).”.

## **Accounts and audit**

**26.** After regulation 75, insert–

### **“Funding strategy statement**

**75A.**—(1) Each administering authority shall, after consultation with such persons as they consider appropriate, prepare, maintain and publish a written statement setting out their funding strategy.

(2) In preparing and maintaining the statement, the administering authority shall have regard to–

- (a) the guidance set out in the document published in March 2004 by the Chartered Institute of Public Finance and Accountancy (“CIPFA”), and called “CIPFA Pensions Panel Guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No.6)”; and
- (b) the statement of investment principles published by the administering authority under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998(15).

(3) The first such statement shall be published on or before 31st March 2006.

(4) The statement shall be revised and published by the administering authority following, and in accordance with, any–

- (a) material change in their policy on the matters set out in the statement; and
- (b) material change to the statement of investment principles under regulation 9A(4) of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998.”.

## **Actuarial valuations and certificates**

**27.** After regulation 76(5), insert–

“(5A) The actuary must have regard to the administering authority’s funding strategy statement published under regulation 75A.”.

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

**28.** In regulation 77(2A)–

- (a) for “a guarantee or indemnity” substitute “an indemnity or bond”; and
- (b) for “showing the revised contributions due from each employing authority who contributes to that fund” substitute–

“showing–

- (a) in the case where the outgoing body is a transferee admission body within the meaning of regulation 4A(2)(a), the revised contributions due from the body which is the Scheme employer in relation to that outgoing admission body; and
- (b) in any other case, the revised contributions due from each employing authority who contributes to that fund.”.

### **Employer’s further payments**

**29.** In regulation 79–

- (a) omit paragraph (2); and
- (b) in paragraph (4)–
  - (i) omit “, 52 or 136”; and
  - (ii) for “(but, in the case of resolutions under regulations 51 and 136, only so far as not paid under paragraph (1) or, as the case may be, paragraph (2))” substitute “(but, in the case of a resolution under regulation 51, only so far as not paid under paragraph (1)).”.

### **Interest**

**30.** In regulation 81(1), for “, 126 or 127” substitute “or 126”.

### **Discontinuance of additional contributions**

**31.** In regulation 82(9)(b), omit “and has not made an election under regulation 28”.

### **Cost of calculations for transfer of AVCs or SCAVCs into the Scheme where no transfer is requested**

**32.** In regulation 85(a)–

- (a) for “regulation 65(2)” substitute “regulation 65(4)”;
- (b) for “to acquire transfer credits in the Scheme” substitute “to provide additional pension for him under the Scheme”; and
- (c) for “transfer value” substitute “additional pension”.

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

**33.** In regulation 86(4), for the words “to such period of membership as is appropriate in accordance with guidance issued by the Government Actuary” substitute–

“to a period of membership equal to the period of membership in the employment which has ceased, as reduced under regulation 10(4) if the employment which has ceased was part-time, multiplied by the fraction–

$$\frac{\text{whole – time rate of pay in the employment which has ceased}}{\text{whole – time rate of pay in the employment which is continuing}}$$

where

the rate of pay in each case is the annual pay as defined in Regulation 12 on the last day of employment in the employment which has ceased”.

### Commencement of pensions

34. In regulation 92(2)–

- (a) omit sub-paragraph (b); and
- (b) after sub-paragraph (a) insert the following–
  - “(b) in a case where he elects under paragraph (7) of that regulation for an earlier date than his NRD, with that date; and
  - (c) otherwise, with his NRD.”

### First instance decisions

35. In regulation 96–

- (a) in paragraph (9), after “on the ground of ill-health” insert “or infirmity of mind or body”; and
- (b) for sub-paragraph (14)(b) substitute–
  - ““qualified in occupational health medicine” means holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in a Member State, Norway, Iceland or Liechtenstein (for the purposes of this definition, “a competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(16)), or being an Associate, a Member, or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of a Member State, Norway, Iceland or Liechtenstein.”.

### Decision by appointed person and notice of it

36. At the end of regulation 100(4) insert–

- “(e) a statement that OPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with any difficulty with the Scheme which remains unresolved and the address at which OPAS may be contacted.”.

### Decisions

37. In regulation 102(4)(e), for “difficulties which they have failed to resolve with the Secretary of State” substitute “any difficulty with the Scheme which remains unresolved”.

### Annual benefit statements

38. After regulation 105 insert–

#### “Annual benefit statements

**105A.**—(1) An administering authority shall issue an annual benefit statement to each of its active, deferred and pension credit members.

(2) The first such statements must be issued on or before 1st April 2007 and subsequent statements must be issued on or before each 1st April thereafter.

(3) An annual benefit statement shall contain an illustration of the amount of benefit entitlement, in respect of the rights that may arise under the Scheme, which–

- (a) has been accrued by the member at the relevant date; and
  - (b) in the case of an active member, is capable of being accrued by the member if he remains in the Scheme until his NRD.
- (4) The illustration shall be calculated–
- (a) in the case of active members, on the member’s pay (or, in the case of part-time employees, the whole-time equivalent) for the twelve-month period ending with the relevant date;
  - (b) in the case of deferred members, on the member’s final pay; and
  - (c) in the case of pension credit members, in accordance with regulation 150, as if the “normal benefit age” is the relevant date.
- (5) The relevant date–
- (a) is 31st March prior to the date that the statement is issued; or
  - (b) such later date as the authority may choose.”.

#### **Recovery or retention where former member has misconduct obligation**

39. In regulation 113(3), for “regulation 65(5)” substitute “regulation 65(4)”.

#### **Inward transfers of pension rights**

40. In regulation 121(2)–
- (a) insert “or” at the end of sub-paragraph (c); and
  - (b) omit sub-paragraph (e).

#### **Right to count credited period**

41. In regulation 122(4), after “and his NRD” insert “or, if earlier, the date on or after the member’s 60th birthday on which the sum of the items referred to in sub-paragraphs (a) to (c) of regulation 30(4) is 85 years or more”.

#### **Changes of fund**

42. In regulation 126–
- (a) in paragraph (2), for “(but see paragraph (3))” substitute “(but see paragraphs (3) and (3A))”; and
  - (b) for paragraph (3), substitute–
    - “(3) Where paragraph (2) applies as respects 10 or more members by virtue of a single event, the amount of the payment under that paragraph shall be determined by agreement between the actuary appointed by the administering authority by which the payment must be made and the actuary appointed by the administering authority to which it must be made.
    - (3A) Where the actuaries cannot agree on the amount within 12 months of the date of transfer or, where there is more than one date of transfer, the date of the last transfer which relates to the single event, the matter shall be referred to a third actuary, chosen by agreement between the actuaries or, in default of agreement, by the President of the Scottish Faculty of Actuaries, and his determination shall be final.

(3B) The cost of determining the amount to be transferred shall be paid in equal shares by the member's former appropriate fund and the member's new appropriate fund."

#### **Liability for combined benefits**

43. Omit regulation 127.

#### **Conversion of periods credited under Discretionary Payments Regulations etc. into membership**

44. Omit regulation 136.

#### **Interpretation**

45. In Schedule 1–

- (a) in the definition of “admission agreement”, for “regulation 4(2)” substitute “regulation 4B(1)”;
- (b) in the definition of “admission agreement employee”, for “regulation 4(15)” substitute “regulation 4B(8)”;
- (c) in the definition of “admission body” for “regulation 4(8)” substitute “regulations 4(2) and 4A(2)”; and
- (d) in the definition of “Scheme employer”, for “regulation 4(15)” substitute “regulation 4B(8)”.

#### **Matters to be included in an admission agreement in certain cases**

46. For Schedule 2A, substitute Schedule 2A as set out in the Schedule B to these Regulations.

#### **Revenue restrictions**

47. In Schedule 4–

- (a) in paragraph 1(1), for the definition of “continuity break” substitute–
  - ““continuity break” is a change of employment from a Scheme employer (including an admission body) to–
    - (a) a community admission body within–
      - (i) regulation 4(2)(a)(ii); or
      - (ii) regulation 4(2)(b) where, at the date that the admission agreement is made, the contributions paid to the body by any one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources; or
    - (b) a transferee admission,
  - but does not include a change in the case of a person who was a member of the Scheme on 13th January 2000.”;
- (b) in the heading above paragraph (8), for “regulations 52 and 54” substitute “regulation 54”;
- (c) in paragraph (8)(1), omit “52 or”; and
- (d) in paragraph (8)(3), omit paragraph (a).

### **Transitional provisions**

**48.**—(1) Nothing in regulations 8 and 10 will affect the amount of pay or final pay determined in accordance with an agreement made under regulation 12(5) of the principal Regulations prior to 30th June 2005.

(2) This paragraph applies to a member, who was a re-employed pensioner member on 30th June 2005, where the member—

- (a) has written to the appropriate administering authority within six months of that date to elect that the amendments in these Regulations in relation to regulations 28, 29 and 47 of the principal Regulations do not apply to them; and
- (b) has remained in the same employment, unless subject to a transfer, from that date until he or she retired or died.

(3) Nothing in these Regulations shall prevent a member to whom paragraph (2) applies from electing for a single pension in accordance with regulations 28 and 29 of the principal Regulations.

(4) Nothing in the Regulations shall affect the calculation of benefits under regulation 47 of the principal Regulations in respect of a member to whom paragraph (2) applies.

(5) Nothing in these Regulations shall prevent an authority from being obliged to make payments to another authority in accordance with regulation 127 of the principal Regulations (liability for combined benefits), or, in the case of an overdue payment, to pay interest under regulation 81 of the principal Regulations.

(6) Nothing in these Regulations shall affect any admission agreement made in accordance with the principal Regulations before the date on which these Regulations came into force and so far as it is necessary to give effect to any such agreement, the principal Regulations shall be treated as if they had continued in effect without the amendments made by these Regulations.

(7) So far as it is necessary to give effect to the entitlements in this regulation and to make provision for any matters incidental to them, the principal Regulations shall be treated as if they had continued in effect without the amendments made by these Regulations.

### **Right to opt out**

**49.**—(1) Where—

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

then the principal Regulations shall have effect in relation to him or her as if those amendments had never been made.

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

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

before the date on which these Regulations come into force.

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

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St Andrew's House, Edinburgh  
31st May 2005

*TAVISH SCOTT*  
Authorised to sign by the Scottish Ministers



SCHEDULE A

Regulation 3

<i>Regulations</i>	<i>Amendment</i>
8	After regulation 8(6) insert– “(7) Periods of membership before and after any unpaid period of maternity or adoption absence or period of parental leave in respect of which the member does not pay any contributions shall be treated as continuous.”.
16(2), 54(8)	After each occurrence of “maternity” insert “, paternity or adoption”.
16	After regulation 16(3) insert– “(3A) If a person who is a member or has applied to be a member– (a) goes on ordinary maternity leave, ordinary adoption leave or paternity leave; and (b) is not entitled to receive pay (including statutory maternity, paternity or adoption pay) payable under the Social Security Contributions and Benefits Act 1992(17) for all or any part of that period of leave, for the purpose of these Regulations that person shall be treated as if that person had paid contributions under paragraph (2) for the unpaid period of that ordinary maternity leave, ordinary adoption leave or paternity leave and on the pay that that person would have received during that period but for that person’s absence.”.
17(2)(a)	For “goes on maternity leave” substitute “is on maternity leave, other than ordinary maternity leave”.
17(2)(b)	After each occurrence of “maternity” insert “or adoption”.
20	After regulation 20(6) insert– “(6A) For the purposes of this Chapter, a member’s pay for any period of maternity, paternity or adoption absence during the final pay period in respect of which that member pays or is treated as paying contributions is the pay that member would have received had that member not been absent;”
78	After regulation 78(5) insert–

(17) 1992 c. 4.

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

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<i>Regulations</i>	<i>Amendment</i>
Schedule 1	<p>“(6) Where an employee–</p> <p>(a) is treated, under regulation 16(3A), as if that employee had paid contributions; or</p> <p>(b) has paid contributions during a period of maternity, paternity or adoption absence;</p> <p>the pay on which the common percentage is calculated is the pay the employee would have received if that employee had not been absent.”</p> <p>(a) (a) After the definition of “official pension” insert–</p> <p style="padding-left: 40px;">““ordinary adoption leave” means leave under section 75A of the Employment Rights Act 1996<b>(18)</b>;</p> <p style="padding-left: 40px;">“ordinary maternity leave” means maternity leave under Part VIII of the Employment Rights Act 1996;”;</p> <p>(b) After the definition of “passenger transport executive” insert</p> <p style="padding-left: 40px;">““paternity leave” means leave under regulations 4 or 8 of the Paternity and Adoption Leave Regulations 2002<b>(19)</b>;”;</p> <p>(c) For the definition of “period of maternity absence” substitute</p> <p style="padding-left: 40px;">““period of maternity, paternity or adoption absence” means any period throughout which a member is absent from duty because that member is exercising the right to take maternity, paternity or adoption leave in accordance with sections 71, 73, 75A or 75B of the Employment Rights Act 1996 or regulations 4 or 8 of the Paternity and Adoption Leave Regulations 2002;”.</p>

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**(18)** 1996 c. 18, as inserted by the Employment Act 2002, c. 22.

**(19)** S.I. 2002/2788.

SCHEDULE B

Regulation 46

“SCHEDULE 2A

Regulation 4A(8)

MATTERS TO BE INCLUDED IN AN ADMISSION AGREEMENT IN CERTAIN CASES

1. A requirement for the transferee admission body to pay to the administering authority all contributions and payments due under the Regulations.
2. If required by regulation 4A(6), a reference to the indemnity or bond in accordance with regulation 4A(7) and a warranty from the transferee admission body that such an indemnity or bond is in place.
3. A provision requiring the transferee admission body to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and in any employer’s guide published by the administering authority and provided to the transferee admission body.
4. An undertaking from the transferee admission body to the administering authority that it will not do anything to prejudice the status of the Scheme as an exempt approved scheme within the meaning given by section 592(1) of the Taxes Act 1988(20) (exempt approved schemes).
5. A representation and warranty from the transferee admission body to the administering authority that all the transferee admission body’s employees or class of employees who are specified as members are employed in connection with the provision of the service or assets being carried out by the transferee admission body as a result of those matters referred to in 4A(2).
6. An undertaking from the transferee admission body that it will promptly notify the administering authority in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for its employees who are members and of any terminations of employment by virtue of redundancy or in the interests of efficiency.
7. A requirement that the transferee admission body notifies the administering authority of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion.
8. A requirement that the transferee admission body notifies the administering authority of any matter which may affect, or is likely to affect, its participation in the Scheme and that it gives immediate notice of any actual or proposed change in its status which may give rise to a termination, including take over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution.
9. A minimum period of three months’ notice to terminate the admission agreement but automatic termination, as required by regulation 4B(2), in the event that the transferee admission body ceases to be such.
10. A right for the administering authority to terminate the agreement in the event of—
  - (a) the insolvency, winding up or liquidation of the transferee admission body;
  - (b) a breach by the transferee admission body of any of its obligations under the admission agreement (but where the breach is capable of remedy only where it has not been remedied within a reasonable time);
  - (c) the withdrawal of approval by the Commissioners of Inland Revenue to the participation of the transferee admission body as a Scheme employer; or

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(20) 1988 c. 1.

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

11. A requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the administering authority.

12. In relation to a transferee admission body under regulation 4A(2)(a)–

- (a) a reference to the date of the contract, other arrangement or direction by which the body met the requirements of that regulation;
- (b) a provision whereby the Scheme employer may set off against any payments due to the transferee admission body an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Regulations) due from the transferee admission body as an employing authority;
- (c) a provision requiring the Scheme employer to keep under assessment the level of risk arising as a result of the matters set out in regulation 4A(6);
- (d) a provision that where a representation or notification must be given to an administering authority under paragraphs (5), (6), (7) and (8) of this Schedule, that representation or notification is also given to the Scheme employer; and
- (e) a requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the Scheme employer, if different from the administering authority.”.

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## EXPLANATORY NOTE

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

These regulations make various amendments to the Local Government Pension Scheme (Scotland) Regulations 1998 (“the principal Regulations”), which regulate the Local Government Pension Scheme in Scotland (“the Scheme”). Regulation 3 takes effect on a date before the Regulations come into force (as set out in regulation 1). Section 12 of the Superannuation Act 1972 provides that regulations made under section 7 of that Act may have retrospective effect.

Regulation 3 amends various Regulations of the principal Regulations so as to take account of new entitlements to paternity and adoption leave provided for by the Employment Act 2002 that came into force on 8th December 2002. Accordingly, the principal Regulations are amended with effect from that date as follows–

A new Regulation 8(7) is inserted which provides for a period of membership before and after any unpaid period of maternity or adoption absence or period of parental leave in respect of which the member does not pay contributions to be treated as continuous.

Regulation 16(2) is amended so that members of the scheme taking paternity or ordinary adoption leave who are in receipt of pay (including statutory paternity or adoption pay) will be obliged to make contributions to the Scheme on that pay.

New Regulations 16(3A), 20(6A) and 78(6) are inserted which ensure that periods of unpaid statutory ordinary maternity, paternity or adoption leave are treated as periods of membership.

Regulation 17(2) is amended so that those members of the scheme taking additional adoption leave can opt whether or not to pay contributions during the additional leave period. Under the amended regulation 17(2), if they choose not to pay contributions, then the period of additional leave will not count for membership purposes, although the periods of employment before and after the additional leave will be treated as continuous.

Regulation 54(8) is amended so that where a member elects to make an additional contribution, a reduction in pay as a result of periods of paternity or adoption leave taken during the interval at the end of which the additional contribution falls to be paid, will be taken into account when assessing the amount of the additional contribution.

Consequential amendments are also made to Schedule 1 to define ordinary adoption, maternity and paternity leave and periods of paternity or adoption absence.

Regulation 4 is a minor clarification to ensure that an appropriate member of a transferee admission body is included in the list of persons who may be an active member of the Scheme.

Regulation 5 amends regulation 4 of the principal Regulations by substituting new regulations 4, 4A and 4B, which provide for administering authorities to make admission agreements to enable employees of non Scheme employers to be members of the Scheme. The main changes are—

- to separate the requirements for “community” and “transferee” admission bodies into separate regulations;

- to extend the definition of transferee admission body, to include bodies (other than community admission bodies) that carry out a public service and have been approved by the Scottish Ministers for admission to the Scheme; and

- to require an indemnity or bond to be entered into by the transferee admission body where it is identified as being necessary following a risk assessment.

The amended regulation 4 of the principal Regulations makes provision for the admission of community admission bodies. These are bodies that provide public services, otherwise than for the purposes of gain, and which have links with local government.

The inserted regulation 4A of the principal Regulations makes provision for the admission of transferee admission bodies. These are bodies that either provide a service or assets transferred from Scheme employers, or carry out a public service and have been approved by the Scottish Ministers for admission to the Scheme.

The inserted regulation 4B of the principal Regulations makes further provisions in relation to admission agreements with both types of admission bodies.

Regulation 6(1)(a) substitutes a new regulation 5(10) in the principal Regulations, a consequential amendment to new regulations 4, 4A and 4B to provide for when employees of the transferee admission bodies are treated as leaving local government employment for the purposes of the Scheme.

Regulation 6(1)(b) adds a new regulation 5(11) to the principal Regulations which allows members who become employees of an NHS Superannuation Scheme employing authority as a result of an arrangement under section 15 of The [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#) to remain members of the Scheme.

Regulation 7 makes a minor drafting amendment to regulation 8(2) of the principal Regulations (periods of membership).

Regulation 8 deletes provisions for Scheme employers and employee representatives to agree a method for determining employees' pay.

Regulation 9 omits regulation 19(6)(a) of the principal Regulations to remove a reference to regulation 28 of the principal Regulations (re employed pensioners).

Regulation 10 omits regulation 20(8) of the principal Regulations (final pay).

Regulation 11 amends regulation 24 of the principal Regulations (normal retirement) to ensure that certain members of the Scheme who were members before 1st April 1998 continue to have a normal retirement date between age 60 and 65 as provided in the Local Government Superannuation (Scotland) Regulations 1987 (S.I.1987/1850), the regulations which were superseded by the principal Regulations.

Regulation 12 amends regulation 26 of the principal Regulations (ill health) to clarify the definition of “permanently incapable”.

Regulation 13(1)(a) amends regulation 27 of the principal Regulations (amounts of ill health pension and grant) to provide that where a member becomes entitled to a further ill health pension and grant (unless by virtue of being in concurrent employments which cease simultaneously), the multiplier for that pension and grant will be total membership without enhancement.

Regulations 13(1)(b) and (c) amend regulation 27 of the principal Regulations by making minor drafting amendments to paragraph (6) and adds a new paragraph (6A) to limit the reduction required to be made to the enhanced membership period of a member who becomes entitled to ill health benefits and has membership in part time employment.

Regulation 14 amends regulation 28 of the principal Regulations (re employed pensioners) to remove provisions relating to re employed pensioners' entitlement to elect for a single new pension and provides for when periods of former membership may be taken into account when calculating the total membership of a re employed pensioner.

Regulation 15 omits regulation 29 of the principal Regulations (further provisions about elections under regulation 28).

Regulation 16 amends regulation 30 of the principal Regulations dealing with early leavers. Regulation 41, which amends regulation 122 of the principal Regulations (right to count credited period), makes an amendment consequential upon these changes.

Regulation 17 adds a new regulation 31A to the principal Regulations dealing with concurrent employments to provide a method of calculating membership where one of two concurrent employments terminates and the member elects to keep the periods of service aggregated for the purposes of calculating benefits.

Regulation 18 omits regulation 38 of the principal Regulations (reduction of death grants: re employed pensioners).

Regulation 19 amends regulation 43 of the principal Regulations, which defines an eligible child for the purpose of children's pension rights. Also the test of financial dependency required in the case of a child who is not the legitimate or adopted child of a member is extended to include a child born after the death of a member, who would have been dependent on that member had the member not died before the birth.

Regulation 20 omits regulation 47 of the principal Regulations (dependants of re employed pensioners) from the principal Regulations to remove calculations in relation to re employed pensioners.

Regulations 21 and 22 amend regulations 51 and 52 of the principal Regulations to provide that employing authorities may increase an active member's total membership.

Regulation 23 amends regulation 57 of the principal Regulations (election for pension in lieu of retirement grant) removing the requirement for a member to be 50 before he can exercise the right to elect for the pension in lieu of retirement grant.

Regulation 24 amends regulation 63 of the principal Regulations (retirement benefits) to allow a longer period after retirement before the value of the additional voluntary contributions must be used to pay for a pension. This is to take advantage of a change in Inland Revenue practice.

Regulation 25 substitutes a new regulation 65 in the principal Regulations only allowing the use of the accumulated value of the additional voluntary contributions to provide a scheme benefit when a

member ceases to be an active member of the Scheme with immediate entitlement to a pension. The changes do not affect the rights of a member who entered into the additional voluntary contributions scheme before the change takes effect.

Regulations 26 and 27 amend regulations 75 (accounts and audit) and 76 (actuarial valuations and certificates) of the principal Regulations to make provision for administering authorities to prepare, maintain and publish a written funding strategy statement, which must be taken into account by the actuary in specifying the common rate of employer's contribution.

Regulation 28 amends regulation 77 of the principal Regulations (special circumstances where actuarial valuations and certificates must be obtained) to require an indemnity or bond instead of a guarantee or indemnity and to allow the actuary to provide, in certain circumstances, that where an outgoing admission body cannot pay revised contributions to a fund, that liability is borne by the Scheme employer who is a party to the admission agreement.

Regulation 29 amends regulation 79 of the principal Regulations (employer's further payments) to remove reference to regulation 136 (conversion of periods credited under Discretionary Payments Regulations, etc. into membership).

Regulation 30 amends regulation 81(1) of the principal Regulations (interest) to remove a reference to regulation 127 of the principal Regulations (liability for combined benefits).

Regulation 31 amends regulation 82(9)(b) of the principal Regulations (discontinuance of additional contributions) to remove a reference to an election under regulation 28 of the principal Regulations (re employed pensioners).

Regulation 32 makes an amendment to regulation 85 of the principal Regulations (cost of calculations for transfer of additional voluntary contributions or shared cost additional voluntary contributions into the Scheme) consequential on the changes from the substitution of the new regulation 65 in the principal Regulations.

Regulation 33 amends regulation 86 of the principal Regulations (rights to return of contributions) by substituting a formula for the calculation of the period of membership the contributions can buy in place of the existing provision that the period will be calculated in accordance with guidance issued by the Government Actuary.

Regulation 34 makes consequential amendments to regulation 92 of the principal Regulations (Commencement of pensions) required as a result of the amendment to regulation 30(7) of the principal Regulations.

Regulation 35 makes amendments to regulation 96 of the principal Regulations (first instance decisions). The amendment to regulation 96(9) is a clarifying amendment and the amendment to regulation 96(14) updates the definition of "qualified in occupational health medicine" to reflect the updated definition of "component authority" in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (S.I. 2003/1250).

Regulations 36 and 37 amend provisions in regulations 100 and 102 respectively of the principal Regulations dealing with resolution of disputes in connection with the information which must be given to members about the Pensions Advisory Service in the internal dispute resolution procedure. These changes are necessitated by the Occupational Pension Schemes (Disclosure of Information) Regulations 1999 (S.I. 1999/3198).

Regulation 38 inserts a new Regulation 105A into the principal Regulations making provisions for the issue of annual benefit statements.

Regulation 39 makes a minor change to regulation 113 of the principal Regulations (recovery or retention where former member has misconduct obligation) consequential on the substitution of the new regulation 65.

Regulation 40 amends regulation 121 of the principal Regulations (inward transfer of pension rights) to exclude rights under a non-Scheme additional voluntary contributions scheme from the list of

relevant pension rights which may count as membership in the Scheme. Those rights are dealt with in regulation 59 of the principal Regulations (election to pay AVCs).

Regulation 41 makes a consequential amendment to the changes made by regulation 16 of these Regulations.

Regulation 42 amends regulation 126 of the principal Regulations (changes of fund) to provide that where a transfer involves ten or more members, the calculation of the transfer amount is to be by way of agreement between fund actuaries with reference to a third actuary to resolve disagreements.

Regulation 43 omits regulation 127 of the principal Regulations (liability for combined benefits).

Regulation 44 omits regulation 136 of the principal Regulations (conversion of periods credited under Discretionary Payments Regulations etc. into membership).

Regulation 45(1)(a) corrects an error in Schedule 1 of the principal Regulations. The remainder of regulation 45 and regulation 47 make consequential amendments from the changes in these Regulations, to definitions in Schedules 1 and 4 to the principal Regulations.

Regulation 46 substitutes a new Schedule 2A to the principal Regulations, as set out in Schedule B to these Regulations. Schedule 2A sets out matters which are to be included in an admission agreement in certain cases.

Regulation 48 makes transitional provisions and Regulation 49 allows certain persons who would be placed in a worse position by amendments made in these Regulations to elect for the amendments not to apply in their case.

The guidance published by CIPFA, the Chartered Institute of Public Finance and Accountancy, referred to in regulation 26, can be purchased from CIPFA, 3 Robert Street, London WC2N 6RL, Tel. 020 7543 5602. The publication costs £50 to members of the public, £25 to local authorities and £12.50 to an administering authority.