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STATUTORY INSTRUMENTS

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**1998 No. 364**

**The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998**

*Special provisions about rights relating to old membership*

**Continuity of elections within regulation 11(1)**

**14.**—(1) The appropriate administering authority of an active member who has given or is deemed to have given a notice which ceases to have effect under regulation 11(1) must inform him in writing that they propose to treat the notice—

- (a) as having been given under the corresponding provision of the 1998 Regulations; and
- (b) as if the notice related only—
  - (i) to so much of the amount remaining to be paid in pursuance of the notice as has not been paid before the commencement date, and
  - (ii) to so much of the period as respects which he gave the notice as he may not count by virtue of regulation 11(4); and
- (c) as enabling the member to make additional contributions at the protected rate.

(2) Where a member is so informed, the notice is to be so treated as from the commencement date unless the member (or, in a case where the member has died, his executor) has informed his appropriate administering authority in writing before the expiry of the period of three months beginning with that date (or such longer period as they may allow) that he does not wish it to be so treated.

(3) Any election by a member to whom regulation 3(1) applies which—

- (a) was made or had effect as if made under regulation C9A of the 1987 Regulations (additional voluntary contributions); and
- (b) was in effect immediately before the commencement date,

shall continue to have effect as if it had been under the 1998 Regulations.

(4) The protected rate is the rate at which the member was making payments by virtue of the notice immediately before the commencement date, expressed as a percentage of his remuneration at that time.

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

**15.**—(1) Regulation 14 applies in relation to a right which ceases to have effect under regulation 12(1)(a) as if—

- (a) that right arose under a notice which ceases to have effect by virtue of regulation 11(1), and
- (b) the corresponding provision of the 1998 Regulations were regulation 54,

(but see the following provisions).

(2) If the right arose under regulation D6, D7 or D8 of the 1974 Regulations and immediately before the commencement date the member had the right to make any payments by lump sum payable

by instalments, then for regulation 14 the protected rate is the rate at which he was paying instalments immediately before the commencement date, expressed as a percentage of his remuneration at that time.

(3) Paragraph (1) does not apply in the case of an election made under regulation C8 of the 1987 Regulations.

(4) Regulation 54(6) of the 1998 Regulations does not apply where regulation 54 applies by virtue of paragraph (1) above, and instead the member's appropriate administering authority must calculate the amounts of the additional contributions by reference to the preferential rate.

(5) The preferential rate is the rate at which the member was making payments (including payments by instalments of a lump sum) by virtue of regulation C9(2) of the 1987 Regulations immediately before the commencement date, expressed as a percentage of his remuneration at that time.

### **Temporary right to pay off liabilities under regulation 15 by capital payment**

**16.—**(1) A member to whom regulation 14 applies by virtue of regulation 15(1), may make an election to make a capital payment in full satisfaction of his liabilities in respect of any period for which he remains liable to make any payment by virtue of regulation 15(1).

(2) Such an election may only be made by notice in writing to the member's appropriate administering authority before the end of the period of six months beginning with the commencement date.

(3) When an administering authority receive such an election they must notify the member of the amount of the capital payment required.

(4) However, if that capital payment, when aggregated with the member's total contributions (as mentioned in regulation 15(2) of the 1998 Regulations) payable in the tax year in which he makes the election, would exceed the maximum amount so payable by him, such an election is ineffective.

(5) Where following a payment under such an election any body's liabilities in respect of the member under regulation P13 of the 1987 Regulations continue by virtue of regulation 20(3), then, despite that regulation, he is entitled to count a period of membership of the same length as if all payments to be made in respect of that period under regulation P13 of the 1987 Regulations had been made.

### **Re-employment after return of contributions: service before 6th April 1978**

**17.—**(1) This paragraph applies to a member if—

- (a) he left a local government employment after 15th May 1974 and before 6th April 1978 with less than 5 years' total membership;
- (b) a return of contributions for that employment was made to him; and
- (c) he has subsequently begun another local government employment (whether before or after the commencement date) in which he is an active member.

(2) Despite regulation 8(3) of the 1998 Regulations, a member within paragraph (1) may count the period for which the contributions were returned, if he pays the appropriate sum to his appropriate fund in his new employment.

(3) That repayment must be made before the expiry of the period of six months beginning with his return to local government employment or such longer period as the authority who returned the contributions and, if different, his appropriate administering authority in his new employment may allow.

(4) The appropriate sum is an amount equal to—

- (a) the amount of returned contributions (net of any tax deducted, but including any increase under regulation M3 of the 1987 Regulations or any corresponding earlier provision and any interest paid on the return); plus
  - (b) interest on the amount specified in paragraph (a) for the period beginning with the date the contributions were returned and ending with the date of payment of the appropriate sum.
- (5) Interest must be calculated—
- (a) at 6 per cent. compounded with yearly rests for each complete period of a year ending before 1st April 1977; and
  - (b) at 2.25 per cent. compounded with three-monthly rests for each complete period of three months beginning on or after that date.
- (6) In any case where the whole or part of the period for which the contributions were returned was a period before 1st April 1972 which, if the member had been entitled immediately before the commencement date to count it, would have been reduced under regulation 8, the period which may be counted under paragraph (2) must be similarly reduced.
- (7) The repayment by a member under paragraph (2) in any tax year must not, when aggregated with his total contributions (as mentioned in regulation 15(2) of the 1998 Regulations) payable in that tax year, exceed the maximum amount so payable by him.

### **Equivalent pension benefits**

- 18.—**(1) This paragraph applies where—
- (a) when a member left his local government employment he was not entitled in relation to that employment to a retirement pension under regulation 24, 25, 26 or 30 of the 1998 Regulations (or any corresponding provision of any earlier regulations) and he receives a return of contributions;
  - (b) the whole or some part of his period of membership was in service in a non-participating employment or in service which relates to employment with a non-local government employer in a non-participating employment;
  - (c) a period of his service in a non-participating employment came to an end by reason—
    - (i) of the repeal of section 56(1) of the National Insurance Act 1965(1), or
    - (ii) of the provisions of regulation 2(2) of the National Insurance (Non-Participation Assurance of Equivalent Pension Benefits) Regulations 1960(2) (as modified by regulation 9(2)(a) or (b) of the National Insurance (Non-participation Transitional Provisions) Regulations 1974(3)); and
  - (d) at some time during the settlement period (within the meaning of regulation 2 of those Regulations of 1974) he became, and has remained, assured of equivalent pension benefits.
- (2) Where paragraph (1) applies, the member is entitled under the 1998 Regulations in relation to that employment to an annual retirement pension payable at the rate of the equivalent pension benefits applicable to him in respect of any period of membership—
- (a) in service in a non-participating employment; or
  - (b) which relates to service with a non-local government employer in a non-participating employment.
- (3) That pension is payable from the first date on which he—
- (a) has attained state pensionable age; and

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(1) 1965 c. 51; section 56(1) was repealed by the Social Security Act 1973 (c. 38), section 100(2)(b), Schedule 28.

(2) S.I.1960/1103.

(3) S.I. 1974/2057.

(b) is no longer in any local government employment.

(4) Where a pension is payable under paragraph (2) to a member who attains state pensionable age for a period of service in a non-participating employment, which counts for the purpose of calculating any benefits payable to the member (other than excepted service), no relevant provision shall apply so as to reduce the pension below the minimum rate of equivalent pension benefits applicable for that period of service under the Insurance Acts.

(5) A relevant provision is a provision of the 1998 Regulations for the surrender, assignation, reduction, termination or suspension of a pension.

(6) Paragraph (4) does not apply to relevant provision for the reduction, termination or suspension of a pension, which is used for a purpose prescribed by regulations made, or deemed to have been made, under section 57(1)(c) of the National Insurance Act 1965 (equivalent pension benefits).

(7) For these Regulations and the 1998 Regulations, a member to whom paragraph (1) applies shall be treated as having ceased to hold the employment for which he receives a return of contributions on the day before the date of receipt.

(8) Entitlement to a pension under paragraph (2) must be disregarded—

(a) for regulations 19(4), (6) and (8), 28, 33(1), 37(5), 41, 44(5), 45(7) and 86(1)(a) of the 1998 Regulations; and

(b) for determining whether a person is at any time a pensioner member or a deferred member.

(9) For this regulation a member may count the excess period referred to in regulation 123(1) of the 1998 Regulations (service not matched by period credited on transfer into the Scheme).

(10) In this regulation—

“non-participating employment” has the same meaning as in section 56(1) of the National Insurance Act 1965;

“excepted service”, in relation to any person, is any earlier period of such service as is mentioned in paragraph (4), being service in respect of which—

(a) a payment in lieu of contributions has been made; or

(b) equivalent pension benefits satisfying the requirements of the Insurance Acts have already been assured to him.