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STATUTORY INSTRUMENTS

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**1998 No. 364 (S. 13)**

**PENSIONS**

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

<i>Made</i>	- - - -	<i>20th February 1998</i>
<i>Laid before Parliament</i>		<i>10th March 1998</i>
<i>Coming into force</i>	- -	<i>1st April 1998</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(1) and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate in accordance with section 7(5) of that Act, and not having considered consultation with any individual local authority desirable, hereby makes the following Regulations:

*Preliminary provisions*

**Citation and commencement**

1. These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998 and shall come into force on 1st April 1998.

**Interpretation**

2.—(1) In these Regulations—

“the 1998 provisions” means the 1998 Regulations, these Regulations and the Investment Regulations;

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

“the commencement date” means 1st April 1998;

“the common provisions” means regulations 48 and 49 and Part IV of the 1998 Regulations and the Investment Regulations;

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(1) 1972 c. 11; section 7(3) was extended by the Pensions (Increase) Act 1974 (c. 9), section 2(2); section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 10.

“the Investment Regulations” means regulations P5, P6, P12(4) and P15(3) of the 1987 Regulations;

“the old provisions” means the 1987 Regulations, the additional regulations specified in Schedule 1 (so far as they relate to the Scheme) and any other regulations relating to the Scheme and made under section 7 or 12 of the Superannuation Act 1972, so far as they continue in effect;

“the replaced provisions” means regulations C1, C12, E11A, E21, E33, E35, M1, R1, R2, R3, R5 and Parts J, N and P of and Schedules 16, 19 and 20 to the 1987 Regulations (but not including the Investment Regulations);

“the saved provisions” means the old provisions (other than the replaced provisions), in so far as they remain capable of having effect and subject to the provisions of these Regulations and, in particular, the amendments specified in Schedule 3.

- (2) For these Regulations, a member must be treated as remaining an active member throughout—
- (a) a period of maternity absence (as defined in regulation C3A(6) of the 1987 Regulations);
  - (b) any period which is treated as membership by virtue of regulation D1(2)(aa) of those Regulations (absence for illness or injury); and
  - (c) any period as respects which a notice under regulation C4(3) of those Regulations (trade disputes absence) is served,

whether or not he or she otherwise would be so treated.

(3) Paragraph (2) shall not apply as respects any part of such a period which falls after a time when the member ceases to be an active member by virtue of regulation B4A of the 1987 Regulations (opting out).

(4) Subject to the previous provisions of this regulation, expressions used in these Regulations and in the 1998 Regulations have the same meaning as in those Regulations (unless the context indicates otherwise).

#### *Application of 1998 Regulations and old provisions*

#### **Cessation of old provisions for active members**

**3.—(1)** Any person who is an active member of the Scheme immediately before the commencement date shall continue to be an active member on that date and, subject to the provisions of these Regulations, the old provisions (other than the Investment Regulations) shall cease to apply to him.

(2) Paragraph (1) shall not apply to any person who ceases to be an active member on March 31st 1998—

- (a) by virtue of regulation B4A of the 1987 Regulations (opting out); or
- (b) by virtue of leaving local government employment on that date and becoming a pensioner member on the commencement date,

and these Regulations shall apply to any such person as if he had already so ceased immediately before the commencement date.

(3) If any person has notified his employer under regulation B4A(1) of the 1987 Regulations before the commencement date that he does not wish to be an active member, but would not (apart from this paragraph) have ceased to be an active member immediately before the commencement date—

- (a) paragraph (1) shall not apply to him;
- (b) he shall cease to be such a member on March 31st 1998; and

(c) these Regulations shall apply to him as if he had already so ceased immediately before the commencement date.

(4) Where (apart from these Regulations) a person away on relevant reserve forces service would be treated under the 1987 Regulations as an active member on the commencement date, paragraph (1) shall apply to him, unless as a result of a cancelling notice his relevant reserve forces services on and after the commencement date is not to be treated as such service.

(5) Where such a notice is served, these Regulations shall apply to such a person as if he had already ceased to be an active member immediately before the commencement date.

#### **Deferred members and pensioners: general**

4.—(1) Except where these Regulations provide otherwise, in relation to the persons specified in paragraph (2)—

- (a) the saved provisions shall continue to apply;
- (b) the common provisions shall apply; and
- (c) Part II (except regulations 48 and 49) and Parts III and V of the 1998 Regulations shall not apply (except in so far as they affect the common provisions).

(2) Those persons are—

- (a) any person who immediately before the commencement date was a deferred member or a pensioner member and does not on or after that date become an active member;
- (b) any person who is or may become entitled to any benefit under the Scheme in respect of such a person;
- (c) any other person whose entitlement to the payment of any pension or other benefit has arisen before that date or who may become so entitled by virtue of the death of any person who has died before that date.
- (d) any person who becomes a deferred member after the commencement date by virtue of an election made under regulation E2A(1) of the 1987 Regulations.

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

5. Schedule 2 shall have effect for the purpose of making provision concerning cases where members are re-employed and regulations 3(1) and 4 are subject to that Schedule.

#### *Counting old membership of existing members under 1998 Regulations*

#### **Entitlement of active members to count old membership**

6. Any person who continues as an active member of the Scheme on the commencement date by virtue of regulation 3 may count for regulation 8(1)(d) of the 1998 Regulations the same length of membership as the total period he was entitled to count under the old provisions immediately before that date (but see regulations 8 to 13 and Schedule 2).

#### **Entitlement of re-employed members to count old membership**

7.—(1) Any member to whom regulation 3(1) does not apply who becomes an active member again on or after the commencement date may count for regulation 8(1)(d) of the 1998 Regulations the same length of membership as he would have been entitled to count for that regulation if regulation 6 had applied to him (but see Schedule 2).

(2) Where paragraph (1) applies to a female member, regulation 9 of these Regulations applies as if she had been an active member immediately before and on the commencement date.

(3) However, where paragraph (2) applies the resolution under regulation 9(2) of these Regulations must be passed as soon as is practicable after the member becomes an active member again.

(4) Where paragraph (1) applies to a member who is entitled to count a period of membership under regulation D1(2)(a) of the 1987 Regulations by virtue of regulation 11(5)(c) of these Regulations, for paragraph (1) the member shall be deemed to have been entitled to count that period immediately before the commencement date.

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

**8.—**(1) If immediately before the commencement date a member who was then a married member—

- (a) was entitled to count a period of membership before 1st April 1972; and
- (b) had not made a relevant election as respects that period or had ceased to make payments under it,

for regulation 6 that period of membership or, as the case may be, the unpaid part of it must be reduced to 89 per cent. of its length (but see regulation 10).

(2) Paragraph (1) applies to a female member only if she duly elected under regulation E12(1)(b) of the 1987 Regulations (election by wife of dependent and permanently incapacitated husband).

(3) A relevant election is an election wholly or partly in respect of membership before 1st April 1972, made under regulation C8 of the 1987 Regulations (payments to avoid reduction of retiring allowance and death gratuity).

(4) Where a member to whom paragraph (1) would have applied if he had been married immediately before the commencement date marries on or after that date while he is an active member and before he becomes entitled to benefits under the Scheme, paragraph (1) shall apply to him as if he had been married immediately before that date.

(5) Despite anything in these Regulations, a relevant election under which payments were being made immediately before the commencement date shall continue to have effect on and after that date to the extent that it relates to a period of membership before 1st April 1972 (subject to the continuation of payments under it at the same rate as they were made before the commencement date) whether or not immediately before the commencement date the election also related to a later period.

(6) However, if a member to whom paragraph (1) would have applied apart from his continuing to make payments under a relevant election until the commencement date (“a continuing member”), fails after that date to complete the payments due under that election in respect of membership before 1st April 1972 (otherwise than by virtue of his death or his becoming entitled to a retirement pension under regulation 26 of the 1998 Regulations), paragraph (1) shall apply to him as if he had so ceased before the commencement date.

(7) If a continuing member—

- (a) completes the payments due under the election in respect of that membership; or
- (b) fails to complete them by virtue of his death or his becoming entitled to a retirement pension under regulation 26 of the 1998 Regulations,

for regulation 8(1)(d) of those Regulations he may count the full period of membership in relation to which he made the election.

(8) For paragraph (1) the unpaid part of the period is the part of it in respect of which payments (including payments by instalments of a lump sum) have not been made.

(9) Where paragraph (1) applies by virtue of paragraph (6) any payments made on or after the commencement date must be taken into account for paragraph (8).

### **Women with membership before 6th April 1988**

9.—(1) Any election or notice made or given (or having effect as if made or given) by a female member under regulation C8, C8A or E6(6) and (7) of the 1987 Regulations shall, in so far as it relates to membership after 31st March 1972, cease to have effect.

(2) Where an election made or a notice given by a member to whom regulation 3(1) applies ceases to have effect under paragraph (1), her employing authority must resolve that for regulation 8(1)(d) of the 1998 Regulations she may count the period in respect of which the election was made or the notice given as membership after 5th April 1988.

(3) Despite anything in these Regulations, an active member who was eligible immediately before the commencement date to make an election under regulation C8 or C8A of the 1987 Regulations or to give notice under regulation E6(6) of those Regulations as respects membership after 31st March 1972 may, with the agreement of her employing authority, make such an election or give such notice on or after the commencement date.

(4) An election made or a notice given by virtue of paragraph (3) has effect for the purposes of this regulation as if it had been made or given immediately before the commencement date.

(5) A resolution under paragraph (2) must be passed—

- (a) in a case where it is made on the cessation of the effect of an election made or a notice given by virtue of paragraph (3), before the expiry of the period of six months beginning with the day the employing authority agree to the making of the election or giving of notice); and
- (b) otherwise, before 1st November 1998.

### **Certain members with membership before 16th May 1974**

10.—(1) Regulation 6 does not apply to any person to whom regulation E19 of the 1974 Regulations applied, but who did not make an election under that regulation before the commencement date.

(2) If such a person continues as an active member of the Scheme by virtue of regulation 3, the period he may count for regulation 8(1)(d) of the 1998 Regulations is such period as his appropriate administering authority determine to be appropriate.

(3) A period is appropriate only if the rights in respect of that period under the 1998 Regulations will be at least equal in value to those which cease to apply in respect of the member as a result of the old provisions ceasing to apply to him.

(4) If the appropriate administering authority think fit, they must obtain the advice of an actuary appointed by them before making a determination under paragraph (2) and a statement as to the actuarial basis of that advice.

### **Rights under old provisions affecting membership periods (extra payments, absences etc.)**

11.—(1) Any notice given or having effect as if given or deemed to have been given under—

- (a) regulation C3(3) or (4) of the 1987 Regulations (payments in respect of long periods away from work);
- (b) regulation C3A(3) of those Regulations (payments in respect of maternity absence);
- (c) regulation C4(3) of those Regulations (payments in respect of absence owing to trade dispute);
- (d) regulation C6 of those Regulations (payments to increase reckonable service),

by a member to whom regulation 3(1) applies shall cease to have effect (but see regulation 14).

(2) Where a member to whom paragraph (1) applies has made any payment under regulation C3(3) or, as the case may be, regulation C3A, C4(3) or C6 of the 1987 Regulations in pursuance of the notice, the member's appropriate administering authority must calculate the period as respects which payment has been made.

(3) That authority must notify the member of that period as soon as practicable after the commencement date.

(4) The period the member may count for regulation 8(1)(d) of the 1998 Regulations includes the period calculated under paragraph (2).

(5) Nothing in these Regulations affects—

- (a) any right of any person who has ceased to be employed before the commencement date to give a notice under regulation C3(3) or C3A(3) of the 1987 Regulations not later than 30 days after he ceased to be employed;
- (b) any right of any person who has ceased to be employed before the commencement date (or his executors) to give a notice under paragraph (3) of regulation C4 of those Regulations within the period mentioned in paragraph (5) of that regulation; or
- (c) if such a person as is specified in paragraph (a) or (b) makes a payment in pursuance of the notice, his right to count the period as respects which the payment is made under regulation D1(2)(a) of those Regulations.

(6) In the case of a notice served under regulation C4(3) of those Regulations where the member has died, references in this regulation to the member shall be taken where appropriate as references to the member's executors.

### **Rights under regulation C9 of the 1987 Regulations: counting of membership**

**12.—**(1) Where any member to whom regulation 3(1) applies has any rights to make any payments which remain payable immediately before the commencement date by virtue of regulation C9(2) of the 1987 Regulations—

- (a) those rights shall cease (but see regulation 15);
- (b) the member's appropriate administering authority must calculate the period as respects which payment has been made and notify the member of that period as soon as practicable after the commencement date; and
- (c) the period the member may count for regulation 8(1)(d) of the 1998 Regulations includes the period so calculated.

(2) The period mentioned in paragraph (1)(c) is such period as his appropriate administering authority determine to be appropriate.

(3) A period is appropriate only if the rights in respect of that period under the 1998 Regulations will be at least equal in value to the member's rights in respect of the payments he has made under the old provisions.

(4) Where the appropriate administering authority think fit, they must obtain the advice of an actuary appointed by them before making a determination under paragraph (2) and a statement as to the actuarial basis of that advice.

### *Augmentation*

#### **Duty of employing authority to increase total membership of members with membership before the commencement date**

13.—(1) Where a relevant event occurs—

- (a) in relation to a member who is entitled to count membership by virtue of regulation 6 or 7; or
- (b) in relation to a member to whom paragraph 6(6) of Schedule 2 applies as respects a period of membership,

the relevant authority must determine whether his rights under the Scheme in respect of that membership are at least equal in value to the rights to which he was entitled immediately before the commencement date (“his 1987 rights”).

(2) If the relevant authority determine that a member’s 1987 rights were of a greater value than his rights under the Scheme in respect of the membership mentioned in paragraph (1), they must resolve to increase the member’s total membership for the 1998 Regulations by an additional period so that his rights under the Scheme in respect of the membership mentioned in paragraph (1) are at least equal in value to his 1987 rights.

(3) However, if that additional period would exceed the period which would be the maximum addition under Schedule 4 to the 1998 Regulations if the resolution were made under regulation 52 of those Regulations—

- (a) it must be reduced to the amount of the maximum addition; and
- (b) the relevant authority must resolve that the appropriate multiplier for one or both of the purposes mentioned in regulation 19(2) and (3) of those Regulations (calculations of pensions and retirement grants) must be increased accordingly so that (taking the effects of the reduced additional period and the increase in any such multiplier together) his rights under the Scheme in respect of the membership mentioned in paragraph (1) are at least equal in value to his 1987 rights.

(4) Before—

- (a) making a determination under paragraph (1); or
- (b) determining the additional period under paragraph (2) or the increase in any appropriate multiplier under paragraph (3)(b),

the authority must consider the advice of an actuary if they consider it appropriate.

(5) Where the relevant authority have passed a resolution under paragraph (2), the additional period counts as part of the member’s total membership for regulation 8(1)(d) of the 1998 Regulations.

(6) The relevant authority must give notice of the making of such a resolution to the member before the expiry of the period of six months beginning with the relevant date.

(7) The relevant authority is—

- (a) in the case of a member who is an active member when the relevant event occurs, his Scheme employer; and
- (b) otherwise, his appropriate administering authority or, if there is more than one, the appropriate administering authority in respect of the employment which he left last.

(8) A relevant event occurs in relation to a member if—

- (a) he becomes immediately entitled to payment of a benefit under the 1998 Regulations or any other person whose entitlement is in respect of him becomes so entitled; or

- (b) he applies under section 93A of the Pension Schemes Act 1993<sup>(2)</sup> for a statement of entitlement; or
  - (c) he is provided with such information as is mentioned in regulation 119(3) of the 1998 Regulations (bulk transfers etc.).
- (9) The relevant date is—
- (a) in the case mentioned in paragraph (8)(a), the date on which the amount of the benefit is determined;
  - (b) in the case mentioned in paragraph (8)(b) or (c), the date the member's membership ceases.

*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).

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(2) 1993 c. 48; section 93A was inserted by the Pensions Act 1995 (c. 26), section 153.



(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<sup>(3)</sup>, or
    - (ii) of the provisions of regulation 2(2) of the National Insurance (Non-Participation Assurance of Equivalent Pension Benefits) Regulations 1960<sup>(4)</sup> (as modified by regulation 9(2)(a) or (b) of the National Insurance (Non-participation Transitional Provisions) Regulations 1974<sup>(5)</sup>); 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—

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<sup>(3)</sup> 1965 c. 51; section 56(1) was repealed by the Social Security Act 1973 (c. 38), section 100(2)(b), Schedule 28.

<sup>(4)</sup> S.I. 1960/1103.

<sup>(5)</sup> S.I. 1974/2057.

- (a) has attained state pensionable age; and
  - (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.

### *Pension funds and authorities*

#### **Superannuation funds and appropriate fund authorities**

**19.—(1)** The funds which are appropriate superannuation funds for the old provisions immediately before the commencement date shall continue to be appropriate superannuation funds for those provisions and shall be the appropriate funds for the 1998 Regulations.

(2) Without prejudice to paragraph (1), any liabilities under the old provisions, as they continue to apply by virtue of these Regulations, shall continue to be payable by the appropriate administering authority from the fund which is the appropriate superannuation fund as respects those liabilities immediately before that date.

(3) Where immediately before that date any body is or may become liable to make payments to any such authority or to any superannuation fund in respect of any liability arising under the old provisions in respect of any person, liabilities in respect of whom continue to arise on or after that date under those provisions, that body shall continue to be the body which is or may become so liable.

### **Continuation of employers' liability for certain payments**

**20.**—(1) Nothing in these Regulations affects the liability of any body to make payments under regulation P13 of the 1987 Regulations in respect of any member who continues as an active member on the commencement date by virtue of regulation 3(1).

(2) However, if the member (or his executor) informs the relevant authority under regulation 14(2) (as applied by regulation 15(1)) that he does not wish a right which ceases to have effect under regulation 12(1)(a) to be treated as mentioned in regulation 14(1), regulation P13 of the 1987 Regulations shall cease to apply in relation to that member's payments so far as they become due on or after the commencement date.

(3) Where, in a case in which payments continue to be made under regulation P13(1) of the 1987 Regulations by virtue of paragraph (1), following an election under regulation 16(1) a member makes a capital payment in full satisfaction of his liabilities in respect of any period, any liabilities which any body has in respect of him under that regulation are not affected.

### *Special cases*

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

**21.**—(1) The 1998 Regulations apply with the following modifications to a member who is employed by the Scottish Environment Protection Agency as a result of a relevant statutory transfer immediately before which he was a pensionable civil servant.

(2) At the end of regulation 12(2) (exclusions from "pay") add the words— "or

(h) the amount of any supplement paid by the Scottish Environment Protection Agency in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the Scheme".

(3) In regulation 30 (early leavers: deferred retirement benefits and elections for early payment)—

(a) in paragraph (1) for the words "may elect to receive payment of them immediately" substitute the words "is entitled, on his so requesting the administering authority in writing, to receive payment of those benefits in respect of his SEPA service immediately or, at his option, at any time before he attains the age of 60";

(b) omit paragraphs (2), (3) and (8);

(c) in paragraph (4) for the words from the beginning to "85 years" substitute the words "If the member has not attained the age of 60";

(d) in paragraph (7) for "NRD" substitute the words "60th birthday";

(e) at the end add the following new paragraph:—

"(9) In this regulation "SEPA service" means—

(a) the period during which the person concerned has remained an active member and in continuous employment of the Scottish Environment Protection Agency following a relevant statutory transfer (as defined in regulation 21(6) of the Transitional Regulations); and

(b) where a transfer value has been accepted from the Principal Civil Service Pension Scheme made under section 1 of the Superannuation Act 1972 and referred to as such in section 2(10) of that Act, the period of membership which he was entitled to count under regulation J9(1)(a) of the 1987 Regulations."

(4) The employment with the Scottish Environment Protection Agency referred to in paragraph (1) does not count as new employment for regulation 109 (statements of policy concerning

abatement of retirement pensions in new employment) or regulation 110 (application of abatement policy in individual cases).

(5) The 1998 Regulations and these Regulations shall have effect, so long as the member remains an active member and in continuous employment of the Scottish Environment Protection Agency, as if they conferred on the member the same rights relating to service overseas as he would have enjoyed if he had remained subject to the principal civil service pension scheme.

(6) A relevant statutory transfer in relation to a member is a transfer of his employment—

- (a) which took place on 1st April 1996 as a consequence of a transfer of functions on that date to the Scottish Environment Protection Agency; or
- (b) which took place as a consequence of a transfer to the Scottish Environment Protection Agency of the undertaking in which he was formerly employed to which the Transfer of Undertakings (Protection of Employment) Regulations 1981(6) apply.

(7) A pensionable civil servant is a person who is employed in the civil service of the State and is a member, or is eligible to be a member, of the principal civil service pension scheme.

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

22.—(1) The 1998 Regulations apply with the modifications mentioned in paragraphs (3) to (5) to a member—

- (a) who became an active member immediately after being transferred to employment by the governing body of a university or designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992(7) or by the board of management of a college of further education within the meaning of Part I of that Act as a consequence of a transfer to the governing body or board of management on 1st September 1996, or in the case of a transfer to the governing body of the Robert Gordon University on 1st December 1996, of the undertaking in which he was employed, to which transfer the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply;
- (b) who immediately before that transfer was employed by a health board and was a member, or was eligible to be a member, of the pension scheme the rules of which are set out in the National Health Service Regulations; and
- (c) who since that transfer has been an active member in relevant local government employment.

(2) In regulation 30 of the 1998 Regulations (early leavers: deferred retirement benefits and elections for early payment)—

- (a) in paragraph (1) for the words “may elect to receive payment of them immediately” substitute the words “is entitled, on his so requesting the administering authority in writing, to receive payment immediately of those benefits in respect of his relevant local government employment and transferred service”;
- (b) omit paragraphs (2), (3) and (8);
- (c) in paragraph (4) for the words from the beginning to “85 years” substitute the words “If the member has not attained the age of 60”;
- (d) at the end add the following new paragraph:—

“(9) In this regulation—

“relevant local government employment” has the meaning given in regulation 22(5) of the Transitional Regulations;

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(6) S.I. 1981/1794; the definition of “undertaking” was amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 33.

(7) 1992 c. 37.

“transferred service” means, where on the transfer referred to in regulation 22(1)(a) of the Transitional Regulations a transfer value has been accepted in respect of a person’s accrued rights from the National Health Service Superannuation Scheme for Scotland constituted under the National Health Service Superannuation Scheme (Scotland) Regulations 1995, the period of membership which he was entitled to count under regulation J9(1)(a) of the 1987 Regulations.”

(3) Regulation 56 of those Regulations (effect of increases under Chapter III of Part III for older members) does not apply to so much of any period counted under that Chapter as is attributable to contributions paid under a contract—

- (a) which was deemed by paragraph 5 of Schedule 16B to the 1987 Regulations to have been made pursuant to an election under regulation C5 or C6 of those Regulations;
- (b) under which contributions were being made immediately before the commencement date; and
- (c) which is treated as continuing under regulation 14.

(4) For regulation 123 of the 1998 Regulations (rights as to service not matched by credited period), in the case of the transfer mentioned in paragraph (1) member’s transferred-in service means any service which for the National Health Service Regulations the member was entitled to count in relation to employment in which he was an officer (as defined in those Regulations) for determining whether he was entitled to a benefit under those Regulations, but for no other purpose.

(5) In this regulation—

“the National Health Service Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(8);

“relevant local government employment” means a continuous period of employment as an active member comprising—

- (a) the period, immediately following the transfer to employment by a governing body or board of management in terms of paragraph (1)(a), of employment by that governing body or board of management during which the member was continuously engaged in the work of the undertaking in which he was previously employed or in the work of another undertaking transferred to that governing body or board of management as mentioned in paragraph (1)(a); and
- (b) any further periods, immediately following the period described in sub-paragraph (a) and each other, of employment by another governing body or board of management of the kind specified in paragraph (1)(a) during which the member was continuously engaged in the work of an undertaking transferred to that governing body or board of management as mentioned in paragraph (1)(a).

### **Community scheme transferees**

**23.**—(1) Community scheme transferees and their surviving spouses, dependants and children are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

(2) A Community Scheme transferee is a person—

- (a) who became employed by a Community institution after having been employed in local government employment;

- (b) in respect of whom the scheme managers of the Communities' scheme were paid a transfer value under Chapter IV of Part IV of the Pension Schemes Act 1993<sup>(9)</sup> or Part J of the 1987 Regulations or any corresponding earlier provisions; and
  - (c) whose fund authority (as defined in regulation 116 of the 1998 Regulations) have been repaid for the credit of their pension fund an amount which in accordance with that guidance may be treated as equivalent to that transfer value.
- (3) The rights to which any person is entitled by virtue of guidance under this regulation must not be less valuable than those to which he would have been entitled if regulation J6 of the 1987 Regulations still applied to him.

#### *Supplementary provisions*

#### **Cost of resolutions**

**24.** Any extra charge on an appropriate fund resulting from a resolution under these Regulations by an authority in relation to any member must be repaid to the fund by that authority.

#### **Minor and consequential amendments**

**25.** The provisions specified in Schedule 3 shall have effect with the amendments made by that Schedule.

#### **Transitional provisions and savings**

**26.**—(1) Schedule 4 shall have effect for the purpose of making transitional and transitory provision and savings.

(2) Nothing in that Schedule affects the general operation of sections 16 and 17 of the Interpretation Act 1978<sup>(10)</sup> (as applied by section 23 of that Act).

#### **Revocations**

**27.** The replaced provisions are hereby revoked, but subject to the provisions of these Regulations and, in particular, Schedule 4.

St Andrew's House,  
Edinburgh  
20th February 1998

*Brian Wilson*  
Minister of State, Scottish Office

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<sup>(9)</sup> 1993 c. 48.  
<sup>(10)</sup> 1978 c. 30.

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SCHEDULE 1

Regulation 2(1)

ADDITIONAL REGULATIONS WHICH ARE “OLD PROVISIONS”

- The Local Government Superannuation (Scotland) Amendment Regulations 1988**(11)**
- The Housing (Scotland) Superannuation Fund Regulations 1989**(12)**
- The Local Government Superannuation (Scotland) Amendment Regulations 1989**(13)**
- The Local Government Superannuation (Scotland) Amendment (No. 2) Regulations 1989**(14)**
- The Local Government Superannuation (Scotland) Amendment Regulations 1990**(15)**
- The Local Government Superannuation (Scotland) (No. 2) Regulations 1990**(16)**
- The Local Government Superannuation (Scotland) Amendment Regulations 1991**(17)**
- The Local Government Superannuation (Reserve Forces) (Scotland) Regulations 1992**(18)**
- The Local Government Superannuation (Scotland) Amendment Regulations 1992**(19)**
- The Local Government Superannuation (Scotland) Amendment Regulations 1993**(20)**
- The Local Government Superannuation (Scotland) Amendment (No. 2) Regulations 1993**(21)**
- The Local Government Superannuation (Scotland) Amendment (No. 3) Regulations 1993**(22)**
- The Local Government Superannuation (Scotland) Amendment Regulations 1994**(23)**
- The Local Government Superannuation (Scotland) Amendment Regulations 1995**(24)**
- The Local Government (Superannuation and Compensation for Premature Retirement (Scotland) Amendment Regulations 1995**(25)**
- The Local Government (Compensation for Reduction of Remuneration on Reorganisation (Scotland) Regulations 1995**(26)**
- The Local Government (Superannuation and Compensation for Redundancy or Premature Retirement) (Scotland) Amendment Regulations 1995**(27)**
- The Local Government Superannuation (Scotland) Amendment Regulations 1996**(28)**
- The Local Government (Superannuation and Compensation for Premature Retirement) (Scotland) Amendment Regulations 1996**(29)**
- The Local Government Superannuation (Scotland) Amendment Regulations 1997**(30)**
- The Local Government Superannuation (Scottish Environment Protection Agency) (Scotland) Regulations 1997**(31)**

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- (11) S.I. 1988/625.
  - (12) S.I. 1989/422.
  - (13) S.I. 1989/802.
  - (14) S.I. 1989/967.
  - (15) S.I. 1990/422.
  - (16) S.I. 1990/1284.
  - (17) S.I. 1991/78.
  - (18) S.I. 1992/1220.
  - (19) S.I. 1992/3025.
  - (20) S.I. 1993/1593.
  - (21) S.I. 1993/2013.
  - (22) S.I. 1993/3044.
  - (23) S.I. 1994/531.
  - (24) S.I. 1995/214.
  - (25) S.I. 1995/750.
  - (26) S.I. 1995/2865.
  - (27) S.I. 1995/3294.
  - (28) S.I. 1996/414.
  - (29) S.I. 1996/1241.
  - (30) S.I. 1997/674.
  - (31) S.I. 1997/1143.



The Local Government Superannuation (Scotland) Amendment (No. 2) Regulations 1997(32)  
The Local Government Superannuation (Scotland) Amendment (No. 3) Regulations 1997(33)  
The Local Government Superannuation (Scotland) Amendment (No. 4) Regulations 1997(34)

## SCHEDULE 2

Regulation 5

### RE-EMPLOYMENT OF MEMBERS

#### *Interpretation*

1. In this Schedule—

“active pensioner” means a person who was a pensioner member and an active member immediately before the commencement date and continues as an active member on that date by virtue of regulation 3;

“rejoining pensioner” means a person who was a pensioner member but not an active member immediately before the commencement date, and becomes an active member again on or after that date (otherwise than in an employment which is a new employment to which paragraph 3(1) applies);

“rejoining deferred member” means any person who—

- (a) immediately before the commencement date was a deferred member (or would have been apart from being a pensioner member) but was not an active member; and
- (b) becomes an active member again on or after that date.

#### *Active and rejoining pensioners: general*

2. Despite regulation 3—

- (a) the saved provisions shall continue to apply; and
- (b) Part II (except regulations 48 and 49) and Parts III and V of the 1998 Regulations shall not apply,

in relation to an active pensioner or a rejoining pensioner in his capacity as a pensioner member as respects his membership before the commencement date, except where the following provisions of this Schedule provide otherwise.

#### *Re-employment and abatement*

3.—(1) Where immediately before the commencement date regulation E15 of the 1987 Regulations (reduction of retirement pensions) applies to any person by virtue of one or more new employments with Scheme employers which continue on that date—

- (a) that regulation shall cease to apply to him if after that date there is a period of more than one month during which he is not employed by any of those Scheme employers; and
- (b) if after such a period the member enters employment with any Scheme employer, regulations 109 and 110 of the 1998 Regulations (abatement) shall apply instead as respects that employment.

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(32) S.I. 1997/1373.

(33) S.I. 1997/1435.

(34) S.I. 1997/3048.

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(2) Regulations 109 and 110 of the 1998 Regulations shall apply instead of regulation E15 of the 1987 Regulations to a rejoining pensioner and a rejoining deferred member.

#### *Combined benefits*

4.—(1) An active pensioner or a former active pensioner may not make an election under regulation E16 of the 1987 Regulations on or after the commencement date, but he may make an election under regulation 28(1) of the 1998 Regulations.

(2) A rejoining pensioner or a rejoining deferred member or a former such person may not make an election under regulation E16 of the 1987 Regulations on or after the date on which he becomes an active member again, but he may make an election under regulation 28(1) of the 1998 Regulations.

(3) Where an election has been made under regulation E16 of the 1987 Regulations on or after the commencement date by a person who later becomes unable to make such an election by virtue of sub-paragraph (2)—

- (a) that election shall continue to have effect, and
- (b) that regulation shall continue to apply,

unless he makes an election under regulation 28(1) of the 1998 Regulations affecting the pension in question.

(4) If he does so, regulation 28(1) to (8) of those Regulations shall apply and the saved provisions shall cease to apply to him as respects the pension in question.

#### *Separate benefits and dependants' benefits*

5.—(1) This paragraph applies where an active pensioner, a rejoining pensioner or rejoining deferred member or a former such person does not make an election under regulation 28(1) of the 1998 Regulations.

(2) Regulation 28(9) of those Regulations shall apply in relation to him instead of regulation E17(2) and (3) of the 1987 Regulations.

(3) When he dies, regulation 47 of the 1998 Regulations (dependants of re-employed pensioners) shall apply instead of regulations E6(1)(c), (2)(e) and (3)(b) and E18 of the 1987 Regulations.

(4) However, if he made an election under regulation E16(1) of the 1987 Regulations which continues in effect until his death, regulation 47 of the 1998 Regulations shall apply as if the single pension to which he became entitled by virtue of that election was an unreduced retirement pension within regulation 47(1) of those Regulations.

(5) Regulation 38 (reduction of death grants: re-employed pensioners) of the 1998 Regulations shall apply in relation to him, instead of regulation E17(4), (5) and (6) of the 1987 Regulations, unless sub-paragraph (6) applies.

(6) This sub-paragraph applies if when he dies, by virtue of regulation 47 of the 1998 Regulations, all the benefits payable on his death (except short-term pensions payable under the old provisions or the 1998 Regulations) are calculated on the assumption that he has made an election under regulation 28(1)).

#### *Members with preserved rights*

6.—(1) Where immediately before the commencement date there is an election in force in respect of a member's benefits under regulation E2(9)(c) of the 1987 Regulations (elections to remain entitled to preserved benefits), for these Regulations he shall be treated as a deferred member (and

not as an active member) as respects his rights to preserved benefits and the membership in question (but see the following provisions of this paragraph).

(2) Sub-paragraph (1) is without prejudice to regulation 31(5) of the 1998 Regulations and applies despite the fact that the member—

- (a) continues as an active member by virtue of regulation 3; or
- (b) becomes an active member again on or after the commencement date (whether immediately before he does so he is a deferred member or a pensioner member).

(3) Sub-paragraph (1) ceases to apply to a person falling within paragraph (2)(b) as respects any part of his former membership which he elects under regulation 31(1) of the 1998 Regulations to aggregate with later membership.

(4) Sub-paragraph (1) also ceases to apply if any person falling within that sub-paragraph makes an election under regulation 28(1) of the 1998 Regulations.

(5) Where sub-paragraph (4) applies, the member shall cease to be entitled to count under the saved provisions any period of membership to which he is entitled under the old provisions but as respects which he elected under regulation E2(9)(c) of the 1987 Regulations to remain entitled to preserved benefits.

(6) He shall instead be entitled to count that period of membership for the purposes of regulation 8(1)(d) of the 1998 Regulations.

(7) However, regulations 8 to 12 shall apply as to the adjustment of the length of that period as if it had been a period which he was entitled to count by virtue of regulation 6.

#### *Elections for aggregation: members rejoining immediately before commencement*

7. Where immediately before the commencement date a member was eligible to make an election under regulation E2(9)(c) of the 1987 Regulations by reason of having re-entered local government employment in the period of three months ending at that time, but had not done so—

- (a) he may make an election under regulation 31(1) of the 1998 Regulations at any time whilst he remains an active member in that employment; but
- (b) if he does not make such an election before he ceases to be such a member in that employment, he shall be treated for the purposes of these Regulations as if he had made an election under regulation E2(9)(c) of the 1987 Regulations immediately before the commencement date as respects all the membership as to which he could have made that election.

#### *Limitations on benefits*

8.—(1) Where an active pensioner, a rejoining pensioner or a rejoining deferred member has not made an election under regulation 28(1) of the 1998 Regulations—

- (a) regulations E11(2) and (13) and E30(1) to (4) of the 1987 Regulations (limitations on benefits) shall continue to apply as respects the benefits derived from his membership before the commencement date; and
- (b) Schedule 4 to the 1998 Regulations shall only apply as respects his membership after that date.

(2) Sub-paragraph (1) ceases to apply to a rejoining deferred member as respects any part of his former membership which he elects under regulation 31(1) of the 1998 Regulations to aggregate with later membership, and accordingly Schedule 4 to the 1998 Regulations shall apply as respects all benefits payable to or in respect of him in relation to the membership aggregated.

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*Continuity of elections by certain rejoining deferred members*

- 9.—(1) This sub-paragraph applies where a rejoining deferred member—
- (a) becomes an active member again—
    - (i) before the expiry of the period of 12 months beginning with the date he ceased to be an active member, and
    - (ii) before becoming entitled to the immediate payment of benefits under the 1987 Regulations;
  - (b) immediately before ceasing to be an active member was making payments under an election made under regulation C6 or C8 of the 1987 Regulations; and
  - (c) elects under regulation 31(1) of the 1998 Regulations.
- (2) Where sub-paragraph (1) applies the member may pay his employing authority in the employment in which he is an active member an amount equal to the amount which would have been payable if he had continued to be an active member and to make those payments.
- (3) That amount must be paid before the expiry of the period of three months beginning with the date he becomes an active member again.
- (4) If he pays them that amount—
- (a) that payment shall be treated as having been made under regulation 54 of the 1998 Regulations; and
  - (b) the election made under regulation C6 or C8 of the 1987 Regulations shall be treated as having been made under that regulation as respects so much of the period of membership as he may not count by virtue of regulation 7 of these Regulations (and accordingly the amounts of his additional contributions shall be determined under regulation 54 of the 1998 Regulations).
- (5) Sub-paragraph (1) does not apply if the member—
- (a) has received a return of contributions which includes additional contributions under regulation C6 of the 1987 Regulations made under the election mentioned in sub-paragraph (1)(b); or
  - (b) has requested such a return of contributions.

SCHEDULE 3

Regulations 2(1) and 25

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Local Government Superannuation (Scotland) Regulations 1987*

- 1.—(1) The Local Government Superannuation (Scotland) Regulations 1987<sup>(35)</sup> are amended in accordance with the following sub-paragraphs.
- (2) In regulation D3(1), (2), (3) and (4) after the words “regulation E16” insert the words “or, as the case may be, regulation 28(1) to (9) of the 1998 Regulations”.
- (3) In regulation E1(2) for the words from “that is inconsistent” to the end substitute—

<sup>(35)</sup> S.I. 1987/1850, amended by S.I. 1988/625, 1989/422, 802 and 967, 1990/422 and 1284, 1991/78, 1992/1220, 1597 and 3025, 1993/1593, 2018 and 3044, 1994/531, 1995/214, 750, 2865 and 3294, 1996/414 and 1241 and 1997/674, 1143, 1373, 1435 and 3048.

“or any provision of the 1998 Regulations or the Transitional Regulations that is inconsistent with it, except–

- (a) regulation E15 of these Regulations (reduction of retirement pension for certain re-employed pensioners) or regulation 109 or 110 of the 1998 Regulations (abatement) or any provision of the Transitional Regulations relating to those provisions;
- (b) regulation E21 of these Regulations or regulation 48 of the 1998 Regulations (commutation of small pensions);
- (c) regulation M1 of these Regulations or regulation 111 of the 1998 Regulations (forfeiture of rights) or regulation 114 of those Regulations (so far as it relates to regulation 111).”.
- (4) In regulation E2(9)(a)–
  - (a) after the words “that regulation” insert the words “or regulation 86 of the 1998 Regulations”;
  - (b) after the words “regulation J8” insert the words “or regulation 121 of the 1998 Regulations”.
- (5) In regulation E4(4) after the words “regulation N5 or N6” insert the words “or regulation 96 of the 1998 Regulations (first instance decisions)”.
- (6) At the end of regulations E8(1)(b) and E9(4)(c)(ii) add the words “of these Regulations or regulation 110 of the 1998 Regulations”.
- (7) In regulation E11(1)(c) after the words “regulation E15” insert the words “to these Regulations or regulation 110 of the 1998 Regulations”.
- (8) At the end of regulation P6 add the following paragraph:–
  - “(11) This regulation shall apply to Scottish Homes as if paragraph (2)(b) were deleted.”.
- (9) In Schedule 1–
  - (a) for the definition of “appropriate superannuation fund” substitute–

““Appropriate superannuation fund”	The appropriate fund within the meaning of the 1998 Regulations.”;
(b) after the definition of “The 1974 Regulations” insert–	
““The 1998 Regulations”	The Local Government Pension Scheme (Scotland) Regulations 1998.”;
(c) after the definition of “The Transitional Provisions Regulations” insert–	
““The Transitional Regulations”	The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998.”.

*The Local Government, Teachers' and National Health Service (Scotland) Pension Schemes (Provision of Information and Administrative Expenses etc.) Regulations 1996*

2. The Local Government Teachers' and National Health Service (Scotland) Pensions Schemes (Provision of Information and Administrative Expenses etc.) Regulations 1996(36) are amended as follows:–

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- (a) in regulation 2(a) at the end insert the words “or the Local Government Pension Scheme (Scotland) Regulations 1998, as the case may be”;
- (b) in regulation 3–
  - (i) after the words “Regulations 1987” insert the words “or under the Local Government Pension Scheme (Scotland) Regulations 1998”; and
  - (ii) at the end insert the words “of 1987 or 1998, as the case may be”.

*The Local Government Superannuation (Scottish Environment Protection Agency) (Scotland) Regulations 1997*

**3.—(1)** The Local Government Superannuation (Scottish Environment Protection Agency) Regulations 1997(**37**) are amended in accordance with the following sub-paragraphs.

(2) In regulation 1(2) before the definition of “the Principal Civil Service Pension Scheme” insert–

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

(3) In regulation 5–

(a) in paragraph (1) after the words “these Regulations” insert the words “or, as the case may be, regulation 21 of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998”;

(b) in paragraph (3)–

(i) after the words “regulation J9(1)(a) of the principal Regulations” and the words “regulation J9(1)(a)” insert respectively the words “or, as the case may be, regulation 122(1) of the 1998 Regulations” and “or, as the case may be, regulation 122”;

(ii) after the words “paragraph 2(1) of Schedule 17 to those Regulations” insert the words “or, as the case may be, regulation 122 of the 1998 Regulations”; and

(c) in paragraph (4) after the words “the principal Regulations” insert the words “or, as the case may be, regulation 21 of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998”.

*The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998*

**4.—(1)** The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998(**38**) shall be amended in accordance with the following sub-paragraphs.

(2) Unless otherwise expressly amended, for references throughout the Regulations to “assumed pensionable employee”, the “LGSS”, “LGSS employer” and “the Superannuation Regulations” substitute respectively a reference to “assumed member”, “the Scheme”, “LGPS employer” and “the LGPS Regulations”.

(3) For references throughout the Regulations to “pensionable employee”, except the third and fourth such references in regulation 2(4), substitute “LGPS member”.

(4) In regulation 2–

(a) in paragraph (1)–

(i) after the definition of “the 1996 Act” insert–

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**(37)** S.I. 1997/1143.

**(38)** S.I. 1998/192.

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- “the 1987 Regulations” means the Local Government Superannuation (Scotland) Regulations 1987;”
- (ii) in the definition of “employing authority” omit the words “or (b)”;
  - (iii) after the definition of “employment” insert–
    - “LGPS employer” means–
      - (a) a Scheme employer as defined in the LGPS Regulations;
      - (b) in relation to any person who is an admission agreement employee (as so defined), his employing body;
    - “LGPS member” means a member of the Scheme (as defined in the LGPS Regulations);
    - “LGPS Regulations” means the Local Government Pension Scheme (Scotland) Regulations 1998;
    - “pensionable remuneration” means pay within the meaning of regulation 12 of the LGPS Regulations;
    - “the Scheme” has the meaning given in the LGPS Regulations;
    - “the Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998.”;
  - (iv) omit the definitions of “LGSS”, “LGSS employer” and “the Superannuation Regulations”;
- (b) at the end of paragraph (3) add the words “or, if the expression is not defined in those Regulations, in the 1987 Regulations”;
  - (c) in paragraph (4) after the words “Regulations 1974” in both places where they appear insert the words “or, as the case may be, the 1987 Regulations”.
- (5) In regulation 5–
- (a) in paragraph (1)–
    - (i) in paragraph (a) of the definition of “effective service” for the words “any period of reckonable service” substitute the words “any period of membership counting towards a person’s total membership within the meaning of LGPS Regulations (including any period of reckonable service within the meaning of the 1987 Regulations)”;
    - (ii) in the definition of “occupational pension” for the words “Superannuation Regulations” substitute “LGPS Regulations or the 1987 Regulations”;
    - (iii) in the definition of “relevant English or Welsh employer” for “1995” substitute “1997”;
  - (b) in paragraph (3) for the words “regulation B8 of the Superannuation Regulations” substitute the words “regulation 130(1) of the LGPS Regulations”;
  - (c) in paragraph (4) for the words “regulation B7 (returning officers etc) of the Superannuation Regulations” substitute the words “regulation 130(2) (returning officers etc.) of the LGPS Regulations”.
- (6) In regulation 6(1)–
- (a) in sub-paragraph (b)(i) for the words “regulation E2(4)(a) of the Superannuation Regulations” substitute the words “regulation 25(1)(b) of the LGPS Regulations”;
  - (b) for sub-paragraph (e)(ii) substitute–

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- “(ii) any periods of superannuable membership (as defined in regulation 9 of the LGPS Regulations) and any increase in membership under regulation 13 of the Transitional Regulations.”.
- (7) In regulation 7(2)–
- (a) in sub-paragraph (c)–
- (i) for the words “Superannuation Regulations” substitute the words “1987 Regulations”;
- (ii) in head (ii) after the words “those Regulations” insert the words “or regulation 21 or 22 of the LGPS Regulations”;
- (b) in sub-paragraph (d) for the words “those Regulations” substitute the words “the 1987 Regulations”.
- (8) In regulation 8(1)–
- (a) in sub-paragraph (c) for the words “to which regulations D2, D10, D11, D12 and E28 of the Superannuation Regulations apply” and “would apply” substitute respectively the words “which count as periods of superannuable membership (as defined in regulation 9 of the LGPS Regulations) and any increase in membership under regulation 13 of the Transitional Regulations” and “would count or, as the case may be, would apply or be awarded”;
- (b) at the end add– “,
- but no person may be credited with a period of service under this regulation in respect of a former employment in respect of the cessation of which an additional period of membership may be counted under regulation 51 of the LGPS Regulations”.
- (9) In regulations 9(2) and 10(2)–
- (a) in paragraph (a) for the words from “regulation E2(1)(b)(iii)” to “satisfied” substitute the words “regulation 25 of the LGPS Regulations”;
- (b) in paragraph (b) for the words “regulation E2(4)(a)” substitute the words “regulation 25(1)(b)”.
- (10) In regulation 11–
- (a) in paragraph (1)(c)(ii) for the words “regulation E2(1)(b)(iii) of the Superannuation Regulations” substitute the words “regulation 25 of the LGPS Regulations”;
- (b) in paragraph (2)(a) for the words “Part E of the Superannuation Regulations” substitute the words “Part II of the LGPS Regulations”.
- (11) In regulation 16–
- (a) for paragraph (3)(a) substitute–
- “(a) a pension under regulation 24, 25, 26 or 30 of the LGPS Regulations (including a single pension under regulation 28 of those Regulations);”;
- (b) in paragraph (7) for the words from “paragraphs (6) to (9)” to the end substitute the words “no regard shall be had to regulation 110 (abatement) of the LGPS Regulations”.
- (12) In regulation 17–
- (a) in paragraph (3) for the words “Part E of the Superannuation Regulations” substitute the words “Part II of the LGPS Regulations”;
- (b) in paragraph (4) for the words “regulation D3(6) of the Superannuation Regulations” substitute the words “regulation 8(4) of the LGPS Regulations”.
- (13) In regulation 18(4) for the words “regulation E3(1) to (3) of the Superannuation Regulations” substitute the words “regulations 19 and 53 of the LGPS Regulations”.



- (14) In regulation 19–
- (a) in paragraph (1) for the words “regulation E20 of and Schedule 13 to the Superannuation Regulations” substitute the words “regulation 32 of the LGPS Regulations”;
  - (b) in paragraph (3) for the words “regulation E2(1)(b)(iii) and (3)(a) of the Superannuation Regulations” substitute the words “regulation 25 of the LGPS Regulations”;
  - (c) in paragraph (6) for the words “regulation E20 of the Superannuation Regulations” substitute the words “regulation 32 of the LGPS Regulations”.
- (15) In regulation 20(1)(a) for the words “regulation E5 of the Superannuation Regulations” substitute the words “regulations 39 to 42 of the LGPS Regulations”.
- (16) In regulation 21(2)(b) for the words “regulation E2(1)(b)(i) of the Superannuation Regulations” substitute the words “regulation 26(1) of the LGPS Regulations”.
- (17) In regulation 22(1)(a) and (2)(a) for the words “regulation E8 of the Superannuation Regulations” substitute the words “regulation 44 of the LGPS Regulations”.
- (18) In regulation 24(1)(a) and (2)(a) for the words “regulation E8 of the Superannuation Regulations” substitute the words “regulation 45 of the LGPS Regulations”.
- (19) In regulation 25–
- (a) in paragraph (3)(b) for the words “regulation E2(1)(b)(i) of the Superannuation Regulations” substitute the words “regulation 26(1) of the LGPS Regulations”;
  - (b) in paragraph 5(i) for the words “regulation E9(5) of the Superannuation Regulations” substitute the words “regulation 45(9) of the LGPS Regulations”.
- (20) In regulation 26(1) and (2) for the words “regulation E9(7) of the Superannuation Regulations” substitute the words “regulation 46 of the LGPS Regulations”.
- (21) In regulation 31(3) and (4) for the words “superannuation fund” substitute the words “pension fund”.
- (22) In regulation 37(4) in paragraph (d)(i) of the definition of “relevant disqualification” for the words “the Superannuation Regulations” substitute the words “the 1987 Regulations”.
- (23) In regulation 38(1)(b) for the words “regulation B6 of the Superannuation Regulations” substitute the words “regulation 4 of the LGPS Regulations”.
- (24) In regulation 41(1)–
- (a) in sub-paragraph (b) for the words “Part E of the Superannuation Regulations” and “regulation E22(4)” substitute respectively the words “Part II of the LGPS Regulations” and “regulation 22”;
  - (b) in sub-paragraph (c) for the words “relevant period for the purposes of regulation E22 of the Superannuation Regulations” substitute the words “final pay period for the LGPS Regulations”.
- (25) In regulation 44(3) for the words “the Superannuation Regulations” substitute the words “the 1987 Regulations”.
- (26) In regulation 45–
- (a) in paragraph (3)–
    - (i) in sub-paragraphs (c) and (e) for the words “the Superannuation Regulations” substitute the words “the 1987 Regulations”;
    - (ii) in sub-paragraph (d) for the words “regulation B4(1) of the Superannuation Regulations” and “regulation B4(2) or B4A” substitute respectively the words “regulation 6 of the LGPS Regulations” and “regulation 6(5) or 7”;

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- (b) in paragraph 5(b) for the words “the Superannuation Regulations” substitute the words “the 1987 Regulations”.
- (27) In regulation 46–
  - (a) in paragraph (4)(a) for the words “the Superannuation Regulations” substitute the words “the 1987 Regulations”;
  - (b) in paragraph (5) for the words “paragraphs 4 and 5 of Part III of Schedule 16 to the Superannuation Regulations” substitute the words “regulations 20 to 22 of the LGPS Regulations”;
  - (c) in paragraph 7–
    - (i) in sub-paragraph (a) for the words “the Superannuation Regulations” substitute the words “the 1987 Regulations”;
    - (ii) in sub-paragraph (b)(ii) for the words “regulation B4A of the Superannuation Regulations” substitute the words “regulation 7 of the LGPS Regulations”.
- (28) In regulation 48(1)(c)(i) for the words “regulation E2(4)(a) of the Superannuation Regulations” substitute the words “regulation 25(1)(b) of the LGPS Regulations”.

#### SCHEDULE 4

Regulation 26

#### TRANSITIONAL PROVISIONS AND SAVINGS

1. In this Schedule–
  - (a) “the former provisions” means any provisions which by virtue of these Regulations cease to apply to any person at any time; and
  - (b) references to the revocation of any provision shall be taken to include its ceasing to apply to any person or in any situation (and related expressions shall be construed accordingly).
- 2.—(1) The substitution of the 1998 provisions for the former provisions does not affect the continuity of the law.
  - (2) Anything done or having effect as if done under or for the purposes of any of the former provisions has effect, if it could have been done under or for the purposes of the corresponding provision of the 1998 provisions, as if done also under or for the purposes of that corresponding provision.
  - (3) Any reference, whether express or implied, in the 1998 provisions or any other instrument or document to a provision of the 1998 provisions shall, so far as the context permits, be construed as including, in relation to the times, circumstances and purposes in relation to which the corresponding provision of the former provisions has effect, a reference to that corresponding provision.
  - (4) Any reference, whether express or implied, in any provision of the former provisions or in any other instrument or document to a provision of the former provisions shall be construed, so far as is required for continuing its effect, as including a reference to the corresponding provision of the 1998 provisions.
  - (5) Any document made, served or issued after the 1998 provisions come into force in relation to any person which contains a reference to any of the former provisions shall be construed, except so far as a contrary intention appears, as referring or, as the context may require, including a reference, to the corresponding provision of the 1998 provisions.
  - (6) Where any provision of the former provisions (“the re-enacting provision”) re-enacted, with or without modification, a previous provision revoked by the 1987 Regulations or any other former provision, then, so far as is necessary to prevent the continuity of the law from being affected, any

reference in the 1998 provisions or in any other instrument or document to the re-enacting provision shall, so far as the context permits, be construed as including a reference to that previous provision.

**3.—(1) Where—**

- (a) any provision continues to have effect in relation to any person by virtue of these Regulations; and
- (b) immediately before the commencement date it has effect in relation to him subject to any saving, transitional provision or modification,

nothing in these Regulations affects the operation of that saving, transitional provision or modification.

(2) The revocation by these Regulations of any provision previously revoked subject to savings does not affect the continued operation of those savings, in so far as they remain capable of having effect.

**4.—(1)** Without prejudice to the generality of the previous provisions of this Schedule, nothing in the 1998 provisions affects the operation of regulations H6, H7 and T6 of the 1987 Regulations (continuation of savings for gratuities and policy schemes) so far as they remain capable of having effect.

(2) However, nothing in sub-paragraph (1) affects any transfer of responsibilities or anything else which has affected the matters mentioned in those regulations since they came into force.

**5.** No provision in the 1998 Regulations derived from a provision of the 1987 Regulations, or any provision amending those Regulations, (“the original provision”) shall apply to any person if he duly elected under the old provisions that the original provision should not apply to him.

**6.** These Regulations do not affect the time before or after which any period of membership is to be treated as falling, except as provided in regulation 9(3).

**7.** Despite regulation 3(1), regulation E2A(1) of the 1987 Regulations shall continue to apply to a person who is an active member of the Scheme immediately before the commencement date and who continues to be an active member on that date.

**8.** Despite regulation 4, regulation 92 of the 1998 Regulations shall not apply to any pension payable to any person under the saved provisions.

**9.—(1)** If any person to whom a relevant benefit is or may become payable would, apart from this paragraph, be placed in a worse position in relation to that benefit than that he would have been in had these Regulations not been made and makes an election under this paragraph, these Regulations shall have effect, in relation to him and to that benefit, as if they had provided for his position to continue without amendment (but see paragraph (4)).

(2) An election under sub-paragraph (1) must be made by notice in writing given to the appropriate administering authority before the expiry of the period of six months beginning with the commencement date.

**(3) In this paragraph—**

“relevant benefit” means a benefit payable to, or in respect of, a person who before the commencement date—

- (a) left an employment in which he was an active member (whether or not he has subsequently become an active member again); or
- (b) died while in such employment; and

“benefit” includes a return of contributions and any pension payable to a widow, widower or any dependant by virtue of a surrender.

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- (4) If an election under sub-paragraph (1) is made in relation to a benefit in respect of a person who is an active member, or subsequently becomes an active member again—
- (a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued by virtue—
    - (i) of periods of membership before he left the employment referred to in paragraph (3)
      - (a) (or, if he left such an employment more than once, the last time he left before the commencement date); or
      - (ii) of contributions paid in respect of such periods of membership; and
    - (b) in determining entitlement to, or the amount of, the benefit to that extent, he shall be treated as if he had never become an active member again at any time after he so left (but without prejudice to the application of this paragraph);
- and these Regulations shall have effect accordingly.

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## EXPLANATORY NOTE

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

These Regulations are supplemental to the Local Government Pension Scheme (Scotland) Regulations 1998 (S.I.1998/366) (“the 1998 Regulations”) which set out the pension arrangements of the Local Government Pension Scheme in Scotland (“the Scheme”) from 1st April 1998 (“the commencement date”). These Regulations make provision for the transition from the arrangements for the Scheme set out in the Local Government Superannuation (Scotland) Regulations 1987 (“the 1987 Regulations”), and the other Regulations specified in Schedule 1 to these Regulations, to those set out in the 1998 Regulations. They revoke provisions of the 1987 Regulations relating to administration of the Scheme (which are replaced by provisions in Part IV of the 1998 Regulations) for all members of the Scheme (ie pensionable employees, pensioners and those with preserved benefits under the 1987 Regulations) and disapply the other provisions of the 1987 Regulations for those who are members in employment on that date (“active members”). They also provide for the continuation of most provisions of the 1987 Regulations for members who are not then active members and for the corresponding provisions of the 1998 Regulations not to apply to them.

Regulation 3 transfers the active members from the arrangements under the 1987 Regulations to those under the 1998 Regulations.

Regulation 4 provides that the 1987 Regulations continue to apply to deferred and pensioner members who do not become active members again, except for provisions about administration, which are replaced by provisions in the 1998 Regulations.

Regulation 5 and Schedule 2 make provision about the treatment of deferred and pensioner members who are re-employed.

Regulations 6 and 7 provide for active members and re-employed members to be able to count for the 1998 Regulations Scheme membership (ie reckonable service under the 1987 Regulations) from before the commencement date.

Regulations 8 and 9 modify the arrangements under the 1998 Regulations for counting certain earlier membership (ie reckonable service under the 1987 Regulations) for the purposes of calculating benefits for surviving spouses of members.

Regulation 10 makes provision as to certain members with unexercised rights under previous Regulations affecting the Scheme.

Regulations 11 and 12 make provision for the cessation of certain existing rights to make additional payments under the Scheme, subject to regulations 14 to 16.

Regulation 13 obliges employers to augment members' membership, where their rights under the 1998 Regulations are less valuable than under the 1987 Regulations.

Regulations 14 to 16 enable the rights to make payments, which otherwise cease to have effect under regulations 11 and 12, to continue where the member wishes. Regulation 17 enables a member to repay a former return of contributions in some circumstances and thereby to count the relevant membership, and regulation 18 makes provision as to equivalent pension benefits under the National Insurance Acts.

Regulation 19 provides for continuity of funds and authorities for the Scheme. Regulation 20 provides for authorities to continue to be liable for certain payments as respects employees who are members.

Regulations 21 to 23 continue the special position of certain groups of members as to whom the Scheme has effect with particular modifications.

Regulations 24 to 27 contain supplemental provisions.

Schedule 3 contains minor and consequential amendments connected with the transition between the old provisions governing the Scheme and the new ones.

Schedule 4 provides for the continuity of the application of the Scheme provisions and contains general savings and transitional provisions.