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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 164**

**The Local Government Pension  
Scheme (Scotland) Regulations 2014**

**PART 1**

**Membership, contributions and benefits**

*Preliminary Provisions*

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) Regulations 2014 and save as is mentioned in paragraph (2), come into force on 1st April 2015.

(2) Regulation 2(3) and the definition of “actuarial guidance issued by the Scottish Ministers” in Schedule 1 (which require the Scottish Ministers to consult the Scheme Actuary before issuing actuarial guidance) come into force on 1st November 2014 for the purpose of enabling the Scottish Ministers to consult the Scheme Actuary and to issue guidance to have effect from 1st April 2015.

(3) These Regulations extend to Scotland.

**Introductory**

2.—(1) These Regulations establish a scheme for the payment of pensions and other benefits to or in respect of persons working in local government service, referred to in these Regulations as “the Scheme”.

(2) The Scheme manager responsible for the local administration of pensions and other benefits payable under these Regulations is referred to in these Regulations as the “administering authority”.

(3) The Scottish Ministers may, after consultation with the Scheme Actuary, issue actuarial guidance to administering authorities.

(4) Schedule 1 (interpretation) contains definitions of expressions used in these Regulations which apply for their interpretation unless the context indicates that they have a different meaning.

*Membership*

**Active membership**

3.—(1) Subject to regulation 4, a person is eligible to be an active member of the Scheme in an employment—

- (a) if employed by a body listed in Part 1 of Schedule 2;
- (b) if employed by an admission body and designated, or belonging to a class of employees that is designated by the body under the terms of an admission agreement, as being eligible for membership of the Scheme;

(2) Subject to paragraph (3), a person eligible to be an active member of the Scheme in an employment becomes an active member on the day that person's employment begins or (if later) the day the person becomes eligible for membership.

(3) A person who would, apart from this paragraph, be an active member of the Scheme by virtue of paragraph (2) who is employed under a contract of employment of less than three months does not become a member on the day specified in paragraph (2) but becomes an active member—

- (a) on the member's automatic enrolment date,
- (b) on the first day of the payment period following an application to become a member, or
- (c) on the first day of the payment period following an extension to the contract of employment to be for three months or more

whichever is the earliest.

(4) Where an administering authority enters into an admission agreement with an admission body—

- (a) the admission agreement must comply with the requirements specified in paragraphs 3 to 12 of Part 2 of Schedule 2; and
- (b) these Regulations apply to the admission body and to employment with the admission body in the same way as if the admission body were a Scheme employer listed in Part 1 of Schedule 2.

(5) A person who is eligible to be an active member in an employment, but who is not an active member in that employment—

- (a) may apply in writing to the person's Scheme employer to join the Scheme, and becomes an active member in that employment on the first day of the payment period following the application; but in any event,
- (b) becomes an active member in an employment on the automatic enrolment date or automatic re-enrolment date relating to that employment.

(6) Subject to paragraph (7) and regulation 5(6) (person whose membership is less than three months treated as never having been a member), an active member has qualifying service for a period of two years if—

- (a) that member has spent two years as an active member;
- (b) a transfer value payment has been received in respect of rights accrued in a different occupational pension scheme or under a European pensions institution and the length of service in respect of which that person accrued benefits in that scheme was two or more years;
- (c) the aggregate of the period the person has spent as an active member of the Scheme and of a different occupational pension scheme or European pensions institution in respect of which a transfer value payment has been accepted, is two years;
- (d) a transfer value payment has been received in respect of rights accrued in a scheme or arrangement that does not permit a refund of contributions to the member;
- (e) the member has paid National Insurance contributions whilst an active member and ceases active membership after the end of the tax year preceding that in which the member attains pensionable age;
- (f) the member already holds a deferred benefit or is in receipt of a pension (other than a survivor's pension or pension credit member's pension) under these Regulations;
- (g) a transfer value payment has been received from a qualifying recognised overseas pension scheme;
- (h) the member ceases active membership at age 75; or

- (i) the member dies in service.
- (7) The following periods do not count as periods of qualifying service for the purposes of these Regulations—
- (a) any period for which contributions have been returned to the member;
  - (b) any period of membership derived from a non-contributory pension scheme or arrangement from which a transfer payment has been received and which is attached to the membership in respect of which contributions have been returned under regulation 18 (rights to return of contributions).
  - (c) any period in respect of which rights have been transferred to another registered pension scheme other than a qualifying recognised overseas pension scheme;
  - (d) any period in respect of which the member has been deprived of benefits under regulation 89 (forfeiture of pension rights after conviction for employment-related offences).

#### **Restriction on eligibility for active membership**

4.—(1) Subject to paragraph (5) if a person’s employment entitles the person to belong to another public service pension scheme, or would so entitle them were it not for their age, that employment does not entitle the person to be a member, unless that other scheme was made under section 7 of the Superannuation Act 1972<sup>(1)</sup>.

(2) An employee of an admission body may not be a member if the employee is a member of another occupational pension scheme in relation to the employment in respect of which that employee would otherwise be eligible to be a member of the Scheme under regulation 3 .

(3) A person may not become or remain a member after the day before the person’s 75th birthday.

(4) Part-time employment as an employee of the Scottish Fire and Rescue Service on terms under which the retained or voluntary member is or may be required to engage in fire fighting does not entitle the member to be a member of the Scheme.

(5) A person may be a member of the Scheme despite being entitled to be a member of the National Health Service Pension Scheme for Scotland (“the NHS Scheme”)<sup>(2)</sup> if—

- (a) that person’s entitlement to be a member of the NHS Scheme is by reason of the person’s employment by an NHS Scheme employing authority as a result of a prescribed arrangement under section 15 of the Community Care and Health (Scotland) Act 2002 (delegation etc. between local authorities and NHS bodies);
- (b) the person is specified in, or within a class of employees specified in, an admission agreement made between an administering authority and an NHS Scheme employing authority; and
- (c) the person was an active member of the scheme immediately before that person’s employment by the NHS Scheme employing authority.

#### **Ending active membership**

5.—(1) A person stops being a member in an employment if the person stops being eligible for membership in that employment.

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(1) 1972 c.11.

(2) The National Health Service Superannuation Scheme for Scotland is set up under section 10 of the Superannuation Act 1972. The current regulations are the National Health Service Pension Scheme (Scotland) Regulations 2008 (S.S.I. 2008/224 amended by S.S.I. 2009/19 and 208, 2010/22, 53 and 369, S.I. 2010/234, S.S.I. 2011/ 364, 2012/69 and 2013/70, 109 and 168) and the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (S.S.I. 2011/117; as amended by S.S.I. 2011/173 and 364, 2012/69 and 2013/70, 109 and 168).

(2) A person who wishes to leave the Scheme must notify his or her employer in writing.

(3) A person with more than one employment may leave the Scheme if the person wishes in respect of one, some or all of the employments.

(4) A member who gives notice under paragraph (2) stops being a member in the specified employment from the date the notification specifies.

(5) But, if a date earlier than the notification or no date is specified, the member stops being a member at the end of the payment period during which the notification is given.

(6) Where notice is given by a person before that person has been a member for three months, that person must be treated as not having been a member in that period.

### **Deferred members**

6.—(1) A person is a deferred member of the Scheme in relation to an employment if—

- (a) the person has qualifying service for a period of at least two years; and
- (b) the person is no longer an active member in relation to that employment; and
- (c) the person has not started to receive any pension under the Scheme in relation to that employment; and
- (d) the person has not reached the age of 75.

(2) A person may be a deferred member of the Scheme in relation to one period of membership notwithstanding the fact that the same person is a member in the same or a different category in relation to a different period of membership.

### **Pensioner members**

7.—(1) A person is a pensioner member of the Scheme if that person—

- (a) was an active member; or
- (b) was a pension credit member, or
- (c) was a deferred member

and is in receipt of a benefit from the Scheme relating to that membership.

(2) A person may be a pensioner member in relation to one period of membership notwithstanding the fact that the same person is a member in the same or a different category in relation to a different period of membership.

### **Pension credit and survivor members**

8.—(1) A person is a pension credit member of the Scheme if that person has been given a pension credit in the Scheme as a consequence of a pension debit created under section 29 of the Welfare Reform and Pension Act 1999(3) in relation to a member of the Scheme.

(2) A person is a survivor member of the Scheme if that person is entitled to a benefit under regulations 39, 40, 42, 43, 45 or 46 (survivor pensions).

## *Contributions*

### **Contributions**

9.—(1) Subject to paragraph (8) and regulation 10 (temporary reduction in contributions), each active member shall make contributions to the Scheme at the contribution rate from that member’s pensionable pay in each employment in which the member is an active member.

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

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

<i>Band</i>	<i>Range</i>	<i>Contribution Rate</i>
1	On earnings up to and including £20,300	5.5%
2	On earnings above £20,300 and up to £24,800	7.25%
3	On earnings above £24,800 and up to £34,000	8.5%
4	On earnings above £34,000 and up to £45,300	9.5%
5	On earnings above £45,300	12%

(3) The figures in the second column of the table in paragraph (2) (“Range”) are—

- (a) to be increased by any increase applied to pensions under the Pensions (Increase) Act 1971 and rounded down to the nearest £100; and
- (b) to be applied to pensions beginning on 1st April 2014.

(4) Where there has been a permanent material change to the terms and conditions of a member’s employment which affect the member’s pensionable pay in the course of a financial year, the member’s employing authority may determine that the contribution rate to be applied in that case is to be recalculated in accordance with paragraph (2) and in such a case, the authority shall inform the member of the contribution rate applicable to the member, and the date from which it is to be applied.

(5) Where an active member is a part-time employee, the member’s contribution rate shall be calculated on actual pensionable pay.

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

(7) The amount of an employee’s pensionable pay for the purposes of this regulation is calculated in accordance with regulation 20 (meaning of “pensionable pay”).

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

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

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

(11) For the purposes of this regulation any reduction in pensionable pay which arises as a consequence of any of the following circumstances is to be disregarded—

- (a) the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work;
- (b) child-related leave;

- (c) leave of absence with permission;
- (d) sick leave;
- (e) leave due to injury;
- (f) reserve forces service leave;
- (g) absence due to trade dispute.

### **Temporary reduction in contributions**

**10.**—(1) A person may elect to pay reduced contributions in an employment for a period by giving written notice to the member's Scheme employer that the member wishes to do so, and the scheme employer must notify the fund of the election.

(2) Where a notice is given under paragraph (1), from the next payment period following the giving of the notice, the contribution rate payable on the member's pensionable pay in relation to that employment is 50% of that which would otherwise be payable under regulation 9 (contributions).

(3) An active member may cancel the election under paragraph (1) at any time by giving written notice to the member's Scheme employer to this effect.

(4) Where a notice is given under paragraph (3), from the next payment period following the giving of the notice, the contribution rate payable on the member's pensionable pay in relation to that employment is as provided by regulation 9.

(5) An active member's election under paragraph (1) is cancelled from the beginning of the first pay period after—

- (a) the automatic re-enrolment date; or
- (b) going on to no pay as a result of sickness or injury provided that the member is still on no pay at the beginning of that pay period; or
- (c) going on to no pay during ordinary maternity, paternity or adoption leave,

and the contribution rate payable on the member's pensionable pay in relation to that employment is as provided by regulation 9 from that date.

(6) An active member may make a further election under paragraph (1) at any time when the member is liable to make contributions as is provided by regulation 9.

(7) The Scheme employer of any member who elects to pay reduced contributions under paragraph (1) shall give the member information about the effect on that member's likely benefits consequent to that election.

### **Contributions during absence from work**

**11.**—(1) An active member must pay contributions under regulation 9 (contributions) or 10 (temporary reduction in contributions) during an absence from work on child-related leave in accordance with regulation 12 (contributions during child-related leave).

(2) An active member must pay contributions under regulation 9 or 10 during an absence on reserve forces service leave in accordance with regulation 13 (contributions during reserve forces service leave).

(3) An active member must pay contributions under regulation 9 or 10 during an absence from work because of illness or injury in accordance with regulation 14 (contributions during absence for illness etc).

(4) A person remains an active member during any absence from work—

- (a) of the description mentioned in paragraphs (1) to (3);
- (b) due to a trade dispute; or

(c) with permission from the member's Scheme employer, and if in receipt of any pay, the member continues to accrue earned pension in accordance with regulation 23(4) or (5) (active member's pension account).

#### **Contributions during child-related leave**

**12.—**(1) An active member on child-related leave must pay contributions in accordance with regulation 9 or 10 on any pensionable pay received, including statutory pay but that pay does not include any amount that reduces the member's actual pensionable pay on account of possible entitlement to statutory pay.

(2) If an active member is on ordinary maternity leave, paternity leave or ordinary adoption leave and is not entitled to receive pensionable pay (including statutory pay) for any of that period, that member is treated for the purposes of these Regulations as if that member had paid contributions for that unpaid period under paragraph (1).

#### **Contributions during reserve forces service leave**

**13.—**(1) An active member on reserve forces service leave must pay contributions in accordance with regulations 9 or 10.

(2) The contributions under paragraph (1) are payable on the member's assumed pensionable pay calculated under regulation 21 (assumed pensionable pay).

#### **Contributions during absence for illness etc.**

**14.—**(1) An active member away from employment by reason of illness or injury must pay contributions in accordance with regulation 9 or 10 on any pensionable pay received, including statutory pay but that pay does not include any amount that reduces the member's actual pensionable pay on account of possible entitlement to statutory pay.

(2) If an active member is absent from employment by reason of illness or injury and is not entitled to receive pensionable pay (including statutory pay) for any period that member—

- (a) is treated for the purposes of these Regulations as if that member had paid contributions for that period under paragraph (1); and
- (b) if that member has an arrangement under regulation 16 (additional pension contributions) which was entered into prior to the commencement of the period of absence, that member is treated for the purposes of these Regulations as if that member had paid contributions under regulation 16.

#### **Employer contributions during absences/Temporary reductions in contributions**

**15.—**(1) A Scheme employer must pay contributions on the assumed pensionable pay of an active member on child-related leave.

(2) A Scheme employer must pay contributions in accordance with regulation 65(4) where an active member is absent from employment by reason of illness or injury.

(3) When an active member goes on reserve forces service leave—

- (a) the Scheme employer must give the following information in writing to the member—
  - (i) the assumed pensionable pay on which the member is liable to pay contributions in accordance with regulation 9 (contributions) or 10 (temporary reduction in contributions),
  - (ii) details of the amount of any additional pension contributions to be paid by the member under regulation 16 during the absence,

- (iii) the rate of the employer’s contribution, being the primary rate of the Scheme employer’s contribution as adjusted by the secondary rate of that employer’s contribution, as specified for the time being in the Scheme employer’s current rates and adjustment certificate, and
  - (iv) details of the member’s appropriate administering authority;
- (b) employer contributions at the rate of the employer’s contribution specified in the Scheme employer’s rates and adjustment certificate are payable to the member’s appropriate administering authority on the member’s assumed pensionable pay.
- (4) Where an active member—
- (a) on reserve forces service leave;
  - (b) on child-related leave, which for this regulation includes any period of additional maternity leave, additional adoption leave, or additional paternity leave during which the member receives no pay;
  - (c) absent from work due to illness or injury where regulation 14(1) (contributions during absence for illness etc) applies; or
  - (d) absent from work with permission from the member’s Scheme employer,
- has an arrangement under regulation 16 (additional pension contributions) the employer contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions) remain payable if that regulation applies.
- (5) Subject to paragraph (6), if an active member who is absent from work with permission with no pensionable pay otherwise than because of illness or injury, child-related leave or reserve force service leave, elects to enter into an arrangement to pay additional contributions under regulation 16 (additional pension contributions), the member’s Scheme employer may pay contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions).
- (6) The amount that a Scheme employer can be required to pay under paragraph (5) may not exceed the cost of an arrangement which would give rise to additional pension accrual equivalent to that which a member would have accrued if treated as receiving assumed pensionable pay for the period of absence from work up to a maximum period of 36 months.
- (7) In paragraphs (4)(d) and (5) the expression “absent from work with permission” does not include an absence due to a trade dispute.
- (8) Where a member has made an election under 10(1) the scheme employers’ contribution shall be reduced by 50% during the period of the reduction.

### **Additional pension contributions**

**16.—**(1) Subject to paragraph (15), an active member who is paying contributions under regulation 9 (contributions) may enter into arrangements to pay additional pension contributions (“APCs”) by regular contributions in accordance with paragraph (2), and a member who is paying contributions under regulation 10 (temporary reduction in contributions) may do so if the arrangement is to cover a period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work), unless the appropriate administering authority determines in any particular case that it would not be practical to allow APCs to be paid by regular contributions.

- (2) Where APCs are to be paid by regular contributions, the arrangements mentioned in paragraph (1)—
- (a) must, when entered into, be for a complete year or number of years with a minimum period of one year;
  - (b) must specify the amount of extra contribution to be paid each Scheme year;



- (c) must, where the member has more than one active member pension account, specify which account the APC is to be attached to;
- (d) must specify the amount of additional pension to be credited to the active member's pension account at the end of the Scheme year; and
- (e) may be funded in whole or in part by the member's Scheme employer.

(3) Subject to paragraph (15), an active member who is paying contributions under regulation 9 (contributions) may enter into arrangements to pay APCs by lump sum contribution in accordance with paragraph (4), and a member who is paying contributions under regulation 10 (temporary reduction in contributions) may do so if the arrangement is to cover a period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work).

(4) Where APCs are to be paid by a lump sum contribution, the arrangements mentioned in paragraph (3)—

- (a) must specify the amount of extra contribution to be paid;
- (b) must, where the member has more than one active member pension account, specify which account the APC is to be attached to;
- (c) must specify the amount of additional pension to be credited to the active member's pension account at the end of the Scheme year; and
- (d) may be funded in whole or in part by the member's Scheme employer.

(5) The amount of additional annual pension that is to be credited to the active member's pension accounts pursuant to arrangements under this regulation must not exceed the additional pension limit.

(6) The additional pension limit is £6,500 from 1st April 2015 and that figure is increased on 1st April 2016, and each subsequent 1st April, by the amount (where it is greater than zero) by which it would be increased if it were a pension beginning on 1st April 2015 to which the Pensions (Increase) Act 1971(4) applied.

(7) The amount of the contributions to be paid in respect of arrangements under this regulation is to be determined in accordance with actuarial guidance issued by the Scottish Ministers based on—

- (a) the age of the member at the time the arrangements commence; and
- (b) the gender of the member.

(8) Actuarial guidance issued by the Scottish Ministers under paragraph (7) may be revised at any time and if so, from the 1st April following any such revision, any contributions payable are to be based on the revised actuarial guidance.

(9) An application by an active member to make arrangements under this regulation must—

- (a) be made in writing to the member's appropriate administering authority, and a copy sent to the member's Scheme employer if that member is not employed by the administering authority; and
- (b) where those arrangements are under paragraph (2), state the length of the period, in whole years ending before the member's normal pension age, over which the member wishes to pay additional contributions.

(10) An administering authority may require an active member to produce a report by a registered medical practitioner of the results of a medical examination, undertaken at the member's own expense, and may refuse an application to make arrangements under paragraphs (1) to (4) if that authority is not satisfied that the member is in reasonably good health.

(11) Arrangements made under paragraph (1) continue until any of the following occurs—

- (a) the period entered into has expired;

- (b) they are terminated by the member giving one month's written notice to the administering authority;
- (c) the member begins to pay reduced contributions under regulation 10 (temporary reduction in contributions) unless the arrangement was to cover a period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work);
- (d) the member ceases to be an active member in the employment to which the APC is attached;
- (e) the member draws benefits under regulation 29(6) (flexible retirement) in the employment to which the APC is attached;
- (f) the member leaves the employment to which the APC is attached; or
- (g) the member dies.

(12) If arrangements entered into under paragraph (2) terminate for any reason and new arrangements are entered into under that paragraph, the amount of contributions payable is determined under paragraph (7) in accordance with the age of the member at the date the new arrangements are entered into and the actuarial guidance issued by the Scottish Ministers in force at that date.

(13) If additional contributions are paid in accordance with arrangements made under this regulation, and are not refunded under regulation 18 (rights to return of contributions), that member's active member's pension account must be credited with the amount specified in those arrangements as additional pension at the end of the Scheme year in which the contributions are paid, or at the date the arrangements terminate, if earlier.

(14) If a member who is paying APCs is granted Tier 1 or Tier 2 benefits in relation to the pension account to which the arrangements are attached before the end of the period the arrangements made under paragraph (1) were due to cease ("the APC period"), that member is to be treated as having paid the contributions required from the date the member is granted Tier 1 or Tier 2 benefits, up to the end of the APC period and the additional pension bought by those contributions is to be included in the active member's pension account for the year of leaving.

(15) If a member fails to pay all the additional contributions due under arrangements made under paragraph (1), and paragraph (14) does not apply to that member, the member's active member pension account must be credited with additional pension of an amount calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(16) Where an arrangement is one to which regulation 15(5)(employer contributions during absences) applies, application by an active member to make the arrangements under this regulation must be made before the expiry of a period of 30 days beginning with the day on which the person returns to work or such longer period as the Scheme employer allows.

(17) Where an active member to whom regulation 11(4) applies (contributions during absence from work) has an arrangement under this regulation which was entered into prior to the commencement of the period of absence, the APCs under that arrangement—

- (a) must be paid by the member during any period of child-related leave, which for this regulation includes any period of additional maternity leave, additional adoption leave, or additional paternity leave during which the member receives no pensionable pay;
- (b) must be paid by the member during any period of reserve forces service leave where regulation 13(1) (contributions during reserve forces service leave) applies;
- (c) must be paid by the member during any period of absence for illness or injury where regulation 14(1) applies; and
- (d) must be paid by the member during any period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work).

### **Additional voluntary contributions**

17.—(1) An active member may enter into arrangements to pay additional voluntary contributions (“AVCs”) or to contribute to shared cost additional voluntary contribution arrangements (“SCAVCs”) in respect of an employment.

(2) The arrangements mentioned in paragraph (1) must be a scheme established under an agreement between the appropriate administering authority and a body approved for the purposes under the Finance Act 2004<sup>(5)</sup> (“the AVC provider”), registered in accordance with that Act and administered in accordance with the Pensions Act 2004<sup>(6)</sup>.

(3) Where an active member wishes to make contributions to an arrangement under paragraph (1), the active member or the AVC provider authorised by the member to act on the member’s behalf must specify in a written notice given both to the appropriate administering authority and the member’s Scheme employer, if the member is not employed by the administering authority—

- (a) the percentage of pensionable pay or the amount that the member wishes to contribute from pensionable pay in respect of an employment in each pay period (but see paragraph (4)); and
- (b) whether any of the contributions are to be used to provide life assurance benefits payable upon death in service as an active member and, if so, the proportion or amount to be so used.

(4) Where a member is paying AVCs for life assurance and pensionable pay in a pay period, net of any deductions made by the Scheme employer, is less than the AVC due, the member may pay the contribution due by way of a payment direct to the AVC provider or to the Scheme employer for onward transmission to that body in order to ensure that the life assurance cover continues.

(5) A member may vary the amount specified in, or cease contributing to, an arrangement by a further written notice given to the member’s Scheme employer and appropriate administering authority by the member or by the AVC provider authorised by the member to act on the member’s behalf.

(6) The date the AVC becomes payable is the date specified in regulation 19(5) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013<sup>(7)</sup>.

(7) If a member draws benefits under regulation 29(1), (2), (4), (5), (7), (10) to (12) (retirement benefits) or regulation 34(1) (early payment of retirement pension on ill-health grounds: active members) or, if a member who draws benefits under regulation 29(6) (flexible retirement) makes an election to draw the realisable value in the AVC arrangement at the same time, that member must notify the appropriate administering authority that the realisable value under arrangements made under this regulation—

- (a) is to be taken in full or in part by the member as a lump sum, and where only part is taken as a lump sum, the member must specify the amount to be so taken; and
- (b) to the extent that the realisable value has not been taken as a lump sum, it is to be used—
  - (i) to purchase additional pension under the Scheme, the amount of which is to be determined by the administering authority in accordance with actuarial guidance issued by the Scottish Ministers, or
  - (ii) to the extent that it has not been used to purchase additional pension under the Scheme, to purchase an annuity from one or more insurance companies (within the meaning of section 275 of the Finance Act 2004<sup>(8)</sup>).

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(5) 2004 c.12.  
(6) 2004 c.35.  
(7) S.I. 2013/2734.  
(8) 2004 c.12.

(8) Where a member chooses to take some or all of the benefits referred to in paragraph (7) in the form of a lump sum, that sum forms part of the total amount referred to in regulation 32(2) (election for lump sum instead of a pension).

(9) A person with an arrangement under paragraph (1) who becomes a deferred member of the Scheme is entitled to a deferred AVC account with the AVC provider.

(10) A member must transfer the realisable value in a deferred AVC account to another registered pension scheme or qualified recognised overseas pension scheme if making a transfer under regulation 94 (rights to payment out of pension fund).

(11) Where a member aggregates a deferred member's pension account or a deferred refund account with an active member's pension account, the realisable value in any deferred AVC account must be transferred to an arrangement under this regulation and the member may make an election to make further payments to the arrangement.

(12) If—

- (a) an active member who is paying contributions to an AVC or SCAVC for the purpose of life assurance dies; or
- (b) an active member who is paying contributions to an AVC or SCAVC other than for the purpose of life assurance dies; or
- (c) a deferred member dies and has a deferred AVC account attached to the deferred member's pension account; or
- (d) a pension credit member who has been awarded a share of a member's AVC account dies before drawing benefits; or
- (e) a member who has made an election under paragraph (7)(b)(ii) dies before the annuity has been purchased,

the appropriate administering authority shall, at its absolute discretion, decide that any life assurance sum due under sub-paragraph (a), and the realisable value of any arrangement under sub-paragraphs (b) to (e), should be paid to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(13) Where a member had attained the age of 75 at the date of death, any tax chargeable under section 206 of the Finance Act 2004 (special lump sum death benefits charge) is to be deducted from the payment due under paragraph (12) or (14).

(14) If the total of payments due under paragraph (12) have not been paid before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably have been expected to have become aware of the member's death, an amount equal to the shortfall must be paid to the member's personal representatives.

(15) Regulations 70 (first instance decisions) and 89 (forfeiture of pension rights after conviction for employment-related offences) do not apply in relation to an annuity purchased under paragraph (7)(b)(ii) and regulation 19(1)(b) (exclusion of rights to return of contributions) does not apply to any AVCs paid by the member.

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

**18.—**(1) If a person's qualifying service in the Scheme determined under regulation 3(6) (active membership) is for less than two years, that person is entitled, when that active membership ceases, to be repaid by the administering authority—

- (a) any contributions paid under or in accordance with regulation 9 or 10 in relation to that active membership;

- (b) any additional contributions paid by the person under regulation 16 in relation to that active membership;
- (c) the realisable value of any AVC or SCAVCs paid by the person, or SCAVCs paid by the Scheme employer under a salary sacrifice scheme, under regulation 17 in relation to that active membership (other than such contributions paid for life assurance cover or additional survivor benefits); and
- (d) any contributions included in a transfer payment received from a registered pension scheme or from a pension scheme or arrangement of a European pensions institution that could have been refundable under that scheme or arrangement.

(2) Where a person is entitled to repayment under paragraph (1)(c), the realisable value of any SCAVC contributions paid by the Scheme employer are repayable to the Scheme employer (other than contributions specifically paid for additional life assurance cover, in respect of additional survivor benefits or paid by the employer under a salary sacrifice scheme).

(3) A person entitled to repayment under paragraph (1)(a), (b) or (d) is also entitled to interest on the sum due under those sub-paragraphs if repayment is not made before the expiry of one year beginning with the date active membership ceased.

(4) Interest due under paragraph (3) is calculated at one per cent above base rate on a day to day basis from the date active membership ceased and compounded with three-monthly rests.

(5) An administering authority shall refund contributions to a person entitled under paragraph (1) when the person requests payment, or on the expiry of a period of five years beginning with the date the person's active membership ceased if no request is made before then or, on the day before attaining age 75, whichever is earliest.

(6) If a person entitled to a repayment under paragraph (1) dies before the payment is made, the administering authority must pay the sum due to the person's estate.

(7) The administering authority must deduct any tax due under the Finance Act 2004 or certified amount due under section 61 of the Pension Schemes Act 1993<sup>(9)</sup> from any repayment under paragraph (1) and where any such deduction is made shall secure that the money withheld is used to discharge the tax liability or is included in the contributions equivalent premium liability due under section 55 of the Pension Schemes Act 1993<sup>(10)</sup>.

(8) This regulation is subject to regulation 19 (exclusion of rights to return of contributions).

### **Exclusion of rights to return of contributions**

**19.**—(1) A person is not entitled to a return of contributions under regulation 18 if that person—

- (a) becomes an active member again within one month and one day of ceasing active membership in an employment, or before the date a return of contributions has been issued by the appropriate administering authority, whichever is the later;
- (b) left the employment and has been found guilty of—
  - (i) an offence of a fraudulent character, or
  - (ii) grave misconduct,in connection with the employment;
- (c) already holds a deferred benefit or is in receipt of a pension (other than a survivor's pension or pension credit member's pension) under these Regulations without prejudice to the right to other compensation for non-refundable contributions;

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<sup>(9)</sup> 1993 c.48; section 61 was amended by the Pensions Act 1995, the Child Support, Pensions and Social Security Act 2000 and the Pensions Act 2004.

<sup>(10)</sup> 1993 c.48; there are amendments to section 55 which are not relevant to this instrument.

- (d) continues as an active member in another employment held concurrently with the employment in which that person has ceased to be an active member; or
- (e) is an active member and dies in service.

(2) Where paragraph (1)(b) applies the Scheme employer may direct payment out of the appropriate fund of a sum equal to all or part of the member's contributions to the member, the member's spouse, civil partner, cohabiting partner or any of the member's dependents.

### Meaning of pensionable pay

**20.**—(1) Subject to regulation 21 (assumed pensionable pay), an employee's pensionable pay is the total of—

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

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

- (a) any sum which has not had income tax liability determined on it;
- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate a contract of employment;
- (e) any payment as an inducement not to terminate employment before the payment is made;
- (f) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision;
- (g) any payment in consideration of loss of future pensionable payments or benefits;
- (h) any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees;
- (i) any payment made by the Scheme employer to a member on reserve forces service leave;
- (j) payments for non-contractual overtime;
- (k) the amount of any supplement paid to an employee whose employment was transferred on 1st April 2010, under a staff transfer scheme, from the Scottish Administration to Learning and Teaching Scotland, in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the Scheme **(11)**;
- (l) the amount of any supplement paid to an employee whose entitlement to a pension was transferred on 1st May 2010 from the SDS Scheme to the Scheme, in recognition of the difference in contribution rates between members of the SDS Scheme and the Scheme **(12)**;
- (m) the amount of any supplement paid to an employee whose employment was transferred on 1st October 2008, under a staff transfer scheme, from the Scottish Legal Services Ombudsman to the Scottish Legal Complaints Commission in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the Scheme **(13)**;
- (n) the amount of any supplement paid to an employee whose employment was transferred on 1st April 2011, under a staff transfer scheme, from the Scottish Administration to

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**(11)** S.S.I. 2011/349.

**(12)** S.S.I. 2011/349.

**(13)** S.S.I. 2011/349.

Social Care and Social Work Improvement Scotland, in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the Scheme (14);

- (o) returning officer, or acting returning officer fees other than fees paid in respect of—
  - (i) local government elections,
  - (ii) elections for the Scottish Parliament,
  - (iii) Parliamentary elections, or
  - (iv) European Parliamentary elections.

### **Assumed pensionable pay**

21.—(1) During the period the circumstances specified in paragraph (2) apply in relation to an employment, the pensionable pay that an active member is, in relation to that employment, treated as receiving for the purposes of these Regulations (including this regulation), other than regulations 9 to 12 and 14 excluding 11(2) (contributions), is that member's assumed pensionable pay calculated in accordance with paragraph (4).

(2) The circumstances are that the member—

- (a) is on leave due to sickness or injury and is on reduced contractual pay or no pay;
- (b) is on child-related leave other than any part of that leave period where the pensionable pay received is greater than the assumed pensionable pay for that part of the leave period; or
- (c) is absent on reserve forces service leave.

(3) Paragraph (2)(c) does not apply in respect of any period of service which qualifies the member for benefits under any other occupational pension scheme in respect of that service.

(4) The annual rate of assumed pensionable pay for an employment for a Scheme year is—

- (a) where the member is paid monthly—
  - (i) the pensionable pay the member received relating to that employment in the three months preceding the commencement of the pay period in which the circumstance specified in paragraph (2) began or, for the purposes of regulations 37(1)(a) (calculation of ill-health pension amounts), 38(3) (death grants: active members), 39(4)(b) (Survivor benefits: partners of active members), 40(4)(b), (5)(b), (9)(b) and (10)(b) (Survivor benefits: children of active members), the pay period in which the ill-health retirement or death occurred;
  - (ii) less any lump sum received during that period;
  - (iii) with the resulting sum being grossed up to an annual figure;
  - (iv) to which any regular lump sum payment received in the 12 months preceding the date specified in paragraph (i) should be added;
- (b) where the member is paid otherwise than monthly—
  - (i) the pensionable pay the member received relating to that employment in the 13 weeks preceding the commencement of the pay period in which the circumstance specified in paragraph (2) began or, for the purposes of regulations 37(1)(a) (calculation of ill-health pension amounts), 38(3) (death grants; active members), 40(4)(b), (5)(b), (9)(b) and (10)(b) (Survivor benefits: children of active members) the pay period in which, respectively, the ill-health retirement or death occurred;
  - (ii) less any lump sum received;

- (iii) with the resulting sum being grossed up to an annual figure;
- (iv) to which any regular lump sum payment received in the 12 months preceding the date specified in paragraph (i) should be added.

(5) For the purposes of paragraph (4) a “regular lump sum” is a payment for which the member’s employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

(6) The assumed pensionable pay that a member is treated as receiving is adjusted by the revaluation adjustment on the first day of the second Scheme year which commenced after the first date on which the member is treated as receiving assumed pensionable pay.

### *Pension accounts*

#### **Pension accounts**

**22.—**(1) An administering authority must open and maintain one or more pension accounts for each member of the Scheme.

(2) A separate pension account must be opened in relation to each employment where a member is or was employed in two or more Scheme employments.

(3) A pension account—

- (a) must contain such matters as are required by these Regulations;
- (b) must identify which one of the following categories of pension account it is—
  - (i) an active member’s pension account;
  - (ii) a deferred member’s pension account;
  - (iii) a deferred refund account;
  - (iv) a retirement pension account;
  - (v) a flexible retirement pension account;
  - (vi) a pension credit account; or
  - (vii) a survivor member’s account,

but, subject to that,

(c) may be kept in any form that the administering authority considers appropriate.

(4) An administering authority must close a pension account if—

- (a) a transfer value payment is made in respect of the member if the effect of the transfer is that the member is no longer entitled to any benefits from the account;
- (b) a refund of contributions is paid under regulation 18 (rights to return of contributions);
- (c) all the benefits in the account are forfeited under regulation 89 (forfeiture of pension rights after conviction for employment-related offences);
- (d) the member dies;
- (e) the last survivor entitled to a benefit from a survivor member’s account ceases to be entitled to a benefit from the account (by reason of death or upon ceasing to be an eligible child); or
- (f) due to aggregation of the benefits in the account with a different account, it is no longer required;
- (g) there is a commutation under regulation 33(1).



(5) Where a member with an active member's pension account also has a deferred refund account, the benefits in the deferred refund account must be aggregated with the active member's pension account and the deferred refund account closed.

(6) Where an active member with concurrent employments ceases an employment and does not have qualifying service for a period of two years, the active member's pension account in respect of that employment must be closed and the benefits in that account must be aggregated with the ongoing active member's pension account and, if there is more than one such account, the one chosen by the member.

(7) Where a deferred member's pension account or a deferred refund account is to be aggregated with an active member's pension account and the gap between the member's last day of membership to which the deferred member's pension account or deferred refund account relates and the first day of active membership to which the active member's pension account relates does not exceed 5 years, the balance in the deferred member's account or deferred refund account shall be recalculated, before aggregation, as if the amount in that account had been increased by the revaluation adjustment and not the index rate adjustment.

### **Active member's pension accounts**

**23.**—(1) At the beginning of each Scheme year, an active member's pension account in relation to an employment must specify the opening balance for that year.

(2) At the end of each Scheme year—

- (a) the balance mentioned in paragraph (1); plus
- (b) the amount of earned pension, if any, for the Scheme year; plus
- (c) the amount of any additional member pension acquired during the Scheme year pursuant to arrangements made under regulation 16(1) or (3) (additional pension contributions); plus or minus, as the case may be,
- (d) the sum resulting from any pension account adjustment during the Scheme year,

must be aggregated and the revaluation adjustment for that Scheme year must be applied at the beginning of the next Scheme year in accordance with actuarial guidance issued by the Scottish Ministers.

(3) The revalued balance calculated under paragraph (2) becomes the new opening balance for the next Scheme year.

(4) Except where regulation 10 (temporary reduction in contributions) applies, the amount of earned pension for a Scheme year is 1/49th of the member's pensionable pay received in that year (irrespective of whether it relates to work carried out in that period).

(5) Where regulation 10 (temporary reduction in contributions) applies, the amount of earned pension for a Scheme year is 1/98th of the member's pensionable pay received in that year while that regulation applies (irrespective of whether it relates to work carried out during that period).

(6) Other than to correct an error in a pension account, a pension account adjustment can only arise as a consequence of—

- (a) an award of additional pension under regulation 30 (award of additional pension);
- (b) a transfer value payment being made or received;
- (c) a pension debit being made;
- (d) a Scheme pays election;
- (e) a transfer into the member's pension account from a different account upon aggregation of those accounts; or

(f) an adjustment of the description mentioned in regulation 91 (adjustment of accounts following forfeiture etc).

(7) If an active member's pension account is closed before the end of a Scheme year any pension account adjustment applicable to the account must be made immediately before the date the account is closed, but no revaluation adjustment is to be made to the active member pension account for that Scheme year.

(8) If a member starts to draw benefits under regulation 29(6) (flexible retirement) any pension account adjustment applicable to the active member's pension account must be made immediately before the date on which benefits start to be paid.

(9) Where—

(a) a pension debit as is mentioned in paragraph (6)(c) is made, or

(b) the joint liability amount specified in a notice given in relation to an election as mentioned in paragraph (6)(d) is met by the pension fund,

the appropriate administering authority shall reduce the balance in the member's account to reflect the reduction in the value of the member's rights, calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(10) Where pensionable pay relating to a period before a member ceased to be an active member is paid after the period of active membership has ended, it is to be treated as if it were received on the day before the active member's account was closed.

#### **Deferred member's pension account and deferred refund account**

**24.—**(1) If a member ceases to be an active member and becomes a deferred member in relation to an employment—

(a) the active member's pension account must be closed; and

(b) a deferred member's pension account must be opened.

(2) The deferred member's pension account must specify the opening balance in that account.

(3) On the day the account is opened, the opening balance is the amount of pension the member has accrued.

(4) The amount of pension a member has accrued is—

(a) the opening balance for the member's last active Scheme year; plus

(b) the amount of earned pension, if any, from the first day of the member's last active Scheme year until the last day of active membership; plus

(c) any additional pension acquired during that period pursuant to arrangements made under regulation 16(1) or (3) (additional pension contributions); plus, or minus, as the case may be;

(d) any pension account adjustment applicable during that period.

(5) Except where regulation 10 (temporary reduction in contributions) applied, the amount of earned pension for the period mentioned in paragraph (4)(b) is 1/49th of the pensionable pay received during that period (irrespective of whether it relates to work carried out in that period).

(6) Where regulation 10 (temporary reduction in contributions) applied to any of the period mentioned in paragraph (4)(b), the amount of earned pension is 1/98th of the member's pensionable pay received while that regulation applied (irrespective of whether it relates to work carried out in that period).

(7) The balance in the member's account at the end of the Scheme year in which the member becomes a deferred member is adjusted at the beginning of the following Scheme year by the

revaluation adjustment applicable to the Scheme year in which the member became a deferred member in accordance with actuarial guidance issued by the Scottish Ministers.

(8) The revalued balance calculated under paragraph (7) is the opening balance for the following Scheme year and thereafter, subject to paragraph (9), the balance in the account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(15) applied.

(9) If a deferred member's account is closed before the end of a Scheme year, any pension account adjustment applicable to the account must be made immediately before the date the account is closed.

(10) Other than to correct an error in a deferred member's pension account, the only pension account adjustment that can arise under this regulation is an adjustment as a consequence of a matter specified in regulation 23(6) (adjustments to active member's pension accounts).

(11) If a member ceases to be an active member without becoming entitled to any benefits because that member has less than two years qualifying service—

- (a) the active member's pension account must be closed; and
- (b) a deferred refund account must be opened.

(12) Paragraphs (3) to (10) of this regulation apply to deferred refund accounts as they apply to deferred member pension accounts.

#### **Retirement pension accounts : active members**

**25.**—(1) When an active member becomes entitled to immediate payment of a full retirement pension in relation to an employment—

- (a) the active member's pension account must be closed; and
- (b) a retirement pension account must be opened.

(2) The retirement pension account must specify—

- (a) the amount of accrued pension;
- (b) the amount of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions);
- (c) the early payment reduction or deferred payment enhancement (if any) and the amount of pension to which that reduction or enhancement is to be applied;
- (d) the commutation amount (if any);
- (e) the amount of any pension adjustment; and
- (f) the amount of pension payable from time to time and the date from which it is to be paid.

(3) Subject to paragraph (4), the amount of accrued pension for the purposes of paragraph (2)(a) is the amount that would have been specified under regulation 24(4) (deferred member's pension account) if a deferred member's pension account had been opened for that member.

(4) The amount of accrued pension specified in paragraph (2)(a) must be reduced to take account of the commutation amount.

(5) The amount of any pension adjustment not already accounted for under paragraph (2)(a) is, for the purposes of paragraph (2)(e) the amount calculated in accordance with actuarial guidance issued by the Scottish Ministers to account for any tax to which the administering authority may become chargeable under the Finance Act 2004 in accordance with regulation 85 (tax) or as a result of a pension sharing order.

(6) The balance in the member's account at the end of the Scheme year in which the member becomes a pensioner member is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the member became a pensioner member in accordance with actuarial guidance issued by the Scottish Ministers.

(7) The revalued balance calculated under paragraph (6) is the opening balance for the following Scheme year and, thereafter, the balance is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(16) applied.

(8) For the purposes of this regulation a full retirement pension means a retirement pension other than a pension payable under regulation 29(6) (flexible retirement pensions).

### **Retirement pension accounts : deferred and pension credit members**

**26.**—(1) When a deferred member becomes entitled to immediate payment of a retirement pension—

- (a) the deferred member's pension account must be closed; and
- (b) a retirement pension account must be opened.

(2) The retirement pension account must specify—

- (a) the amount of accrued pension;
- (b) the amount of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions);
- (c) the early payment reduction or deferred payment enhancement (if any), and the amount of pension to which that reduction or enhancement applies;
- (d) the commutation amount (if any);
- (e) the amount of any pension adjustment; and
- (f) the amount of pension payable from time to time and the date from which it is to be paid.

(3) Subject to paragraph (4), the amount of accrued pension for the purposes of paragraph (2)(a) is the amount specified in that member's deferred member's pension account immediately before it was closed.

(4) The amount of accrued pension specified in paragraph (2)(a) must be reduced to take account of the commutation amount.

(5) The amount of any pension adjustment not already accounted for under paragraph (2)(a) is, for the purposes of paragraph (2)(e), the aggregate of the amounts calculated in accordance with actuarial guidance issued by the Scottish Ministers to account for—

- (a) any tax to which the administering authority may become chargeable under the Finance Act 2004 in accordance with regulation 85 (tax); or
- (b) a pension sharing order.

(6) The balance in the member's account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(17) applied.

(7) This regulation applies in relation to pension credit members who become entitled to immediate payment of a retirement pension as it applies to deferred members with the following modifications—

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(16) 1971 c.56.

(17) 1971 c.56.

- (a) all references to deferred members are to be read as references to pension credit members; and
- (b) the reference to accrued pension in paragraph (2)(a) is to be read as a reference to the amount of pension credit in the pension credit member's account.

### **Flexible retirement pension accounts**

**27.**—(1) When an active member is entitled to immediate payment of a retirement pension under regulation 29(6) (flexible retirement pensions) in relation to an employment—

- (a) a flexible retirement pension account must be opened; and
- (b) the balance in the active member's pension account must be reduced by the amount of accrued pension transferred into the member's flexible retirement account.

(2) The flexible retirement pension account must specify—

- (a) the amount of accrued pension transferred from the active member's pension account;
- (b) the amount of additional pension (if any) purchased under regulation 17(7)(b)(i) (additional voluntary contributions);
- (c) the early payment reduction or deferred payment enhancement (if any) and the amount of pension to which that reduction or enhancement is to be applied;
- (d) the commutation amount (if any);
- (e) the amount of any pension adjustment; and
- (f) the amount of pension payable from time to time and the date from which it is to be paid.

(3) The amount of accrued pension specified in paragraph (2)(a) must be reduced to take account of the commutation amount.

(4) The amount of any pension adjustment not already accounted for under paragraph (2)(a) is, for the purposes of paragraph (2)(e), the aggregate of the amounts calculated in accordance with actuarial guidance issued by the Scottish Ministers to account for an adjustment as a consequence of a matter specified in regulation 23(6) or 25(5) (adjustments to active member's pension accounts).

(5) The balance in the member's flexible retirement pension account at the end of the Scheme year in which the member became entitled to the immediate payment of a retirement pension under regulation 29(6) (flexible retirement) is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the member became entitled to that retirement pension, in accordance with actuarial guidance issued by the Scottish Ministers.

(6) The revalued balance calculated under paragraph (5) is the opening balance for the following Scheme year and, thereafter, the balance in the account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(18) applied.

### **Pension credit accounts**

**28.**—(1) When a person becomes a beneficiary of a pension sharing order, a pension credit member account must be opened.

(2) The pension credit account at the date it is opened must be credited from the member's pension account that is to be debited with an amount in compliance with the pension sharing order and calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(3) The amount credited under paragraph (2) is the opening balance for the following Scheme year and, thereafter, the balance in the account each year is adjusted by the index rate adjustment

from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(19) applied.

(4) The amount in a pension credit account may be adjusted by amounts calculated in accordance with actuarial guidance issued by the Scottish Ministers—

- (a) as a result of a further pension sharing order; or
- (b) to account for any tax to which the administering authority may become liable under the Finance Act 2004 in accordance with regulation 85 (tax).

### *Benefits*

#### **Retirement benefits**

29.—(1) Subject to paragraph (3), a member who attains normal pension age and is not an employee in local government service at that time is entitled to immediate payment of a retirement pension without reduction.

(2) A member to whom paragraph (1) applies and who has concurrent employments may draw a pension in relation to an employment so long as the member is not an employee in local government service in relation to that employment.

(3) A member to whom paragraph (1) applies may elect to defer payment of a retirement pension to a date after that member's normal pension age up to the date when that member attains the age of 75.

(4) A member who starts to receive payment of a retirement pension from a date after that member's normal pension age is entitled to enhancement of the pension by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers.

(5) Subject to paragraph (13) a member who has not attained normal pension age but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, but the amount of the retirement pension must be reduced by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers.

(6) An active member who has attained the age of 55 or over who reduces working hours or grade of an employment may, with the Scheme employer's consent, elect to receive immediate payment of all or part of the retirement pension to which that member would be entitled in respect of that employment if that member were not an employee in local government service on the date of the reduction in hours or grade, adjusted by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers.

(7) Where an active member who has attained the age of 55 or over is dismissed from an employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency, that member is entitled to, and must take immediate payment of—

- (a) retirement pension relating to that employment payable under regulation 16 (additional pension contributions), adjusted by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers; and
- (b) any other retirement pension relating to that active membership payable under these Regulations, without reduction.

(8) A Scheme employer, former employer which is a Scheme employer, or, where a member's employer or former employer has ceased to be a Scheme employer, the appropriate administering

authority, may agree to waive in whole or in part any reduction that would, apart from this paragraph, be required by paragraph (5) or (6).

(9) In paragraphs (1) to (7) of this regulation the expression “member” means a member with qualifying service for a period of two years and does not include a pension credit member.

(10) Subject to paragraph (11), a pension credit member who attains normal pension age is entitled to, and must take, immediate payment of a retirement pension deriving from the pension credit, without reduction, irrespective of whether that pension credit member is also an employee in local government service.

(11) A pension credit member may, before reaching normal pension age, elect to defer payment of a retirement pension deriving from a pension credit to a date after that member’s normal pension age and, if the member does so, is entitled to immediate payment of a retirement pension from any date up to the date when that member attains the age of 75, enhanced by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers, irrespective of whether the pension credit member is also an employee in local government service.

(12) A pension credit member who has attained the age of 55 or over may elect to receive immediate payment of a retirement pension deriving from the pension credit, reduced by the amount shown as appropriate in actuarial guidance issued by the Scottish Ministers, irrespective of whether the pension credit member is also an employee in local government service.

(13) An election under paragraph (5) made by a member aged less than 60 is ineffective without the consent of the member’s—

- (a) employing authority;
- (b) former employing authority; or
- (c) appropriate administering authority where the member’s former employing authority has ceased to be a Scheme employer.

### **Award of additional pension**

**30.**—(1) A Scheme employer may resolve to award—

- (a) an active member; or
- (b) a member who was an active member who was dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

additional annual pension of, in total (including any additional pension purchased by the Scheme employer under regulation 16), not more than the additional pension limit payable from the same date as any pension payable under other provisions of these Regulations from the pension account to which the additional pension is attached, provided that, in the case of a member falling within sub-paragraph (b), the resolution to award additional pension is made within 6 months of the date the member’s employment ended.

(2) The additional pension limit is £5,000 and that figure is increased on 1st April 2016, and each subsequent 1st April, by the amount (where it is greater than zero) by which it would be increased if it were a pension beginning on 1st April 2015 to which the Pensions (Increase) Act 1971(20) applied.

(3) An award of additional pension under—

- (a) paragraph (1)(a) is to be credited to the relevant active member pension account in the Scheme year in which the resolution to award the additional pension is made; and
- (b) paragraph (1)(b) is to be treated as credited to the relevant active member pension account on the day before the date of termination of employment.

### **Commencement of pensions**

**31.**—(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable, begins with the day after the date on which the employment ends.

(2) Subject to paragraphs (3) and (4), in the case of a deferred member, the first period for which payment begins is the member's normal pension age unless that member gives written notice to the appropriate administering authority to defer payment (but any such deferral shall not extend beyond the day before the member's 75th birthday).

(3) Where a member elects under regulation 29(3), (5), (11) or (12) to have a pension paid from a date other than normal pension age, the first period for which retirement pension is payable begins on the date the member specifies in a written notice to the appropriate administering authority.

(4) When, in a written notice to the appropriate administering authority, a member elects under regulation 29(6) (flexible retirement) to receive immediate payment of all or part of that member's benefits, if the member's Scheme employer consents to the payment, the first period for which retirement pension is payable begins on the date of the reduction in hours or grade.

(5) A notice given under paragraph (3) must be given not less than three months before the beginning of the period specified and a notice given under paragraph (4) must be given within one month of the reduction in hours or grade.

(6) A member may give a further notice under paragraph (3) altering the date specified in an earlier notice, but any such further notice must be given not less than three months before the beginning of the period specified in the further notice.

(7) An administering authority may agree to amend the time limits specified in paragraphs (5) and (6).

(8) Where a member is entitled to early payment of pension due to ill-health under regulation 34 (early payment of retirement pension on ill-health grounds: active members) the first period for which retirement pension is payable is the day after the date on which the member's employment is terminated.

(9) Where a member is entitled to early payment of pension due to ill-health under regulation 36 (early payment of retirement pension on ill-health grounds: deferred members), the first period for which retirement pension is payable begins on the date of the determination that the member is permanently incapable under that regulation.

### **Election for lump sum instead of pension**

**32.**—(1) Subject to paragraph (4), a member entitled to a retirement pension under the Scheme may by written notice given to the appropriate administering authority before the benefit crystallisation event in respect of which any benefits are payable, commute the retirement pension payable, or part thereof, at a rate of £12 for every £1 of annual pension commuted.

(2) But the total amount of the member's commuted sum shall not exceed 25% of the capital value of the member's accrued rights under all local government pension provision in relation to that benefit crystallisation event including those under regulation 17(7)(a) (additional voluntary contributions).

(3) The capital value of a member's accrued rights shall be calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(4) Paragraph (1) does not apply to—

- (a) a pension credit member where the member of the Scheme to whom the Pension Sharing Order applied has made an election under this regulation before the valuation date used when implementing the Pension Sharing Order;



- (b) any additional pension purchased by the member under regulation 17(7)(b)(i) (additional voluntary contributions).

### **Commutation and small pensions**

**33.**—(1) Any authorised payments within the meaning of section 164 (authorised member payments) of the Finance Act 2004<sup>(21)</sup> listed in sub-paragraphs (a) to (c) may be paid in accordance with the rules relating to the payment of such benefits under that Act or relevant regulations under that Act—

- (a) a lump sum which is a trivial commutation lump sum within the meaning of section 166 (lump sum rule) of that Act;
- (b) a trivial commutation lump sum death benefit within the meaning of section 168 (lump sum death benefit rule) of that Act; or
- (c) a commutation payment under regulation 6 (payment after relevant accretion), 11 (*de minimis* rule for pension schemes) or 12 (payments by larger pension schemes) of the Registered Pension Schemes (Authorised Payments) Regulations 2009<sup>(22)</sup>.

(2) Any payment under paragraph (1) shall be calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(3) If a member receives a payment under this regulation, any pension account relating to that payment must be closed and the member is entitled to no further benefits in relation to that account and no survivor benefits are subsequently payable upon the death of the member.

### *Ill-health retirement*

#### **Early payment of retirement pension on ill-health grounds: active members**

**34.**—(1) An active member who has qualifying service for a period of two years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches age 65, is entitled to, and must take, early payment of a retirement pension if that member satisfies the condition in paragraph (3) of this regulation.

(2) The amount of the retirement pension that a member who satisfies the conditions mentioned in paragraph (1) receives, is determined by which of the benefit tiers specified in paragraphs (4) and (5) that member qualifies for, calculated in accordance with regulation 37 (calculation of ill-health pension amounts).

(3) The condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

(4) A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before age 65.

(5) A member is entitled to Tier 2 benefits if that member—

- (a) is not entitled to Tier 1 benefits but,
- (b) is likely to be able to undertake gainful employment before reaching age 65.

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<sup>(21)</sup> 2004 c.12; section 164 was amended by the Finance Act 2006 (c.25), the Finance Act 2008 (c.9), the Finance Act 2009 (c.10) and the Finance Act 2011 (c.11).

<sup>(22)</sup> S.I. 2009/1171; regulations 11 and 12 were amended by S.I. 2011/1751.

### **Role of the IRMP**

**35.—**(1) A decision as to whether a member is entitled under regulation 34 (early payment of retirement pension on ill-health grounds: active members) to early payment of retirement pension on grounds of ill-health or infirmity of mind or body, and if so which tier of benefits the member qualifies for, shall be made by the member's Scheme employer after that authority has obtained a certificate from an IRMP as to—

- (a) whether the member satisfies the condition in regulation 34(3); and if so,
- (b) whether the member is unlikely to be capable of undertaking gainful employment.

(2) An IRMP from whom a certificate is obtained under paragraph (1) must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested.

(3) If the Scheme employer is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of IRMP.

(4) The Scheme employer and IRMP must have regard to guidance given by the Scottish Ministers when carrying out their functions under this regulation and regulation 36 (early payment of retirement pension on ill-health grounds: deferred members).

### **Early payment of retirement pension on ill-health grounds: deferred members**

**36.—**(1) A deferred member who, because of ill-health or infirmity of mind or body—

- (a) becomes permanently incapable of discharging efficiently the duties of the employment that member was engaged in at the date the member became a deferred member; and
- (b) is unlikely to be capable of undertaking gainful employment before age 65,

may ask to receive payment of a retirement pension whatever the member's age.

(2) A request under paragraph (1) must be made in writing to the deferred member's appropriate administering authority.

(3) Before determining whether or not to agree to a request under paragraph (1), the deferred member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to—

- (a) whether the member is suffering from a condition that renders the member permanently incapable of discharging efficiently the duties of the employment the member was engaged in because of ill-health or infirmity of mind or body; and, if so,
- (b) whether as a result of that condition the member is unlikely to be capable of undertaking gainful employment before reaching age 65.

### **Calculation of ill-health pension amounts**

**37.—**(1) Subject to paragraphs (5) to (7), Tier 1 benefits are calculated by adjusting the active member's pension account as follows—

- (a) an amount is added to the balance in the account for the year in which the member's employment was terminated, equivalent to the amount of earned pension the member would have accrued between the day following the date of termination and age 65, if that member had been treated as receiving assumed pensionable pay, calculated in accordance with regulation 21(4) (assumed pensionable pay) for each year and fraction of a year in that period and treating any election under regulation 10 (temporary reduction in contributions) as lapsed at the date of the termination of the member's employment; and
- (b) retirement pension is payable to the member as if the member had reached age 65 on the date the member's employment was terminated.

(2) Subject to paragraphs (5) to (7), Tier 2 benefits are calculated by adjusting the active member's pension account as follows—

- (a) for the year in which the member's employment was terminated, one quarter of the sum calculated in accordance with paragraph (1)(a) is added; and
- (b) retirement pension is payable to the member as if the member had reached age 65 on the date the member's employment was terminated.

(3) Benefits payable under regulation 36 (early payment of retirement pension on ill-health grounds: deferred members) are the retirement pension that would be payable to the member as if that member had reached age 65 on the date from which benefits are awarded.

(4) Where a member entitled to Tier 1 benefits subsequently becomes an active member, no addition is to be made under paragraph (1)(a) or (2)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership.

(5) Where a member entitled to Tier 2 benefits ("the initial ill-health retirement") subsequently becomes an active member, the addition made under paragraph (1)(a) or (2)(a) to any Tier 1 or Tier 2 benefits that the member becomes entitled to after that subsequent period of membership is modified in accordance with paragraph (6).

(6) The number of years for which a member to whom paragraph (5) applies is treated as having received assumed pensionable pay for the purposes of paragraph (1)(a) or (2)(a) shall not exceed—

- (a) the number of years at the date of the initial ill health retirement up to age 65; less
- (b) a quarter of the number of years calculated in accordance with sub-paragraph (a); less
- (c) the number of years during which the member has been an active member after the initial ill-health retirement.

(7) For the purposes of this regulation—

- (a) in calculating assumed pensionable pay in accordance with regulation 21(4) (assumed pensionable pay), account is only taken of any reduction in the pensionable pay the member received if an IRMP has certified that the member was working reduced contractual hours as a consequence of ill-health or infirmity of mind or body; and
- (b) no adjustment is to be made to any sum by virtue of regulation 21(6) for any period after the date of termination of employment under regulation 34 (early payment of retirement pension on ill-health grounds: active members).

#### *Survivor benefits*

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

**38.**—(1) If an active member dies before attaining the age of 75, an administering authority shall pay a death grant.

(2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(3) The death grant is the highest of the amount of three times the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) as at the date of the member's death, the amount of the death grant payable under regulation 41, or the amount of the death grant payable under regulation 44.

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death

within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

### **Survivor benefits: partners of active members**

**39.**—(1) If an active member dies leaving a surviving spouse, civil partner or cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The appropriate administering authority shall close the active member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the amounts in sub-paragraphs (a) and (b)—

- (a) the pension that the member would have been entitled to draw if—
  - (i) the member had been entitled to draw a pension on the date of the member's death,
  - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election,
  - (iii) the pension excluded additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension),
  - (iv) the member's earned pension had accrued at a rate of 1/160th of pensionable pay, and
  - (v) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) had been multiplied by 49/160;
- (b) a sum equivalent to 1/160th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(5) The balance in the survivor member's pension account at the end of the Scheme year in which the survivor member's account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the survivor member's account was opened, in accordance with actuarial guidance issued by the Scottish Ministers.

(6) The revalued balance calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following Scheme year and, thereafter, the balance in the account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(23) applied.

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

### **Survivor benefits: children of active members**

**40.**—(1) If an active member dies leaving one or more eligible children, they are entitled to a children's pension which shall come into payment on the day following the member's death.

(2) If a pension is payable to a partner of an active member under regulation 39(1), the appropriate administering authority shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(3) The opening balance of a survivor member's pension account opened under paragraph (2) is the amount of pension payable to the eligible child or children calculated in accordance with paragraph (4) or (5), but if the pension payable under regulation 39(1) ceases to be paid, the pension payable to the eligible child or children is recalculated in accordance with paragraph (9) or (10) as from the day following the date the pension under regulation 39(1) ceased to be paid.

(4) The amount of pension payable under paragraph (3) where there is only one such child is calculated by adding together the amounts in sub-paragraphs (a) and (b)—

- (a) the pension that the member would have been entitled to draw if—
  - (i) the member had been entitled to draw a pension on the date of the member's death,
  - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn, or following a Scheme pays election, or any pension debit applied on account of a pension sharing order,
  - (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension),
  - (iv) the member's earned pension had accrued at a rate of 1/320th of pensionable pay, and
  - (v) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/320;
- (b) a sum equivalent to 1/320th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(5) The amount of pension payable under paragraph (3) where there is more than one such child, is calculated by adding together the amounts in sub-paragraphs (a) and (b), and is payable to those children in equal shares—

- (a) the pension that the member would have been entitled to draw if—
  - (i) the member had been able to draw a pension on the date of the member's death,
  - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial reduction relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
  - (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension),
  - (iv) the member's earned pension had accrued at a rate of 1/160th of pensionable pay, and
  - (v) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/160;
- (b) a sum equivalent to 1/160th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(6) At the point at which the number of eligible children is reduced to one, if a pension is still payable to a surviving partner under regulation 39(1), the pension payable to that eligible child is

recalculated in accordance with paragraph (4) as from the day following the date the other eligible child's or children's pension ceased to be paid.

(7) If, on the day following the member's death, no pension is payable to a partner of an active member under regulation 39(1), the appropriate administering authority shall close the active member's pension account and shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(8) The opening balance of a survivor member's pension account opened under paragraph (7) is the amount of pension payable to the eligible child or children, calculated in accordance with paragraph (9) or (10).

(9) The amount of pension payable under paragraph (8) where there is only one such child is calculated by adding together the amounts in paragraphs (a) and (b)—

- (a) the pension that the member would have been entitled to draw if—
  - (i) the member had been entitled to draw a pension on the day the member died,
  - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
  - (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension),
  - (iv) the member's earned pension had accrued at a rate of 1/240th of pensionable pay, and
  - (v) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/240;
- (b) a sum equivalent to 1/240th of the member's annual assumed pensionable pay, calculated in accordance with regulation 21(4) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(10) The amount of pension payable under paragraph (8) where there is more than one such child, is calculated by adding together the amounts in paragraphs (a) and (b), and is payable to those children in equal shares—

- (a) the pension that the member would have been entitled to draw if—
  - (i) the member had been entitled to draw a pension on the date the member died,
  - (ii) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order,
  - (iii) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension),
  - (iv) the member's earned pension had accrued at a rate of 1/120th of pensionable pay, and
  - (v) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/120;
- (b) a sum equivalent to 1/120th of the member's annual assumed pensionable pay, calculated in accordance with regulation 21(4) as at the date of the member's death, for each year or fraction of a year between the date of the member's death and the member's normal pension age.

(11) At the point at which the number of eligible children is reduced to one, the pension payable to that child is recalculated in accordance with paragraph (9).

(12) The balance in the survivor member's pension account at the end of the Scheme year in which the survivor member's account was opened is adjusted at the beginning of the following Scheme year by the valuation adjustment applicable to the Scheme year in which the survivor member's account was opened, in accordance with actuarial guidance issued by the Scottish Ministers.

(13) The revalued balance calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following Scheme year and, thereafter, the balance in the account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(24) applied.

### **Death grants: deferred members and pension credit members**

**41.**—(1) If a deferred member dies before attaining the age of 75, an administering authority shall pay a death grant.

(2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(3) The death grant is the amount the member would have been entitled to receive as retirement pension annually if—

- (a) the member had been able to draw a pension on the day the member died; and
- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn,

multiplied by 5.

(4) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the member's death or, where the authority did not know about the member's death before the expiry of that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

(5) This regulation applies to pension credit members (including persons entitled to a pension credit who die before the appropriate administering authority awards a pension credit) as it applies to deferred members with the modification that for the amount of death grant calculated under paragraph (3), the amount calculated under paragraph (3)(a) and (b) is multiplied by 3.

### **Survivor benefits: partners of deferred members**

**42.**—(1) If a deferred member dies leaving a surviving spouse, civil partner or cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The appropriate administering authority shall close the deferred member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the pension that the member would have been entitled to draw if—

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(24) 1971 c.56.

- (a) the member had been able to draw a pension on the date the member died;
- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment either relating to the age at which it was drawn or following a Scheme pays election;
- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension);
- (d) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions);
- (e) the member's earned pension had accrued at a rate of 1/160th of pensionable pay; and
- (f) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/160.

(5) If the member ceased to be an active member, became a deferred member and died all within the same Scheme year, the balance in the survivor member's pension account at the end of the Scheme year in which the survivor member's account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the survivor member's account was opened, in accordance with actuarial guidance issued by the Scottish Ministers.

(6) Where—

- (a) paragraph (5) applies, the revalued balance calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following Scheme year;
- (b) paragraph (5) does not apply, the balance under paragraph (3) is the opening balance of the survivor member's pension account for the following Scheme year,

and, thereafter, the balance in the account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(25) applied.

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

#### **Survivor benefits: children of deferred members**

**43.**—(1) If a deferred member dies leaving one or more eligible children, they are entitled to a children's pension which shall come into payment on the day following the member's death.

(2) If a pension is payable to a partner of a deferred member under regulation 42(1) (survivor benefits: partners of deferred members), the appropriate administering authority shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(3) The opening balance of a survivor member's pension account opened under paragraph (2) is the amount of pension payable to the eligible child or children calculated in accordance with paragraph (4) or (5) but if the pension payable under regulation 42(1) ceases to be paid, the pension payable to the eligible child or children is recalculated in accordance with paragraph (9) or (10) as from the day following the date the pension under regulation 42(1) ceased to be paid.

(4) The amount of pension payable under paragraph (3) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member had been entitled to draw a pension on the date the member died;



- (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order;
  - (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension);
  - (d) the pension included 15.3125% of any pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions);
  - (e) the member's earned pension had accrued at a rate of 1/320th of pensionable pay; and
  - (f) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/320.
- (5) The amount of pension payable under paragraph (3) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw if—
- (a) the member had been entitled to draw a pension on the date the member died;
  - (b) the pension the member would have been able to draw on the date the member died had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order;
  - (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30;
  - (d) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions);
  - (e) the member's earned pension had accrued at a rate of 1/160th of pensionable pay; and
  - (f) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/160.
- (6) At the point at which the number of eligible children is reduced to one, if a pension is still payable to a surviving partner under regulation 42(1), the pension payable to that eligible child is recalculated in accordance with paragraph (4) as from the day following the date the other eligible child's or children's pension ceased to be paid.
- (7) If, on the day following the member's death, no pension is payable to a partner of a deferred member under regulation 42(1), the appropriate administering authority shall close the deferred member's pension account and shall open a survivor member's pension account for the eligible child or children from the day following the member's death.
- (8) The opening balance of a survivor member's pension account opened under paragraph (7) is the amount of pension payable to the eligible child or children, calculated in accordance with paragraph (9) or (10).
- (9) The amount of pension payable under paragraph (8) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw if—
- (a) the member had been entitled to draw a pension on the date the member died;
  - (b) the pension the member would have been able to draw on that date had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order;

- (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension);
  - (d) the pension included 20.41667% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions);
  - (e) the member's earned pension had accrued at a rate of 1/240th of pensionable pay; and,
  - (f) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/240.
- (10) The amount of pension payable under paragraph (8) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw if—
- (a) the member had been entitled to draw a pension on the date the member died;
  - (b) the pension the member would have been able to draw on the date the member died had not been subject to any restriction on the age at which it could be drawn, or actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order;
  - (c) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension);
  - (d) the pension included 40.8333% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions);
  - (e) the member's earned pension had accrued at a rate of 1/120th of pensionable pay; and
  - (f) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/120.
- (11) At the point at which the number of eligible children is reduced to one, the pension payable to that child is recalculated in accordance with paragraph (9) as from the day following the date the other eligible child's or children's pension ceased to be paid.
- (12) If the member ceased to be an active member, became a deferred member and died all within the same Scheme year, the balance in the survivor member's pension account at the end of the Scheme year in which the survivor member's account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the survivor member's account was opened, in accordance with actuarial guidance issued by the Scottish Ministers.
- (13) Where—
- (a) paragraph (12) applies, the revalued balance calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following Scheme year;
  - (b) paragraph (12) does not apply, the balance under paragraph (3) or (8), as the case may be, is the opening balance of the survivor member's pension account for the following Scheme year,
- and, thereafter, the balance in the account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(26) applied.

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

**44.**—(1) If a pensioner member dies before attaining the age of 75 an administering authority shall pay a death grant.

(2) The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.

(3) Subject to paragraph (4), the death grant is 10 times the annual amount the member would have been entitled to receive as retirement pension at the date of death if there had been no commutation under regulation 32 (election for lump sum instead of pension), but the amount so calculated is reduced by the amounts of any such commuted lump sum and any retirement pension paid to the member.

(4) Where any pension paid to a member derived from a pension credit, the death grant is 5 times the annual amount the member would have been entitled to receive as that pension at the date of death if there had been no commutation under regulation 32 (election for lump sum instead of pension), reduced by the amounts of any such commuted lump sum and any pension paid to the member.

(5) If the administering authority has not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the member's death or, where the authority did not know about the member's death before the expiry of that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay an amount equal to the shortfall to the member's personal representatives.

### **Survivor benefits: partners of pensioner members**

**45.**—(1) If a pensioner member (other than a pensioner member where the pension the member was in receipt of was derived from a pension credit) dies leaving a surviving spouse, civil partner or cohabiting partner, that person is entitled to a pension which shall come into payment on the day following the member's death.

(2) The appropriate administering authority shall close the pensioner member's pension account and shall open a survivor member's pension account from the day following the member's death.

(3) The opening balance of the survivor member's pension account is the amount of pension payable to the survivor calculated in accordance with paragraph (4).

(4) The amount of a pension payable under paragraph (3) is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension had accrued at a rate of 1/160th of pensionable pay;
- (b) the pension had not been subject to any actuarial adjustment relating either to the age at which it was drawn or following a Scheme pays election;
- (c) there had been no commutation under regulation 32 (election for lump sum instead of pension);
- (d) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension);
- (e) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions); and
- (f) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/160.

(5) If the member ceased to be an active member, became a pensioner member and died all within the same Scheme year, the balance in the survivor member's pension account at the end of

the Scheme year in which the survivor member's account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the survivor member's account was opened, in accordance with actuarial guidance issued by the Scottish Ministers.

(6) Where—

- (a) paragraph (5) applies, the revalued balance calculated under paragraph (5) is the opening balance of the survivor member's pension account for the following Scheme year;
- (b) paragraph (5) does not apply, the balance under paragraph (3) is the opening balance of the survivor member's pension account for the following Scheme year,

and, thereafter, the balance in the account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(27) applied.

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

#### **Survivor benefits: children of pensioner members**

**46.**—(1) If a pensioner member (other than a pensioner member where the pension the member was in receipt of was derived from a pension credit) dies leaving one or more eligible children, they are entitled to a children's pension which shall come into payment on the day following the member's death.

(2) If a pension is payable to a partner of a pensioner member under regulation 45(1) (survivor benefits: partners of pensioner members), the appropriate administering authority shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(3) The opening balance of a survivor member's pension account opened under paragraph (2) is the amount of pension payable to the eligible child or children calculated in accordance with paragraph (4) or (5) but if the pension payable under regulation 45(1) ceases to be paid, the pension payable to the eligible child or children is recalculated in accordance with paragraph (9) or (10) from the day following the date the pension under regulation 45(1) ceased to be paid.

(4) The amount of pension payable under paragraph (3) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension had accrued at a rate of 1/320th of pensionable pay;
- (b) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/320;
- (c) the member's pension had not been subject to any actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order;
- (d) there had been no commutation under regulation 32 (election for lump sum instead of pension);
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension); and
- (f) the pension included 15.3125% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(5) The amount of pension payable under paragraph (3) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension had accrued at a rate of 1/160th of pensionable pay;
- (b) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/160;
- (c) the member's pension had not been subject to any actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order;
- (d) there had been no commutation under regulation 32 (election for lump sum instead of pension);
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension); and
- (f) the pension included 30.625% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(6) At the point at which the number of eligible children is reduced to one, if a pension is still payable to a surviving partner under regulation 45(1), the pension payable to that eligible child is recalculated in accordance with paragraph (4) as from the day following the date the other eligible child's or children's pension ceased to be paid.

(7) If, on the day following the member's death, no pension is payable to a partner of a pensioner member under regulation 45(1), the appropriate administering authority shall close the pensioner member's pension account and shall open a survivor member's pension account for the eligible child or children from the day following the member's death.

(8) The opening balance of a survivor member's pension account opened under paragraph (7) is the amount of pension payable to the eligible child or children, calculated in accordance with paragraph (9) or (10).

(9) The amount of pension payable under paragraph (8) where there is only one such child is calculated by adding together the pension that the member would have been entitled to draw on the date of the member's death if—

- (a) the member's earned pension had accrued at a rate of 1/240th of pensionable pay;
- (b) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/240;
- (c) the member's pension had not been subject to any actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order;
- (d) there had been no commutation under regulation 32 (election for lump sum instead of pension);
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension); and
- (f) the pension included 20.41667% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(10) The amount of pension payable under paragraph (8) where there is more than one such child, is payable to those children in equal shares and is calculated by adding together the pension that the member would have been entitled to draw if—

- (a) the member's earned pension had accrued at a rate of 1/120th of pensionable pay;

- (b) the amount of any earned pension credited under regulation 99(1) (effect of acceptance of transfer value) has been multiplied by 49/120;
- (c) the member's pension had not been subject to any actuarial adjustment relating to the age at which it was drawn or following a Scheme pays election or any pension debit applied on account of a pension sharing order;
- (d) there had been no commutation under regulation 32 (election for lump sum instead of pension);
- (e) the pension excluded any additional pension purchased under regulation 16 (additional pension contributions) and any additional pension awarded under regulation 30 (award of additional pension); and
- (f) the pension included 40.8333% of any additional pension purchased under regulation 17(7)(b)(i) (additional voluntary contributions).

(11) At the point at which the number of eligible children is reduced to one, the pension payable to that child is recalculated in accordance with paragraph (9) as from the date the other eligible child's or children's pension ceased to be paid.

(12) If the member ceased to be an active member, became a pensioner member and died all within the same Scheme year, the balance in the survivor member's pension account at the end of the Scheme year in which the survivor member's account was opened is adjusted at the beginning of the following Scheme year by the revaluation adjustment applicable to the Scheme year in which the survivor member's account was opened, in accordance with actuarial guidance issued by the Scottish Ministers.

(13) Where—

- (a) paragraph (12) applies, the revalued balance calculated under paragraph (12) is the opening balance of the survivor member's pension account for the following Scheme year;
- (b) paragraph (12) does not apply, the balance under paragraph (3) or (8), as the case may be, is the opening balance of the survivor member's pension account for the following Scheme year,

and, thereafter, the balance in the account is adjusted each year by the index rate adjustment from the date that an increase would apply if that balance were a pension in payment to which the Pensions (Increase) Act 1971(28) applied.

#### *Adjustments of benefits*

#### **No double entitlement**

**47.**—(1) Where apart from this regulation any member would be entitled to a pension or lump sum under two or more regulations by reason of the same period of membership—

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

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

(3) Paragraph (1) does not affect the member's rights under the Pension Schemes Act 1993(29).

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(28) 1971 c.56.

(29) 1993 c.48.

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

**48.**—(1) No person is entitled under any provision of these Regulations to receive benefits the capital value of which exceed that person’s lifetime allowance, except in accordance with actuarial guidance issued by the Scottish Ministers and any benefits to which a person is entitled are restricted accordingly.

(2) In this regulation “lifetime allowance” is to be construed in accordance with section 218 of and Schedule 36 to the Finance Act 2004<sup>(30)</sup> and, where applicable, is to include primary protection, enhanced protection or fixed protection within the meaning of those provisions.

(3) The capital value of a person’s benefits shall be calculated in accordance with actuarial guidance issued by the Scottish Ministers.

### **Guaranteed minimum pensions**

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

(2) But if the member attains pensionable age while in local government service, the member is not so entitled until leaving that employment, unless paragraph (3) or (4) applies.

(3) If the member—

(a) continues in local government service for a further period of five years after attaining pensionable age; and

(b) does not then leave that service,

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

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

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

(6) Subject to regulation 29(3) (retirement after normal retirement date), where paragraph (3), (4) or (5) applies, the member may consent to a postponement of the entitlement.

(7) For the purposes of this regulation, a person has a guaranteed minimum if they have such a minimum under section 14 (earner’s guaranteed minimum) of the Pension Schemes Act 1993<sup>(31)</sup> in relation to benefits under these Regulations, and references to entitlement are to the entitlement to payment of a pension in accordance with paragraph (1).

(8) In this regulation “contracted out employment” shall be construed in accordance with section 8 of the Pension Schemes Act 1993.

### **Pension debits**

**50.**—(1) Administering authorities shall have regard to actuarial guidance issued by the Scottish Ministers as to reduction of benefits payable under these Regulations in consequence of a pension debit.

(2) An administering authority shall make such adjustments to a member’s pension accounts as are required to give effect to a pension debit.

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<sup>(30)</sup> 2004 c.12; section 218 was amended by the Finance Act 2011 (c.11). There are numerous amendments to Schedule 36 which are not relevant to these regulations.

<sup>(31)</sup> 1993 c.48; section 14 was amended by the Proceeds of Crime Act 2002, the Pensions Act 1995, and the Social Security Contributions (Transfer of Functions, etc) Act 1999.

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

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