
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 233

The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014

Citation, extent, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014.

(2) These Regulations extend to Scotland.

(3) These Regulations come into force on 1st April 2015.

(4) In these Regulations—

“the 1974 Regulations” means the Local Government Superannuation (Scotland) Regulations 1974(1);

“the 1974 Scheme” means the occupational pension scheme constituted by the 1974 Regulations;

“the 1987 Regulations” means the Local Government Superannuation (Scotland) Regulations 1987(2);

“the 1987 Scheme” means the occupational pension scheme constituted by the 1987 Regulations;

“the 1998 Regulations” means the Local Government Pension Scheme (Scotland) Regulations 1998(3);

“the 1998 Transitional Regulations” means the Local Government Pension Scheme (Scotland) (Transitional Provisions) Regulations 1998(4)

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

“the 2009 Scheme Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008(5);

“the 2009 Scheme” means the occupational pension scheme constituted by the Administration Regulations, the Benefits Regulations and the 2009 Scheme Transitional Regulations;

“the 2014 Regulations” means the Local Government Pension Scheme (Scotland) Regulations 2014(6);

“the 2015 Scheme” means the occupational pension scheme constituted by these Regulations and the 2014 Regulations;

“the Administration Regulations” means the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008(7);

(1) S.I. 1974/812; these Regulations were revoked by S.I. 1987/1850.

(2) S.I. 1987/1850, these Regulations were revoked by S.S.I. 2008/229

(3) S.I. 1998/366.

(4) S.I. 1998/364.

(5) S.S.I. 2008/229, as amended by S.S.I. 2010/233 and S.S.I. 2010/234.

(6) S.S.I. 2014/164.

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

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008⁽⁸⁾;

“the Earlier Schemes” means the 1974, the 1987, the 1998 and the 2009 Schemes collectively;

“the Earlier Regulations” means the regulations by which the Earlier Schemes were constituted;

“public service pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993⁽⁹⁾.

(5) In these Regulations, where an expression is used in relation to provisions in the 1998 Regulations, the 1998 Transitional Regulations, the Benefits Regulations, the Administration Regulations, the 2009 Scheme Transitional Regulations, or the 2014 Regulations, those expressions are to be construed in accordance with the meaning given to those expressions in the provisions referred to, unless the context indicates otherwise.

(6) In these Regulations, where final pay is to be calculated in accordance with regulations 9 to 11 of the Benefits Regulations (calculation of final pay) if a certificate has been issued under regulation 22 of the 1998 Regulations, regulation 43 of the Administration Regulations or regulation 93 of the 2014 Regulations (permanent reductions in pay: certificates of protection of pension benefits), that certificate continues to have effect in accordance with the regulation in question.

Revocation of Regulations

2. Except to the extent that these Regulations provide otherwise, the Regulations listed in Schedule 1 are revoked.

Membership before 1st April 2015

3.—(1) Notwithstanding the revocations effected by regulation 2, and subject to this regulation, the Regulations listed in Schedule 1 (other than regulation 3(4) of the e Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008⁽¹⁰⁾) continue to have effect so far as is necessary—

(a) so that membership accrued in the Earlier Schemes in respect of service before 1st April 2015, the pension rights accrued at that date, and any rights and obligations imposed on any person under those Schemes in relation to service before 1st April 2015, are preserved; and

(b) so that benefits are payable in accordance with these Regulations.

(2) In paragraph (1)(a) the expression “pension rights accrued” includes any right to any pension, lump sum, grant or other benefit due to or in respect of a member.

(3) A scheme manager responsible under regulation 2(2) of the 2014 Regulations (introductory) for the local administration of pensions and other benefits payable under those Regulations is also responsible for the administration of benefits pursuant to paragraph (1) of this regulation.

(4) Where a person has been an active member of the 2015 Scheme, and retirement benefits under paragraph (1) are payable to a member in accordance with regulation 11 of these Regulations (retirement benefits), the benefits paid from Earlier Schemes and the 2015 Scheme are, for all purposes, to be regarded as constituting a single pension scheme.

(5) But a retirement pension and any retirement grant payable to a member under paragraph (4) is subject to actuarial adjustment if it would have been subject to actuarial adjustment under the 2009

⁽⁸⁾ S.S.I. 2008/230.

⁽⁹⁾ 1993 c.48; section 1 has amendments which are not relevant to this instrument.

⁽¹⁰⁾ S.S.I. 2008/229.

Scheme, irrespective of whether retirement pension under the 2015 Scheme payable at the same time is subject to actuarial adjustment.

(6) Where a member who has not had a disqualifying break aggregates benefits from Earlier Schemes with benefits from the 2015 Scheme, the benefits from the Earlier Schemes other than additional pension under regulation 13 or 14 of the Benefits Regulations are payable as final salary benefits or, in the case of councillor members, career average pay benefits.

(7) A disqualifying break for the purposes of paragraph (6) is a continuous break in active membership of a public service pension scheme of more than five years.

(8) Where a person has not been an active member of the 2015 Scheme and has benefits under the Earlier Schemes, or has been an active member of the 2015 Scheme and has benefits under the Earlier Schemes which have not been aggregated with the benefits in the 2015 Scheme, the benefits payable as a consequence of paragraph (1) are payable in accordance with the Earlier Schemes as applied by this regulation.

(9) Any pensionable pay received or contribution paid by a member on or after 1st April 2015 which relates to work carried out before that date shall be dealt with in accordance with the 2009 Scheme.

(10) Any guidance issued by the Scheme Actuary in accordance with any provision in the Earlier Regulations is to be treated as actuarial guidance issued by the Scottish Ministers as defined in Schedule 1 to the 2014 Regulations and any reference to guidance issued by the Government Actuary in the Earlier Regulations is to be construed as a reference to actuarial guidance issued by the Scottish Ministers.

(11) Regulations 64 and 65 of the Administration Regulations (abatement) continue to have effect in relation to pensions in payment deriving from the Earlier Schemes regardless of when payment of those pensions commenced.

Statutory underpin

4.—(1) This regulation applies to a person who—

- (a) was an active member of the 2009 Scheme on 31st March 2012 and who on 1st April 2012 was 10 years or less from the normal retirement age applicable to the member under the 2009 Scheme;
- (b) was an active member immediately before the underpin date and who receives payment of benefits under the 2015 Scheme on or after the underpin date;
- (c) does not have a disqualifying break in service; and
- (d) has not, prior to the underpin date, drawn benefits under the 2014 Regulations in relation to an employment.

(2) The underpin date for the purposes of this regulation is the earliest of—

- (a) the date the member attained the normal retirement age applicable to the member under the 2009 Scheme;
- (b) the date the member ceased to be an active member (including through retirement on efficiency or redundancy grounds) of the 2015 Scheme with an immediate entitlement to a pension, including where—
 - (i) a member may elect to receive immediate payment of a pension under regulation 29(5) of the 2014 Regulations (early retirement) without the need for employer consent,
 - (ii) a member who, with the Scheme employer's consent, elects to receive immediate payment under regulation 29(5) of the 2014 Regulations (early retirement), and

- (iii) a member who, with the Scheme employer's consent, elects to receive immediate payment under regulation 29(6) of the 2014 Regulations (flexible retirement); or
 - (c) the date the member died in service.
- (3) A disqualifying break in service for the purposes of paragraph 1(c) is a continuous break after 31st March 2012 of more than five years in active membership of a public service pension scheme.
- (4) The active member's pension account is to be increased at the underpin date by the amount by which the underpin amount exceeds the assumed benefits on the underpin date.
- (5) The assumed benefits are calculated by assessing the benefits the member would have been entitled to under the 2015 Scheme if—
- (a) the member had paid contributions under regulation 9 of the 2014 Regulations (contributions) from 1st April 2015 to the underpin date but excluding—
 - (i) any period when the member was not an active member,
 - (ii) any period of absence from work with no pensionable pay in consequence of a trade dispute which the member has not covered by additional pension under regulation 16 of the 2014 Regulations (additional pension), and
 - (iii) any period of absence from work with permission with no pensionable pay otherwise than because of illness or injury, child-related leave or reserve forces service leave which the member has not covered by additional pension under regulation 16 of the 2014 Regulations (additional pension);
 - (b) the member had in the period between 1st April 2015 and the underpin date paid no additional contributions under—
 - (i) regulation 16 (additional pension contributions) of the 2014 Regulations, other than additional contributions paid under that regulation to cover a period of absence from work with no pensionable pay in consequence of a trade dispute or to cover a period of absence from work with permission with no pensionable pay otherwise than because of illness or injury, child-related leave or reserve forces service leave, or
 - (ii) regulation 17 (additional voluntary contributions) of the 2014 Regulations;
 - (c) the member had not been awarded additional annual pension under regulation 30 of the 2014 Regulations (award of additional pension) during that period;
 - (d) the Scheme had received no transfer value payment in respect of the member relating to rights accrued under a registered pension scheme or a European pensions institution;
 - (e) the revaluation adjustment⁽¹¹⁾ made to the active member's pension account had been made up to and including the beginning of the scheme year in which the member's underpin date fell; and
 - (f) the balance in the active member's account at the member's underpin date had been adjusted on account of any pension debit or Scheme pays election applicable to the member, with the adjustment being calculated in accordance with actuarial guidance issued by the Scottish Ministers.
- (6) The underpin amount is calculated by assessing the benefits the member would have been entitled to under the 2009 Scheme if—
- (a) the member had continued to accrue membership under the 2009 Scheme rather than benefits in the 2015 Scheme from 1st April 2015 to the underpin date;
 - (b) the period of membership taken into account for the purposes of sub-paragraph (a) were—

⁽¹¹⁾ Revaluation adjustment is defined in Schedule 1 to the 2014 Regulations.

- (i) the period during which the member has paid, or is treated as having paid, contributions under regulation 9 or 10 of the 2014 Regulations, plus
 - (ii) any period of unpaid absence due to industrial action, or absence from work with permission otherwise than because of illness or injury, child related leave or reserve forces service leave, if that period was covered by additional pension purchased under regulation 16 of the 2014 Regulations (additional contributions), plus
 - (iii) where the member's assumed benefits include an adjustment under regulation 37 of the 2014 Regulations (calculation of ill health pension amounts), any additional period of membership that would have been added to the member's total membership under regulation 20 of the Benefits Regulations (early leavers: ill-health) had that regulation applied at the underpin date;
- (c) the final pay was calculated in accordance with regulations 9 to 11 of the Benefits Regulations (calculation of final pay) or, in the case of a councillor member, career average pay was calculated in accordance with paragraph 1 of the Schedule to the Benefits Regulations, as if those Regulations were still in force at the underpin date; and
- (d) the member's benefits at the member's underpin date had been adjusted on account of any pension debit or a Scheme pays election applicable to the member, with the adjustment being calculated in accordance with actuarial guidance issued by the Scottish Ministers.

Membership of the 2015 Scheme

5.—(1) A person who is an active member of the 2009 Scheme in an employment immediately before 1st April 2015 becomes an active member of the 2015 Scheme on 1st April 2015 in that employment provided the person is eligible for membership of the 2015 Scheme on that date.

(2) Paragraph (1) does not apply to a person who ceases to be an active member on 31st March 2015 by virtue of regulation 11 of the Administration Regulations (ending of membership) and these Regulations apply to any such person as if that person is not an active member immediately before 1st April 2015.

(3) Notwithstanding regulation 3(3) of the 2014 Regulations (active membership), a person who is eligible to be an active member of the 2009 Scheme immediately before 1st April 2015 who is not a member of the 2009 Scheme, does not become a member of the 2015 Scheme on 1st April 2015 unless that date is the automatic enrolment date for that member.

(4) If any person has notified an employer under regulation 11(2) of the Administration Regulations before 1st April 2015 of a wish to leave the 2009 Scheme, but would not (apart from this paragraph) have ceased to be an active member immediately before 1st April 2015—

- (a) paragraph (1) does not apply to that person;
- (b) the person's active membership ceases on 31st March 2015; and
- (c) these Regulations apply to that person as if that person is not an active member immediately before 1st April 2015.

(5) A person who was a deferred member of one of the Earlier Schemes whose benefits under those Schemes have not come into payment and who becomes an active member of the 2015 Scheme by virtue of regulation 3(1) of the 2014 Regulations (active membership) without a disqualifying break, may choose, by notice in writing to the appropriate administering authority within 12 months of becoming a member of the 2015 Scheme, to be treated as if he or she had become an active member of the 2015 Scheme by virtue of paragraph (1).

(6) A disqualifying break for the purposes of paragraph (5) is a continuous break of more than five years in active membership of a public service pension scheme.

(7) A designation by a body of an employee or class of employees as being eligible for membership of the 2009 Scheme pursuant to regulations 3 (general eligibility for membership), 6 (admission agreements: further provisions), 7 (eligibility for membership of employees of other bodies not listed in Schedule 2) or 9(6) (further restrictions on eligibility: admission agreements with certain NHS bodies) of the Administration Regulations has effect as a designation as being eligible for membership of the 2015 Scheme.

Admission agreements

6.—(1) Any admission agreement entered into before 1st April 2015 continues to have effect after 31st March 2015 and employees of admission bodies designated before that date in accordance with an admission agreement as eligible for membership of the Local Government Pension Scheme are from 1st April 2015, subject to regulation 5(2) to (4), members of the 2015 Scheme by virtue of the agreement.

(2) Any indemnity, bond or guarantee provided in respect of an admission agreement entered into before 1st April 2015 has effect in relation to any liabilities whether incurred before or after that date.

(3) Any condition imposed before 1st April 2015 by the Scottish Ministers on an approval for the admission of a body to the Earlier Schemes continues to have effect and withdrawal of the approval by the Scottish Ministers where the condition is not met has effect as if approval for admission to the 2015 Scheme had been withdrawn.

Qualifying service for the 2015 Scheme

7.—(1) Any period of active membership in the Earlier Schemes which the member has at 31st March 2015 counts as qualifying service in the 2015 Scheme for the purposes of regulation 3(6)(a) and (c) of the 2014 Regulations (active membership).

(2) Any transfer value payment accepted into the Earlier Schemes counts as a transfer value payment into the 2015 Scheme for the purposes of regulation 3(6)(b), (c) and (d) of the 2014 Regulations (active membership).

(3) A transfer value payment made under the Earlier Schemes from a qualifying recognised overseas pension scheme counts as qualifying service in the 2015 Scheme for the purpose of regulation 3(6)(g) of the 2014 Regulations (active membership).

(4) A member of the 2015 Scheme who has a deferred benefit or a pension in payment under the Earlier Schemes is treated as having qualifying service for a period of 2 years for the purposes of regulation 3(6) of the 2014 Regulations (active membership).

Pensionable pay

8.—(1) For the purposes of regulation 20(1) of the 2014 Regulations (meaning of pensionable pay), no account is to be taken of any supplement paid in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the 2009 or 2015 Schemes.

(2) Notwithstanding regulation 20(2)(f) of the 2014 Regulations (meaning of pensionable pay: exclusions), a member's pensionable pay for the purposes of regulation 20(1) of those Regulations includes an amount in respect of a sum treated as the money value to the member of the provision of a motor vehicle or an amount paid in lieu of such provision, if the condition specified in regulation 12(8) of the 1998 Regulations (meaning of "pay": money value of provision of motor vehicle) is satisfied in relation to the member, unless the condition specified in regulation 12(9) of those Regulations is satisfied in relation to the member.

(3) For the purposes of calculating assumed pensionable pay under regulation 21 of the 2014 Regulations (assumed pensionable pay), if all or part of the periods referred to in paragraph (4)

of that regulation fall before 1st April 2015, the calculation must include the pensionable pay the member received before 1st April 2015 in relation to that period.

(4) Where these Regulations provide for final pay received after 31st March 2015 to be calculated under regulations 9 to 11 of the Benefits Regulations (calculation of final pay) or, in the case of a councillor member, career average pay received after 31st March 2015 to be calculated in accordance with paragraph 1 of the Schedule to the Benefits Regulations, if a member has a period of absence from work of the description in regulation 11(4)(b) or (c) of the 2014 Regulations (contributions during absence from work with permission or due to a trade dispute) and, on or after the commencement of that period of absence, has purchased additional pension under regulation 16 of the 2014 Regulations (additional pension contributions) equivalent to the pension that the member would have accrued but for the absence—

- (a) the member is treated as entitled to count the period of absence as a period of membership; and
- (b) the member is treated as receiving the pay that would have been received but for the absence.

Transfers

9.—(1) Where a transfer payment is received into the 2015 Scheme in respect of a person from a different public service pension scheme which includes a payment in respect of service before 1st April 2015 which would have entitled the person to final salary benefits in that scheme, such payment shall (except in the case of councillor members where entitlement is based on accrued pension) entitle that person in respect of that service to benefits under the 2015 Scheme as if they were payable as final salary benefits under the 2009 Scheme so long as the person in respect of whom the transfer payment is received has had no continuous break in active membership of any public service pension scheme of more than five years.

(2) Where a transfer payment is to be made to a registered pension scheme or qualifying recognised overseas pension scheme in respect of a member of the 2015 Scheme, that transfer payment shall include any benefits accrued by that member under the Earlier Schemes that are aggregated with the service under the 2015 Scheme.

(3) Where a transfer payment is received from a registered pension scheme which is not a public service pension scheme, or from a European Pensions Institution in respect of a member of the 2015 Scheme, if the relevant date in either case was before 1st April 2015, that transfer payment shall be dealt with by the appropriate administering authority as if it had been received in respect of membership of the 2009 Scheme.

(4) The relevant date for the purposes of paragraph (3) is the date on which the person first became an active member in the employment, or the date the transfer payment is received if more than 12 months later.

Interfund adjustments etc.

10.—(1) Paragraph (2) applies to a member in a fund—

- (a) who became an active member of the 2015 Scheme by virtue of regulation 5(1) of these Regulations (membership of the 2015 Scheme);
- (b) who subsequently became a deferred member or deferred refund member of the 2015 Scheme;
- (c) who becomes again an active member of the 2015 Scheme with no continuous break in active membership of any public service pension scheme of more than five years; and
- (d) where the deferred benefits or deferred refund benefits pursuant to sub-paragraph (b) are aggregated with the benefits accruing pursuant to sub-paragraph (c).

(2) A member falling within the description in paragraph (1) is entitled, notwithstanding the revocations effected by regulation 2 (revocation of Regulations)—

- (a) to have the pension rights accrued in respect of service before 1st April 2015 preserved by regulation 3 (membership before 1st April 2015) calculated as final salary benefits with final pay calculated under regulations 9 to 11 of the Benefits Regulations (calculation of final pay) or, where those preserved benefits accrued whilst a councillor member, calculated as career average pay benefits with career average pay calculated in accordance with paragraph 1 of the Schedule to the Benefits Regulations as if they were still in force; and
- (b) where the new period of active membership under paragraph (1)(c) is in a different fund, to have a payment made by the first administering authority to the subsequent administering authority in respect of those pension rights, calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(3) Paragraph (4) applies to a member in a fund—

- (a) who became an active member of the 2015 Scheme by virtue of regulation 5(1) (membership of the 2015 Scheme);
- (b) who subsequently became a deferred member of the 2015 Scheme;
- (c) who becomes again an active member of the 2015 Scheme with a continuous break in active membership of any public service pension scheme of more than five years; and
- (d) where the deferred benefits pursuant to sub-paragraph (b) are aggregated with the benefits accruing pursuant to sub-paragraph (c).

(4) A member falling within the description in paragraph (3) is entitled to a transfer value payment in relation to the deferred benefits to be credited to the member's active member account to purchase earned pension, with the transfer value payment and the amount of purchased earned pension being calculated in accordance with actuarial guidance issued by the Scottish Ministers and, where the new period of active membership under paragraph (3)(c) is in a different fund, the administering authority within whose fund the deferred benefits are held must make the transfer value payment to the administering authority within whose fund the benefits which are being aggregated are held.

(5) A member entitled to a refund of contributions from the Earlier Schemes, who becomes an active member of the 2015 Scheme, is entitled to a transfer value payment in relation to the benefits in respect of that membership, which is to be credited to the member's active member account to purchase earned pension, with the transfer value payment and the amount of purchased earned pension being calculated in accordance with actuarial guidance issued by the Scottish Ministers and, where the new period of active membership is in a different fund, the authority which has ceased to be the member's appropriate administering authority must make the transfer value payment to the authority that has become the member's appropriate administering authority.

(6) A member with deferred benefits relating to the Earlier Schemes, who did not become a member of the 2015 Scheme by virtue of regulation 5(1) (membership of the 2015 Scheme), but who subsequently becomes an active member of the 2015 Scheme, may elect to receive a transfer value payment in relation to the deferred benefits to be credited to the member's active member account to purchase earned pension, with the transfer value payment and the amount of purchased earned pension being calculated in accordance with actuarial guidance issued by the Scottish Ministers, and where the new period of active membership is in a different fund, the authority which has ceased to be the member's appropriate administering authority must make the transfer value payment to the authority that has become the member's appropriate administering authority.

(7) Where earned pension is purchased by a transfer value payment under paragraphs (4) to (6), regulation 3(1)(a) (membership before 1st April 2015) ceases to apply to the membership to which that transfer value payment relates.

(8) Where deferred benefits or a deferred refund under paragraph (1) arise from the cessation of a concurrent employment and the member continues as an active member in a continuing employment in which the member became an active member by virtue of regulation 5(1) (membership of the 2015 Scheme), the formula in regulation 14(4) (concurrent employments) or, as the case may be, regulation 41(4) (rights to return of contributions) of the Administration Regulations must be applied in order to determine the rights the member is entitled to for the purposes of paragraph (2).

(9) Where there is more than one continuing employment to which paragraph (8) applies, the member may, within 12 months of the date active membership in the concurrent employment ceased, make an election to the appropriate administering authority specifying which of the continuing employments the rights from the concurrent employment that has ceased are to be aggregated with and, in the absence of an election from the member, the administering authority must make the determination on the member's behalf.

(10) Where the deferred benefits or deferred refund under paragraph (1) arise from the cessation of variable-time employment and the new active membership is not variable-time employment, the formula in regulation 82(2) (changes of fund and variable-time employees) of the Administration Regulations must be applied in order to determine the rights to which the member is entitled for the purposes of paragraph (2).

Retirement benefits

11.—(1) A member who became an active member of the Scheme by virtue of regulation 5(1) (membership of the 2015 Scheme) must, upon drawing a retirement pension under regulation 29 (retirement pension), 34 (early payment of retirement pension on ill-health grounds: active members) or 36 (early payment of retirement pension on ill-health grounds: deferred members) of the 2014 Regulations, draw any aggregated benefits accrued in the 1998 Scheme and 2009 Scheme at the same time as those benefits accrued under the 2015 Scheme are drawn.

(2) A member who became an active member of the Scheme by virtue of regulation 5(1) (membership of the 2015 Scheme) must, if exercising the option in regulation 29(6) of the 2014 Regulations (flexible retirement), make a request to receive the benefits mentioned in paragraph (3) and such benefits may, with the member's employer's consent be paid to the member notwithstanding that the member has not retired.

(3) The benefits referred to in paragraph (2) are—

- (a) all of the aggregated benefits from the 1998 Scheme;
- (b) all, part or none of the aggregated benefits accrued under the 2009 Scheme;
- (c) all, part or none of the aggregated benefits accrued under the 2015 Scheme; and
- (d) any additional benefits, in accordance with actuarial guidance issued by the Scottish Ministers.

(4) For the purposes of paragraph (3), additional benefits are—

- (a) benefits from added years contracts entered into under regulation 54 of the 1998 Regulations (payments to increase total membership) or equivalent provisions in the other Earlier Schemes;
- (b) benefits under regulation 17(7) of the 2014 Regulations (additional voluntary contributions) or equivalent provisions in the Earlier Schemes;
- (c) additional pension purchased under regulation 16 of the 2014 Regulations (additional pension contributions) or regulation 20 of the Administration Regulations (payment of additional regular contributions) and regulation 14 of the Benefits Regulations (election in respect of additional pension);

- (d) additional pension awarded under regulation 30 of the 2014 Regulations (award of additional pension) or regulation 13 of the Benefits Regulations (power of employing authority to award additional pension).

Ill-health retirement

12.—(1) A member who qualifies for Tier 1 or Tier 2 benefits under the 2014 Regulations who would have benefited from the protection in regulation 20(5) of the Benefits Regulations (transitional protection for persons who were members immediately before 1st April 2009) if those Regulations had applied on the date the member's employment was terminated, is entitled to benefits equalling the higher of—

- (a) the Tier 1 or Tier 2 benefits, as the case may be, calculated under the 2014 Regulations and these Regulations; or
- (b) the benefits the member would have received under sub-paragraph (a) if the amount to be added under regulation 37(1) or (2) of the 2014 Regulations (calculation of ill-health pension amounts) were calculated by reference to the period that would have been added had regulation 27 of the 1998 Regulations (amounts of ill-health pension and grant) applied and if—
 - (i) the period of membership the member had accrued under the Earlier Schemes and the 2015 Scheme had counted as a period of membership of the 1998 Scheme,
 - (ii) the amount added under regulation 37(1) or (2) of the 2014 Regulations were calculated by reference to a 1/60th accrual rate

(2) The 2014 Regulations apply to a person in respect of whom benefits are paid under regulation 20(2) of the Benefits Regulations (early leavers: ill-health) as if that person were in receipt of Tier 1 Benefits under the 2014 Regulations.

(3) The 2014 Regulations apply to a person in respect of whom benefits are paid under regulation 20(3) of the Benefits Regulations as if that person were in receipt of Tier 2 Benefits under the 2014 Regulations.

(4) A certificate produced by an IRMP under the 2009 Scheme may be used for the purposes of making determinations under the 2015 Scheme.

(5) A person who has received an ill-health pension and grant under the Earlier Schemes, which for the purposes of this paragraph does not include the 2009 Scheme, is to be treated as if that person were in receipt of Tier 1 Benefits under the 2014 Regulations.

Lump sum commutation

13.—(1) Where a member elects to commute pension under regulation 32 of the 2014 Regulations (election for lump sum instead of pension) the member's benefits under the Earlier Schemes which are aggregated with the member's benefits under the 2015 Scheme are taken into account for the purposes of regulation 32(1) and (2) of the 2014 Regulations.

(2) In the case of a pensioner member of the 2015 Scheme with benefits under the Earlier Schemes and the 2015 Scheme which have been aggregated as is described in paragraph (1) and who commuted pension under regulation 32 of the 2014 Regulations, for the purposes of working out any entitlement to death grant or increases on any benefit in accordance with the Pensions (Increase) Act 1971⁽¹²⁾, the pension the member received is treated as having been reduced in the proportions described in paragraphs (3) and (4).

(12) 1971 c.56.

(3) Pension accrued under the 2015 Scheme is treated as reduced by that percentage of the amount of pension commuted which the amount of pre-commutation pension under the 2015 Scheme bears to the total pre-commutation pension.

(4) Pension accrued under the Earlier Schemes is treated as reduced by that percentage of the amount of the pension commuted which the amount of pre-commutation pension under the Earlier Schemes bears to the total pre-commutation pension.

Contributions

14.—(1) Notwithstanding the revocations effected by regulation 2 (revocation of Regulations), the Administration Regulations and the Benefits Regulations continue to have effect so far as is necessary to ensure that where—

- (a) a member has a period of absence from work which begins before 1st April 2015 and ends after that date, the period falling before 1st April 2015 is to be dealt with in accordance with those Regulations and the period falling after 31st March 2015 is to be dealt with in accordance with the 2014 Regulations; and
- (b) a member receives pensionable pay after 31st March 2015 which relates to a period prior to 1st April 2015, the member's contributions are payable on the pensionable pay as defined in regulation 5 of the Benefits Regulations (meaning of pensionable pay), as modified in the case of a councillor member by paragraph 1 of the Schedule to the Benefits Regulations, at the rate payable under those Regulations, and

any contributions that the member makes after 1st April 2015 in respect of the absence or that pay must be allocated according to the period to which they relate and benefits are accrued accordingly.

(2) A member entitled to a refund of contributions under regulation 18 of the 2014 Regulations (rights to return of contributions) who has paid contributions under the Earlier Schemes and has aggregated the periods in which those contributions were paid with membership of the 2015 Scheme, is entitled to a refund of the contributions paid to the Earlier Schemes in respect of that aggregated membership.

Additional contributions

15.—(1) Notwithstanding the revocations effected by regulation 2 (revocation of Regulations) the following regulations continue to have effect—

- (a) regulation 54 of the 1998 Regulations (payments to increase total membership) as it applies to a member who has elected before 1st April 2009 to make additional contributions to increase total membership by an additional period;
- (b) regulation 65(8) of the 1998 Regulations (elections as to use of accumulated value of AVCs prior to 30th June 2005) in respect of a person who made an election under regulation 59(10) of those Regulations (elections to pay AVCs) before 30th June 2005;
- (c) regulation 82 of the 1998 Regulations (discontinuance of additional contributions) in respect of a person to whom sub-paragraph (a) applies; and,
- (d) regulations 14 (election in respect of additional pension) and 14A (election to pay additional contributions: survivor benefits) of the Benefits Regulations and regulations 20, 21, 21A and 21B of the Administration Regulations (payment, discontinuance and use etc of additional contributions) as they apply to a member who has elected before 1st April 2015 to pay additional contributions under those regulations.

(2) Benefits accrued under the regulations preserved by paragraph (1) must be calculated using the normal retirement age under the 2009 Scheme.

(3) Notwithstanding regulation 17(11) of the 2014 Regulations (additional voluntary contributions), a person to whom regulation 5(1) (membership of the 2015 Scheme) applies who has had no continuous break in active membership of a public service pension scheme of more than five years, may elect not to transfer the realisable value in any deferred AVC account to an arrangement under regulation 17 of the 2014 Regulations.

Annual allowance

16.—(1) If a member gives the administering authority notice of joint and several liability under section 237B of the Finance Act 2004⁽¹³⁾ (liability of scheme administrator) in respect of the member's annual allowance charge after 1st April 2015, the administering authority may adjust the member's benefits accrued within the Earlier Schemes in accordance with actuarial guidance issued by the Scottish Ministers.

Survivor benefits

17.—(1) Except where regulation 10(4) (interfund adjustments etc: deferred members re-joining after five year break in membership) applies, survivor pensions in the case of a survivor of a person who became an active member of the 2015 Scheme by virtue of regulation 5(1) (membership of the 2015 Scheme) are calculated by adding together the 2009 Scheme survivor pension and the 2015 Scheme survivor pension.

(2) Subject to paragraphs (9) to (13), 2009 Scheme survivor pensions for the purposes of paragraph (1) are calculated under the 2009 Scheme, notwithstanding the revocations effected by regulation 2 (revocation of Regulations), taking account of the deceased member's membership up to 31st March 2015 but—

- (a) in the case of a death in service where a survivor benefit is payable under regulations 39 or 40 of the 2014 Regulations (survivor benefits for partners and children of active members), excluding any augmentation under regulation 20(2) of the Benefits Regulations (early leavers: ill-health); and
- (b) using final pay calculated in accordance with regulations 9 to 11 of the Benefits Regulations or, where the deceased was a councillor member, calculated in accordance with paragraph 1 of the Schedule to the Benefits Regulations (calculation of final pay), as if those Regulations were still in force.

(3) 2015 Scheme survivor pensions for the purposes of paragraph (1) are calculated in accordance with the 2014 Regulations.

(4) Subject to paragraphs (9) to (13), where—

- (a) a member did not accrue any membership in the 2015 Scheme but had pension rights under the Earlier Schemes; or
- (b) a member did accrue membership in the 2015 Scheme and has pension rights under the Earlier Schemes that have not been aggregated with the rights in the 2015 Scheme,

the survivor pensions in respect of the rights under the Earlier Schemes are calculated under the Earlier Schemes notwithstanding the revocations effected by regulation 2 (revocation of Regulations).

(5) Death grants in the case of a member who did not accrue any membership of the 2015 Scheme are calculated under the Earlier Schemes notwithstanding the revocations effected by regulation 2 of these Regulations (revocation of regulations).

(6) Subject to paragraph (7), death grants in the case of an active member who accrued any membership of the 2015 Scheme are calculated under regulation 38 of the 2014 Regulations (death

⁽¹³⁾ 2004 c.12. Section 237B was inserted by the Finance Act 2011 (c.11).

grants: active members) regardless of whether the member had accrued any membership of the Earlier Schemes (excluding membership deriving from a pension credit).

(7) In the case of an active member of the 2015 Scheme who is also a deferred or pensioner member of the Earlier Schemes, the death grant payable is the higher of—

- (a) the amount of death grant that would have been payable if regulations 32 and 35 of the Benefits Regulations (as amended by paragraphs 7 and 8 of the Schedule to the Benefits Regulations as appropriate) or the corresponding provisions under any of the other Earlier Regulations (death grants: deferred and pensioner members) still applied; and
- (b) the amount that would be payable under paragraph (6).

(8) Death grants in the case of a deferred or pensioner member of the 2015 Scheme who has membership accrued before 1st April 2015 are calculated by adding together the death grant calculated under the Earlier Schemes based on the membership accrued before 1st April 2015, and the death grant calculated under the 2015 Scheme based on membership after 31st March 2015.

(9) For the purposes of calculating eligibility of a person to survivor benefits under the 2009 Scheme and the other Earlier Schemes—

- (a) the definition of “eligible child” contained in Schedule 1 to the 2014 Regulations (interpretation) is substituted for the definition contained in regulation 26 of the Benefits Regulations (meaning of “eligible child”) and the corresponding provisions in the other Earlier Regulations; and
- (b) the definition of “cohabiting partner” contained in Schedule 1 to the 2014 Regulations (interpretation) is substituted for the definition of “nominated cohabiting partner” contained in regulation 25 of the Benefits Regulations (meaning of “nominated cohabiting partner”).

(10) Any calculation of the survivor pension payable under the Earlier Regulations to a person specified in paragraph (11) is only to take account of membership accrued by a member after 5th April 1988.

(11) The persons referred to in paragraph (10) are—

- (a) the surviving civil partner of a member where the civil partnership was entered into after the member’s active membership ceased;
- (b) the survivor of a female married—
 - (i) deferred member, or
 - (ii) pensioner member,where the marriage took place after the member’s active membership ceased;
- (c) the male survivor of a married same sex couple where the marriage took place after the member’s active membership ceased;
- (d) a cohabiting partner.

(12) Where a male deferred member or pensioner member marries and dies, any calculation of any survivor pension payable under the Earlier Regulations to a female survivor of the member is only to take account of membership accrued by the member after 5th April 1978.

(13) Membership for the purposes of paragraphs (10) to (12) includes—

- (a) any additional membership referred to in regulation 41(a) to (d) of the 1998 Regulations (reduction of some surviving spouse’s pensions) or equivalent provisions in the 2009 Scheme where—
 - (i) the surviving spouse or civil partner was married to or in a civil partnership at any time whilst the deceased was in active membership of the Scheme after 31st March 1972, or

- (ii) the cohabiting partner was cohabiting with the deceased at any time whilst the deceased was in active membership of the Scheme after 31st March 2009, and
- (b) for the purposes of any survivor pension payable to a cohabitee, any membership before 6th April 1988 which the member had purchased under regulation 14A of the Benefits Regulations and regulation 21B of the Administration Regulations.

The 85 year rule

18. Schedule 2 (which makes transitional provision relating to the so-called “85 year rule”) has effect.

Appropriate funds

19.—(1) The pension funds which are the appropriate funds for members of the 1998 Scheme or the 2009 Scheme who do not become members of the 2015 Scheme continue to be the appropriate funds for those members unless changed in accordance with the 2014 Regulations.

(2) Any direction given by the Scottish Ministers under paragraph 2B or 3 of Part 1 of Schedule 4 to the Administration Regulations (appropriate funds)(**14**) before 1st April 2015 continues to have effect notwithstanding the revocations effected by regulation 2 (revocation of Regulations).

Pension sharing

20.—(1) A valuation of benefits of a person who is a member of the 2015 Scheme shall, for the purposes of a pension sharing order which has an effective date on or after 1st April 2015, take account of any benefits the member has accrued in the Earlier Schemes.

(2) The beneficiary of an order of the type described in paragraph (1) is not to be credited with any benefits under the Earlier Schemes, but is entitled to a pension credit under the 2015 Scheme in compliance with the pension sharing order and calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(3) Where a pension sharing order requires a pension debit in respect of a percentage of a member’s pension benefits, any benefits accrued in the Earlier Schemes or 2015 Scheme shall be debited by the same percentage unless the order specifies otherwise, with the debit being calculated in accordance with actuarial guidance issued by the Scottish Ministers.

(4) Where a pension sharing order requires a pension debit in terms other than a percentage of a member’s pension benefits, the debit is to apply in proportion to the cash equivalent transfer value of the benefits accrued within the Earlier Schemes and the 2015 Scheme unless the order specifies otherwise.

Mis-sold personal pensions

21. Regulations 108 (provision of information and calculation of restitution payment) and 124 of the 1998 Regulations (credited periods for transferring members with mis-sold pension rights) are preserved so far as is necessary to ensure that administering authorities are under a duty to provide information requested to a prescribed person as to the restitution payment applicable to an individual, but no membership may be granted under the 1998 Scheme or the 2009 Scheme in relation to a restitution payment.

(14) Paragraph 2B was inserted and paragraph 3 amended by [S.S.I. 2012/347](#).

Scheme employers' obligations

22.—(1) Scheme employers must provide administering authorities with such information as administering authorities reasonably require to enable them to discharge their functions under these Regulations and any outstanding functions under the Earlier Regulations.

(2) An administering authority may give a written notice under regulation 68 of the 2014 Regulations (additional costs arising from Scheme employer's level of performance) where the additional costs incurred were as a result of the employer's level of performance in carrying out functions under the Administration or Benefits Regulations.

Decisions and adjudications of disagreements

23. Regulations 70 to 78 (decisions and adjudications) of the 2014 Regulations apply in respect of questions not finally determined by 1st April 2015 concerning the rights and liabilities of a person under the Earlier Schemes as they apply to questions under the 2015 Scheme.

Special cases

24.—(1) A person who was an active member of the 2009 Scheme on 31st March 2015 by virtue of or subject to the terms of any statutory provision which varied the application of the generality of any of the Earlier Regulations continues to be an active member in the 2015 Scheme from 1st April 2015 on the same terms as provided for in that Scheme, provided that person is eligible for membership on that date and, subject to this regulation, any variation of the application of any of those Regulations to that person applies in respect of the application of the 2014 Regulations to that person, with any necessary modifications.

(2) Subject to paragraph (4), the normal pension age in the 2015 Scheme for a person to whom paragraph (1) applies is the pensionable age of that person as specified from time to time in Schedule 4 to the Pensions Act 1995⁽¹⁵⁾ or if higher, 65, and any provisions in the Earlier Regulations which provide for references to normal pension age, or to a person's 65th birthday, to be construed as references to age 60, cease to have effect.

(3) Notwithstanding the revocations effected by regulation 2 (revocation of Regulations), regulation 38 (pension increases under the Pensions (Increase) Acts) of the Benefits Regulations and regulation 36 of the Administration Regulations (employer's payment following resolution to increase membership or award additional pension) continue to have effect.

(4) For a person to whom regulations 16A to 16D of the Benefit Regulations (normal retirement age: Learning and Teaching Scotland, Skills Development Scotland, Scottish Legal Complaints Commission, Social Care and Social Work Improvement Scotland) apply—

- (a) the normal pension age for the purposes of regulation 4 (statutory underpin) is age 60; and
- (b) regulation 18 and Schedule 2 (the 85 year rule) do not apply.

(5) The right, except if otherwise lost through a previous break in membership, in regulation 19(3) of the Benefits Regulations (notwithstanding paragraph (1)) is lost in the case of a break in membership after 1st April 2015.

(6) Notwithstanding the revocation of regulation 22 of the 1998 Transitional Regulations (former NHS scheme members) and regulation 128 of the 1998 Regulations (transport employees) by the 2009 Scheme Transitional Regulations, those regulations have effect as if they had never been revoked.

(15) 1995 c.26.

Pension increases under the Pensions (Increase) Acts

25.—(1) This regulation applies—

- (a) where an increase under the Pensions (Increase) Act 1971⁽¹⁶⁾ (“the 1971 Act”) or the Pensions (Increase) Act 1974⁽¹⁷⁾ (“the 1974 Act”) would have effect in relation to an increase payable by a Scheme employer before 1st April 1990; or
- (b) where the last Scheme employer was a relevant body.

(2) Where paragraph (1)(a) applies, Schedule 3 to the 1971 Act has effect in relation to the increase under the 1971 or 1974 Act.

(3) Where paragraph (1)(b) applies, the reference to “the last employing authority” in paragraph 1(2) of Schedule 3 to the 1971 Act is a reference to a relevant body where pension has become payable by reason of service with a relevant body.

(4) “Relevant body” in this regulation means—

- (a) an admission body which has made an admission agreement;
- (b) a body employing persons deemed to be in employment under regulation 128 of the 1998 Regulations (transport employees); or
- (c) a company under the control of a Scheme employer.

St Andrew’s House,
Edinburgh
21st August 2014

JOHN SWINNEY
A member of the Scottish Government

⁽¹⁶⁾ 1971 c.56.
⁽¹⁷⁾ 1974 c.9.