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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 141**

**The Local Government Pension  
Scheme (Scotland) Regulations 2018**

**PART 1**

**Membership, contributions and benefits**

*Preliminary Provisions*

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) Regulations 2018, and come into force on 1st June 2018.

(2) Regulations 18(7), 26(8), 29(11), 30(2), 40(13), 58(2), the definitions of “Club Memorandum”, “Club transfer” and “revaluation adjustment” in schedule 1 and paragraph 6 of schedule 5 have effect from 1st April 2015.

(3) Regulation 54(2) has effect from 5th April 2016.

(4) Regulation 56(2) and (4) has effect from 31st March 2016.

**Introductory**

2.—(1) These Regulations establish a scheme for the payment of pensions and other benefits to or in respect of persons employed by Scheme employers 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 (restriction on eligibility for active membership), 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;

*Status: Point in time view as at 01/06/2018.*

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(b) if employed by an admission body and designated, or belonging to a class of employees that is designated, by the admission body under the terms of an admission agreement as being eligible for active 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 3 months does not become a member on the day specified in paragraph (2) but becomes an active member on—

- (a) the person's automatic enrolment date;
- (b) the first day of the payment period following an application to become an active member; or
- (c) the first day of the payment period following an extension to the contract of employment to be for 3 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 becomes an active member in an employment—

- (a) on the first day of the payment period following the application to become an active member in that employment; or
- (b) 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 3 months treated as never having been a member), an active member has qualifying service for a period of 2 years if—

- (a) that member has spent 2 years as an active member;
- (b) a transfer value payment has been received in respect of rights accrued in a registered pension scheme or under a European pensions institution and the length of service in respect of which that person accrued benefits in that scheme or institution was 2 or more years;
- (c) the aggregate of the period the person has spent as an active member of the Scheme and of a registered pension scheme or European pensions institution in respect of which a transfer value payment has been received, is 2 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 contracted-out 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 paid to 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 value 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 86 (forfeiture of pension rights after conviction for employment-related offences).

#### Restriction on eligibility for active membership

4.—(1) Subject to paragraph (4), 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 an active member of the Scheme, unless that other scheme was made under section 7 of the Superannuation Act 1972 <sup>M1</sup>.

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

(3) A person may not become or remain an active member on or after the person's 75th birthday.

(4) 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>M2</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 <sup>M3</sup>);
- (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.

#### Marginal Citations

**M1** 1972 c.11.

**M2** The National Health Service Superannuation Scheme for Scotland is set up under section 10 of the Superannuation Act 1972. The current regulations are the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 20138 (S.S.I. 2013/174 amended by S.S.I. 2014/43 , S.S.I. 2014/154, S.S.I. 2015/95, S.S.I. 2015/96, 2016/98 and 2017/27 and the National Health Service

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Superannuation Scheme (Scotland) Regulations 2011 (S.S.I. 2011/117; as amended by S.S.I. 2011/173, S.S.I. 2011/364, S.S.I. 2012/69 and S.S.I. 2013/70, S.S.I. 2013/109 and S.S.I. 2013/168).  
**M3** 2002 asp 5.

### **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.

(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 3 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 the person—

- (a) has qualifying service for a period of at least 2 years;
- (b) is no longer an active member in relation to that employment;
- (c) has not started to receive any pension under the Scheme in relation to that employment; and
- (d) 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 was—

- (a) an active member;
- (b) a pension credit member; or
- (c) 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 <sup>M4</sup> 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).

**Marginal Citations**

M4 1999 c.30.

*Contributions***Contributions**

9.—(1) Subject to paragraph (6) 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 and at the commencement of each scheme year on the basis of the person's pensionable pay—

- (a) in accordance with the following table; and
- (b) having regard to guidance issued by 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 each year by any increase applied to pensions under the Pensions (Increase) Act 1971 <sup>M5</sup> and rounded down to the nearest £100; and
- (b) to be treated for the purposes of paragraph (3)(a) as if they were 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 Scheme employer must 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 Scheme employer shall inform the member of the contribution rate applicable to the member, and the date from which it is to be applied.

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

(6) An active member does not make contributions on or after the member's 75th birthday.

(7) 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.

(8) The active member's Scheme employer may decide the intervals at which the contributions are made.

(9) 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—

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- (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.

#### **Marginal Citations**

**M5** 1971 c.56.

#### **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, and the Scheme employer must notify the fund of the election.

(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 long-term 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 a description mentioned in paragraphs (1) to (3);
- (b) due to a trade dispute; or
- (c) with permission from the member's Scheme employer.

### **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 absence**

**15.—**(1) A Scheme employer must pay contributions on the assumed pensionable pay of an active member on child-related leave or on actual pay received if this is greater than assumed pensionable pay.

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(2) A Scheme employer must pay contributions in accordance with regulation 62(4) (employer's contributions) 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 (additional pension contributions) or regulation 17 (additional voluntary contributions) during reserve forces service leave;
- (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 shared parental 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) or regulation 17 (additional voluntary contributions) or, as appropriate, under an SCAVC under regulation 17, the employer contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions) remain payable if the relevant 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 must pay contributions under regulation 16(2)(e) or (4)(d) (shared cost additional pension contributions) to meet two thirds of the cost of the arrangement.

(6) The amount that a Scheme employer can be required to pay under paragraph (5) must 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 pensionable pay for the period of absence from work up to a maximum period of 36 months calculated in accordance with guidance to be issued by the Scottish Ministers where the amount of pensionable remuneration cannot readily be determined.

(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 regulation 10(1) the scheme employers' contribution shall remain at the full amount (100%) 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 a 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 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 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 account 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<sup>M6</sup> 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—

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- (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 (1) 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 shared parental 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)(contributions during absence or illness etc.) 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).

(18) Where the member elects to pay an APC to cover the amount of pension that would otherwise have accrued but for an absence of a description mentioned in regulation 11(4)(b) or (c), the amount of pension that would have accrued during that absence shall be calculated on the pensionable pay the member would have received but for the absence or in accordance with guidance to be issued by the Scottish Ministers where the amount of pensionable remuneration cannot readily be determined.

#### Marginal Citations

M6 1971 c.56.

#### 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>M7</sup> (“the AVC provider”), registered in accordance with that Act and administered in accordance with the Pensions Act 2004<sup>M8</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) If a member draws benefits under regulation 29(1), (2), (4), (5), (7), (11) to (13) (retirement benefits), regulation 34(1) (early payment of retirement pension on ill-health grounds: active members), regulation 36 (early payment of retirement pension on ill-health grounds: deferred 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).

(7) Where a member chooses to take some or all of the benefits referred to in paragraph (6) 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).

(8) Where a member chooses to take their benefits as an UFPLS, this may be paid from AVC funds, subject to the AVC provider's terms and conditions <sup>M9</sup>.

(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) 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.

(11) An active member may, by notifying his or her administering authority in writing, transfer into the member's AVC scheme constituted under this regulation the accumulated value of any other AVC scheme to which the member has subscribed.

(12) If—

- (a) an active member who is paying contributions to an AVC or SCAVC for the purpose of life assurance dies;
- (b) an active member who is paying contributions to an AVC or SCAVC other than for the purpose of life assurance dies;
- (c) a deferred member dies and has a deferred AVC account attached to the deferred member's pension account;
- (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 (6)(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 <sup>M10</sup> (special lump sum death benefits charge) is to be deducted from the payment due under paragraph (12).

(14) Regulations 67 (first instance decisions) and 86 (forfeiture of pension rights after conviction for employment-related offences) do not apply in relation to an annuity purchased under paragraph (6)(b)(ii) and regulation 19(1)(b) (exclusion of rights to return of contributions) does not apply to any AVCs paid by the member.

#### Marginal Citations

**M7** 2004 c.12.

**M8** 2004 c.35.

**M9** Section 166(1)(ba) of the Finance Act 2004, as inserted by paragraph 54 of schedule 1 of the [Taxation of Pensions Act 2014 \(c.30\)](#).

**M10** Section 206 was amended by [Finance Act 2011 \(c.11\)](#), [schedule 16\(1\)](#), paragraph 41, the [Finance Act 2013 \(c.29\)](#), [schedule 46\(4\)](#), paragraph 123, the [Taxation of Pensions Act 2014 \(c.30\)](#), section 2, [schedule 1\(1\)](#), paragraph 13 and schedule 2(2), paragraph 17 and the [Finance \(No. 2\) Act 2015 \(c.33\)](#), [section 21](#).

#### 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 2 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 3-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 5 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.

*Status: Point in time view as at 01/06/2018.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government Pension Scheme (Scotland) Regulations 2018. (See end of Document for details)*

(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) If a member dies before repayment of the deferred refund, these shall be treated as a lump sum death benefit for the purposes of Part 2 of schedule 29 of the Finance Act 2004 and taxed accordingly.

(8) 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>M11</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>M12</sup>.

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

#### Marginal Citations

**M11** 1993 c.48; section 61 was repealed by the Pensions Act 2014 (c.19), schedule 13(1), paragraph 37 and subject to savings in S.I. 2015/1502.

**M12** To which there are amendments which are not relevant to this instrument.

#### 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;
- (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 <sup>M13</sup>;
- (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 <sup>M14</sup>;
- (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 <sup>M15</sup>;
- (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 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 <sup>M16</sup>;
- (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.

**Marginal Citations**

**M13** [S.S.I. 2011/349](#).

**M14** [S.S.I. 2011/349](#).

**M15** [S.S.I. 2011/349](#).

**M16** [S.S.I. 2011/349](#).

**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) Subject to paragraphs (6) and (7), 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 3 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, respectively, 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;
- (v) if the member received no pensionable pay relating to that employment in the 12 weeks preceding the commencement of the pay period in which the absence commenced, assumed pensionable pay should be calculated on the pensionable pay the member received relating to that employment in the 3 months preceding the pay period in which they last received pensionable pay in that employment;

(b) where the member is paid otherwise than monthly—

- (i) the pensionable pay the member received relating to that employment in the 12 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;
- (v) if the member received no pensionable pay relating to that employment in the 12 weeks preceding the commencement of the pay period in which the absence commenced, assumed pensionable pay should be calculated on the pensionable pay the member received relating to that employment in the 3 months preceding the pay period in which they last received pensionable pay in that employment.



(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) Where the pensionable pay received by a member during the period specified in paragraph (4) (a)(i) or (4)(b)(i) was, in the opinion of the Scheme employer, materially higher or lower than that member normally received, for the purposes of this regulation the Scheme employer may substitute for the pensionable pay the member received a higher or lower level of pensionable pay to reflect the level of pensionable pay that the member would normally have received.

(7) Where any pensionable pay that has been received by a member includes fees of the kind listed in regulation 20(2)(o) (returning officer fees), for the purposes of this regulation the annual rate of pensionable pay relating to those fees for the period specified in paragraph (4)(a)(i) or (4)(b) (i) is the annual average of that pay during the 3 years preceding the date the ill-health retirement or death occurred.

(8) 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.

(9) 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) and 40(4) (b), (5)(b), (9)(b) and (10)(b) (survivor benefits: children of active members), the annual rate of assumed pensionable pay for an employment under regulation 99(2) (separate employments etc.), is the annual average pensionable pay the member received relating to that employment in the 3 years (or the period of membership in that employment, if less than 3 years) preceding the commencement of the pay period in which the ill-health retirement or death occurred.

### *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 2 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; and

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

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

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*Status: Point in time view as at 01/06/2018.*

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- (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 86 (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);
- (f) due to aggregation of the benefits in the account with a different account, it is no longer required;
- (g) a payment under regulation 33(1) has been made; or
- (h) the member's benefits are transferred to another fund under regulation 97.

(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 2 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 an active member with concurrent employments ceases an employment with entitlement to a deferred pension, the benefits in the deferred member's pension account must be aggregated with those in the on-going active member's pension account and, if there is more than one such account, the one chosen by the member, unless within—

- (a) 12 months of the date the concurrent employment ceased; or
- (b) such longer time as the Scheme employer in relation to the relevant on-going active member's pension account permits,

the member makes an election to the appropriate administering authority to retain the deferred member's pension account.

(8) Where a deferred member again becomes an active member, the benefits in the deferred member's pension account must be aggregated with those in the active member's pension account unless within—

- (a) 12 months of the active member's pension account being opened; or
- (b) such longer time as the Scheme employer in relation to that active member's pension account permits,

the member makes an election to the appropriate administering authority to retain the deferred member's pension account.

(9) 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.

(10) The option under paragraphs (7) and (8) to elect to retain the deferred member's pension account does not apply to a member who is the subject of a transfer—

- (a) to which the TUPE Regulations apply; or
- (b) which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

### 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 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;
- (f) an adjustment of a description mentioned in regulation 88 (adjustment of accounts following forfeiture etc);
- (g) an adjustment of the description mentioned in paragraph (10); or
- (h) an adjustment resulting from a certificate of protection.

(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—

*Status: Point in time view as at 01/06/2018.*

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- (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 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<sup>M17</sup> 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 2 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.

#### Marginal Citations

M17 1971 c.56.

#### 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 (if any) purchased under regulation 17(6)(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 82 (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 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 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 (if any) purchased under regulation 17(6)(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 82 (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 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—

- (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.

(8) If the member ceased to be an active member, became a deferred member and a pensioner member within the same Scheme year, the balance in the member's retirement pension account at the end of the Scheme year in which the retirement pension 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 retirement pension account was opened, in accordance with guidance issued by the Scottish Ministers.

**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(6)(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 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 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 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 82 (tax).

## *Benefits*

### **Retirement benefits**

29.—(1) Subject to paragraph (3), a member who attains normal pension age is entitled to immediate payment of a retirement pension without reduction if the member is not an employee in local government service in employment from which the benefits arise.

(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 is an employee in local government service on the day before attaining age 75 must have their retirement pension paid from age 75 even if the member remains in local government service beyond that age.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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 (6) or (7).

(10) In paragraphs (1) to (8) of this regulation the expression “member” means a member with qualifying service for a period of 2 years and does not include a pension credit member.

(11) Subject to paragraph (12), a pension credit member who attains normal pension age or who is, at the effective date of the pension sharing order, already at or over 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.

(12) 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.

(13) 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.

### 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, 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<sup>M18</sup> 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.

#### Marginal Citations

M18 1971 c.56.

### 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) The first pay period for which any retirement pension is payable in accordance with regulation 29(4) begins with the member's 75th birthday.

(3) Subject to paragraphs (4) and (5), 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

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appropriate administering authority to defer payment (but any such deferral shall not extend beyond the day before the member's 75th birthday).

(4) Where a member elects under regulation 29(3), (6), (12) or (13) 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.

(5) Where, in a written notice to the appropriate administering authority, a member elects under regulation 29(7) (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.

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

(7) A member may give a further notice under paragraph (4) altering the date specified in an earlier notice, but any such further notice must be given not less than 3 months before the beginning of the period specified in the further notice.

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

(9) 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.

(10) 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 the member makes a request 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 (including any revaluation adjustment), 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(6)(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 which the Pension Sharing Order applied has made an election under this regulation before the valuation date used when implementing the Pension Sharing Order; or
- (b) any additional pension purchased by the member under regulation 17(6)(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>M19</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>M20</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, 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.

#### Marginal Citations

- M19** 2004 c.12; section 164 was amended by the Finance Act 2008 (c.9), **schedule 29**, paragraph 1(2), the Finance Act 2009 (c.10), the Finance Act 2009 (c.10), **section 75(2)**, the Taxation of Pensions Act 2014 (c.30), **schedule 1(5)**, paragraph 85 and the Finance Act 2016 (c.24), **schedule 5**, paragraph 3(1).
- M20** S.I. 2009/1171; regulations 11 and 12 were amended by S.I. 2011/1751, the Finance Act 2014 (c.26), **section 42** and the Taxation of Pensions Act 2014 (c.30), **schedule 1(5)**, paragraph 73(3)..

### *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 2 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 normal pension age, 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 to whom paragraph (1) applies, 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 reaching normal pension age.

(5) A member is entitled to Tier 2 benefits if that member is likely to be able to undertake gainful employment before reaching normal pension age.

#### **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—

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- (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 before normal pension age.

(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 of 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 normal pension age,

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 appropriate administering authority 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 normal pension age.

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

**37.**—(1) Subject to paragraphs (5) and (6), 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 normal pension age, if that member had been treated as receiving assumed pensionable pay, calculated in accordance with regulation 21(4) (assumed pensionable pay) or, as appropriate regulation 21(7) 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 normal pension age on the date the member's employment was terminated.

(2) Subject to paragraphs (5) and (6), 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 normal pension age 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 normal pension age on the date the member made a request under regulation 36.
- (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 normal pension age; 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) 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, the appropriate administering authority shall pay a death grant.
- (2) The 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 of 3 times the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) or, as appropriate, regulation 21(9), as at the date of the member's death or, if higher, the aggregate of the amount of any death grant payable under regulation 41 (death grants: deferred members and pension credit members) and the amount of any death grant payable under regulation 44 (death grants: pensioner members).

##### **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).

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(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;
  - (v) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/160; and
  - (vi) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160;
- (b) a sum equivalent to 1/160th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) or, as appropriate, regulation 21(9), 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) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(a)(iii) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
  - (i) illness or injury;
  - (ii) child related leave; or
  - (iii) reserve forces special leave.

(6) 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 guidance issued by the Scottish Ministers.

(7) The revalued balance calculated under paragraph (6) 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 <sup>M21</sup> applied.

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

#### **Marginal Citations**

**M21** 1971 c.56.

### 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;
  - (v) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/320; and
  - (vi) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/320;
- (b) a sum equivalent to 1/320th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) or, as appropriate, regulation 21(9), 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;

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- (v) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/160; and
  - (vi) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160;
- (b) a sum equivalent to 1/160th of the member's annual assumed pensionable pay calculated in accordance with regulation 21(4) or, as appropriate, regulation 21(9), 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;
    - (v) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 39/240; and
    - (vi) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/240;
  - (b) a sum equivalent to 1/240th of the member's annual assumed pensionable pay, calculated in accordance with regulation 21(4) or, as appropriate, regulation 21(9), 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;
  - (v) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/120; and
  - (vi) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160;
- (b) a sum equivalent to 1/120th of the member's annual assumed pensionable pay, calculated in accordance with regulation 21(4) or, as appropriate, regulation 21(9), 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) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraphs (4)(a)(iii), (5)(a)(iii), (9)(a)(iii) and (10)(a)(iii) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—
- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
  - (b) an absence from work with permission with no pensionable pay, otherwise than because of—
    - (i) illness or injury;
    - (ii) child related leave; or
    - (iii) reserve forces special leave.
- (12) 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).
- (13) 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 guidance issued by the Scottish Ministers.
- (14) The revalued balance calculated under paragraph (13) 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 applied.

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

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

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*Status: Point in time view as at 01/06/2018.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government Pension Scheme (Scotland) Regulations 2018. (See end of Document for details)*

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- (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) 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 5.

### **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—

- (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 member's earned pension had accrued at a rate of 1/160th of pensionable pay;
- (e) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/160; and
- (f) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160.

(5) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(c) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
  - (i) illness or injury;
  - (ii) child related leave; or
  - (iii) reserve forces special leave.

(6) 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 guidance issued by the Scottish Ministers.

(7) Where—

- (a) paragraph (6) applies, the revalued balance calculated under paragraph (6) is the opening balance of the survivor member's pension account for the following Scheme year;
- (b) paragraph (6) 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 <sup>M22</sup> applied.

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

#### Marginal Citations

M22 1971 c.56.

#### 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 member's earned pension had accrued at a rate of 1/320th of pensionable pay;
- (e) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/320; and
- (f) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/320.

(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;

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*Changes to legislation: There are currently no known outstanding effects for the The Local Government Pension Scheme (Scotland) Regulations 2018. (See end of Document for details)*

- (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 member's earned pension had accrued at a rate of 1/160th of pensionable pay;
  - (e) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/160; and
  - (f) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160.
- (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 member's earned pension had accrued at a rate of 1/240th of pensionable pay;
  - (e) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/240; and
  - (f) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/240.
- (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 member's earned pension had accrued at a rate of 1/120th of pensionable pay;
  - (e) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/120; and
  - (f) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/120.
- (11) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(c) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—
- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
  - (b) an absence from work with permission with no pensionable pay, otherwise than because of—
    - (i) illness or injury;
    - (ii) child related leave; or
    - (iii) reserve forces special leave.
- (12) 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.
- (13) 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 guidance issued by the Scottish Ministers.
- (14) Where—
- (a) paragraph (13) applies, the revalued balance calculated under paragraph (13) is the opening balance of the survivor member's pension account for the following Scheme year;
  - (b) paragraph (13) 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 applied.

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

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

(2) The 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 the amount of 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 the amount of 10 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.

### **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 (including any amount added under regulations 37(1)(a) or 37(2)(a) (enhancement of member's Tier 1 and Tier 2 benefits)) 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 49/160 of any additional pension purchased under regulation 17(7)(b) (i) (additional voluntary contributions) which included provision for a survivor's pension;
- (f) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had been multiplied by 49/160; and
- (g) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160.

(5) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(d) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
  - (i) illness or injury;
  - (ii) child related leave; or
  - (iii) reserve forces special leave.

(6) 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 guidance issued by the Scottish Ministers.

(7) Where—

- (a) paragraph (6) applies, the revalued balance calculated under paragraph (6) is the opening balance of the survivor member's pension account for the following Scheme year;
- (b) paragraph (6) 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 <sup>M23</sup> applied.

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

#### Marginal Citations

M23 1971 c.56.

### 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 (including any amount added under regulations 37(1)(a) or 37(2)(a) (enhancement of member's Tier 1 and Tier 2 benefits)) had accrued at a rate of 1/320th of pensionable pay;
- (b) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had 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);

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- (f) the pension included 49/320 of any additional pension purchased under regulation 17(6)(b) (i) (additional voluntary contributions) which included provision for a survivor's pension; and
  - (g) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/320.
- (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 on the date of the member's death if—
- (a) the member's earned pension (including any amount added under regulations 37(1)(a) or 37(2)(a) (enhancement of member's Tier 1 and Tier 2 benefits)) had accrued at a rate of 1/160th of pensionable pay;
  - (b) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had 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);
  - (f) the pension included 49/160 of any additional pension purchased under regulation 17(6)(b) (i) (additional voluntary contributions) which included provision for a survivor's pension; and
  - (g) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/160.
- (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 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 (including any amount added under regulations 37(1)(a) or 37(2)(a) (enhancement of member's Tier 1 and Tier 2 benefits)) had accrued at a rate of 1/240th of pensionable pay;
  - (b) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had 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);
  - (f) the pension included 49/240 of any additional pension purchased under regulation 17(6)(b)(i) (additional voluntary contributions) which included provision for a survivor's pension; and
  - (g) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/240.
- (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's earned pension (including any amount added under regulations 37(1)(a) or 37(2)(a) (enhancement of member's Tier 1 and Tier 2 benefits)) had accrued at a rate of 1/120th of pensionable pay;
  - (b) the amount of any earned pension credited under regulation 96(1) (effect of acceptance of transfer value) had 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);
  - (f) the pension included 49/120 of any additional pension purchased under regulation 17(6)(b)(i) (additional voluntary contributions) which included provision for a survivor's pension; and
  - (g) the amount of any pension credited under regulation 4(4) (underpin) of the Transitional Provisions and Savings Regulations 2014 had been multiplied by 60/120.
- (11) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraphs (4)(e), (5)(e), (9)(e) and (10)(e) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—
- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
  - (b) an absence from work with permission with no pensionable pay, otherwise than because of—
    - (i) illness or injury;
    - (ii) child related leave; or
    - (iii) reserve forces special leave.
- (12) 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.

*Status: Point in time view as at 01/06/2018.*

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(13) 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 guidance issued by the Scottish Ministers.

(14) Where—

- (a) paragraph (13) applies, the revalued balance calculated under paragraph (13) is the opening balance of the survivor member's pension account for the following Scheme year;
- (b) paragraph (13) 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 <sup>M24</sup> applied.

(15) For the purposes of paragraphs (4)(a), (5)(a), (9)(a) and (10)(a), earned pension also includes any amount awarded under regulations 37(1)(a) or (2)(a).

#### **Marginal Citations**

**M24** 1971 c.56.

### *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 2 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 3 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 <sup>M25</sup>.

#### **Marginal Citations**

**M25** 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 of the Finance Act 2004 <sup>M26</sup> and Schedule 6 to the Finance Act 2014 and, where applicable, is to include primary protection, enhanced protection, individual protection or fixed protection within the meaning of those provisions <sup>M27</sup>.

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

#### Marginal Citations

**M26** 2004 c.12; section 218 was amended by the Finance Act 2011 (c.11), **schedule 8**, paragraph 2, the Finance Act 2013 (c.29), **schedule 22**, paragraph 6 and the Finance Act 2016 (c.24), **section 19**. There are numerous amendments to Schedule 36 which are not relevant to these regulations. See, however, amendments made by Part 2 of Schedule 4 to the Finance Act 2016 for individual protection.

**M27** For definitions, see **paragraph 9(5)** of schedule 4 of the Finance Act 2016 (c.24).

#### 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 5 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>M28</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.

#### Marginal Citations

**M28** 1993 c.48; section 14 was amended by the Proceeds of Crime Act 2002 (c.29), **schedule 11**, paragraph 22, the Pensions Act 1995 (c.26), **schedule 5**, paragraph 29 and schedule 7, paragraph 1, and the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), **schedule 1**, paragraph 38.

## **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.

## **PART 2**

### **Administration**

#### *Administering authorities*

#### **Scheme managers**

**51.**—(1) The bodies listed in schedule 3, referred to in these Regulations as “administering authorities”, must maintain a pension fund for the Scheme.

(2) An administering authority is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate administering authority under these Regulations.

(3) The appropriate fund in relation to a person who is or has been a member of the Scheme, or is entitled to any benefit in respect of a person who is or has been a member of the Scheme, is the fund specified in schedule 4 in relation to that person.

#### **Admission agreement funds**

**52.**—(1) An administering authority which has made an admission agreement may establish a further pension fund (an “admission agreement fund”) in addition to the fund maintained under regulation 51(1) (Scheme managers) (“the main fund”).

(2) Immediately after an administering authority establishes an admission agreement fund, it must give the Scottish Ministers written notice that it has done so.

(3) The notice must specify the admission bodies whose employees are eligible for benefits from the admission agreement fund.

(4) Where an admission agreement fund is established—

- (a) the liabilities of the main fund as respects membership relating to employment with those specified bodies become liabilities of the admission agreement fund; and
- (b) assets of such value as an actuary appointed by the appropriate administering authority determines to be appropriate must be transferred from the main fund to the admission agreement fund.

(5) When valuations under regulation 60 (actuarial valuations of pension funds) of both the main fund and the admission agreement fund are first obtained after the admission agreement fund is established, the administering authority must obtain from the actuary appointed by the authority—

- (a) a transfer statement; and
- (b) a rates and adjustment certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for its main fund.

(6) The transfer statement must specify whether, in the actuary's opinion, there is a need for further assets to be transferred from the main fund to the admission agreement fund and, if so, their value.

(7) Where the transfer statement specifies that assets of a specified value need to be transferred, the administering authority must arrange for assets of that value to be transferred as soon as is reasonably practicable.

#### Administering authorities: governance compliance statement

53.—(1) An administering authority must prepare a written statement setting out—

- (a) whether the authority delegates its functions, or part of its functions under these Regulations to a committee, a sub-committee or an officer of the authority;
- (b) if the authority does so—
  - (i) the terms, structure and operational procedures of the delegation;
  - (ii) the frequency of any committee or sub-committee meetings;
  - (iii) whether such a committee or sub-committee includes representatives of Scheme employers or members, and if so, whether those representatives have voting rights;
- (c) the extent to which a delegation, or the absence of a delegation, complies with guidance given by the Scottish Ministers and, to the extent that it does not so comply, the reasons for not complying; and
- (d) details of the terms, structure and operational procedures relating to the local pension board established under regulation 5 (pension boards) of the Governance Regulations.

(2) An administering authority must keep a statement prepared under paragraph (1) under review, and make such revisions as are appropriate, following a material change to any of the matters mentioned in that paragraph.

(3) Before preparing or revising a statement under this regulation, an administering authority must consult such persons as it considers appropriate.

(4) An administering authority must publish its statement under this regulation, and any revised statement.

#### Accounts and audit

54.—(1) After any of its pension funds has been audited, an administering authority must immediately send copies of the following to each body whose employees are active members—

- (a) a summary of the revenue account and balance sheet of the fund; and
- (b) any report by the auditor.

(2) The pension input period for the purposes of section 238 of the Finance Act 2004<sup>M29</sup> is the year ending on 5th April 2016 and each year ending on 5th April after that year.

#### Marginal Citations

M29 2004 c.12; section 238 was amended by the Finance Act 2011 (c.11), schedule 17(1), paragraph 16 and the Finance No. 2 Act 2015 (c.33), schedule 4(1), paragraph 2.

#### Strategies, statements and reports

#### Pension fund annual report

55.—(1) An administering authority must, in relation to each year beginning on 1st April 2015 and each subsequent year, prepare a document (“the pension fund annual report”) which contains—

*Status: Point in time view as at 01/06/2018.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government Pension Scheme (Scotland) Regulations 2018. (See end of Document for details)*

- (a) a report about the management and financial performance during the year of each of the pension funds maintained by the authority;
  - (b) a report explaining the authority's investment policy for each of those funds and reviewing the performance during the year of the investments of each fund;
  - (c) a report of the arrangements made during the year for the administration of each of those funds;
  - (d) for each of those funds, a statement by the actuary who carried out the most recent valuation of the assets and liabilities of the fund in accordance with regulation 60 (actuarial valuations of pension funds), of the level of funding disclosed by that valuation;
  - (e) the current version of the statement under regulation 53 (governance compliance statement);
  - (f) for each of the funds, the fund account and net asset statement with supporting notes and disclosures prepared in accordance with proper practices;
  - (g) an annual report dealing with—
    - (i) the extent to which the authority and the Scheme employers in relation to which it is the administering authority have achieved any levels of performance set out in a pension administration strategy in accordance with regulation 57 (pension administration strategy); and
    - (ii) such other matters arising from a pension administration strategy as it considers appropriate;
  - (h) the current version of the statement referred to in regulation 56 (funding strategy statement);
  - (i) the current version of the statement under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 2010 (statement of investment principles) <sup>M30</sup>;
  - (j) the current version of the statement under regulation 59 (statements of policy concerning communications with members and Scheme employers); and
  - (k) any other material which the authority considers appropriate.
- (2) The authority must publish the pension fund annual report or details of where it may be obtained on or before 1st December following the Scheme year end.
- (3) In preparing and publishing the pension fund annual report, the authority must have regard to guidance given by the Scottish Ministers.

#### **Marginal Citations**

**M30** S.S.I. 2010/233.

#### **Funding strategy statement**

**56.**—(1) An administering authority must, after consultation with such persons as it considers appropriate, prepare, maintain and publish a written statement setting out its funding strategy.

(2) The statement must be published no later than 31st March 2016.

(3) The authority must keep the statement under review and, after consultation with such persons as it considers appropriate, make such revisions as are appropriate following a material change in its policy set out in the statement, and if revisions are made, publish the statement as revised.

(4) In preparing, maintaining and reviewing the statement, the administering authority must have regard to—

- (a) the guidance set out in the current version of the document published by the Chartered Institute of Public Finance and Accountancy (“CIPFA”) and called “Preparing and maintaining a Funding Strategy Statement in the Local Government Pension Scheme”<sup>M31</sup>; and
- (b) the statement of investment principles published by the administering authority under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 2010.

**Marginal Citations**

**M31** ISBN: 9781845083359; copies may be obtained from CIPFA at 77 Mansell Street, London E1 8AN.

**Pension administration strategy**

57.—(1) An administering authority may prepare a written statement of the authority's policies in relation to such of the matters mentioned in paragraph (2) as it considers appropriate (“its pension administration strategy”) and, where it does so, paragraphs (3) to (7) apply.

(2) The matters are—

- (a) procedures for liaison and communication with Scheme employers in relation to which it is the administering authority (“its Scheme employers”);
- (b) the establishment of levels of performance which the administering authority and its Scheme employers are expected to achieve in carrying out their Scheme functions by—
  - (i) the setting of performance targets;
  - (ii) the making of agreements about levels of performance and associated matters; or
  - (iii) such other means as the administering authority considers appropriate;
- (c) procedures which aim to secure that the administering authority and its Scheme employers comply with statutory requirements in respect of those functions and with any agreement about levels of performance;
- (d) procedures for improving the communication by the administering authority and its Scheme employers to each other of information relating to those functions;
- (e) the circumstances in which the administering authority may consider giving written notice to any of its Scheme employers under regulation 65 (additional costs arising from Scheme employer's level of performance) on account of that employer's unsatisfactory performance in carrying out its Scheme functions when measured against levels of performance established under sub-paragraph (b);
- (f) the publication by the administering authority of annual reports dealing with—
  - (i) the extent to which that authority and its Scheme employers have achieved the levels of performance established under sub-paragraph (b); and
  - (ii) such other matters arising from its pension administration strategy as it considers appropriate; and
- (g) such other matters as appear to the administering authority after consulting its Scheme employers and such other persons as it considers appropriate, to be suitable for inclusion in that strategy.

(3) An administering authority must—

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- (a) keep its pension administration strategy under review; and
  - (b) make such revisions as are appropriate following a material change in its policies in relation to any of the matters contained in the strategy.
- (4) In preparing or reviewing and making revisions to its pension administration strategy, an administering authority must consult its Scheme employers and such other persons as it considers appropriate.
- (5) An administering authority must publish—
- (a) its pension administration strategy; and
  - (b) where revisions are made to it, the strategy as revised.
- (6) Where an administering authority publishes its pension administration strategy, or that strategy as revised, it must send a copy of it to each of its Scheme employers and to the Scottish Ministers as soon as is reasonably practicable.
- (7) An administering authority and its Scheme employers must have regard to its pension administration strategy when carrying out their functions under these Regulations.
- (8) In this regulation references to the functions of an administering authority include, where applicable, its functions as a Scheme employer.

#### **Statements of policy about exercise of discretionary functions**

**58.**—(1) A Scheme employer must prepare a written statement of its policy in relation to the exercise of its functions under regulations—

- (a) 16(2)(e) and 16(4)(d) (funding of additional pension);
- (b) 29(7) (flexible retirement);
- (c) 29(9) (waiving of actuarial reduction); and
- (d) 30 (award of additional pension),

and an administering authority must prepare such a statement in relation to the exercise of its functions under regulation 29(9) in cases where a former employer has ceased to be a Scheme employer.

(2) Each Scheme employer must send a copy of its statement to each relevant administering authority before 1st July 2015 and must publish its statement.

(3) A body required to prepare a statement under paragraph (1) must—

- (a) keep its statement under review; and
- (b) make such revisions as are appropriate following a change in its policy.

(4) Before the expiry of a month beginning with the date any such revisions are made, each Scheme employer must send a copy of its revised statement to each relevant administering authority, and must publish its statement as revised.

(5) In preparing, or reviewing and making revisions to its statement, a body required to prepare a statement under paragraph (1) must have regard to the extent to which the exercise of the functions mentioned in paragraph (1) in accordance with its policy could lead to a serious loss of confidence in the public service.

(6) In this regulation a relevant administering authority, in relation to a Scheme employer, is any authority which is an appropriate administering authority for that employer's employees.



## **Statements of policy concerning communications with members and Scheme employers**

**59.**—(1) An administering authority must prepare, maintain and publish a written statement setting out its policy concerning communications with—

- (a) members;
- (b) representatives of members;
- (c) prospective members; and
- (d) Scheme employers.

(2) In particular the statement must set out its policy on—

- (a) the provision of information and publicity about the Scheme to members, representatives of members and Scheme employers;
- (b) the format, frequency and method of distributing such information or publicity; and
- (c) the promotion of the Scheme to prospective members and their employers.

(3) The statement must be revised and published by the administering authority following a material change in their policy on any of the matters referred to in paragraph (2).

## *Actuarial valuations*

### **Actuarial valuations of pension funds**

**60.**—(1) An administering authority must obtain—

- (a) an actuarial valuation of the assets and liabilities of each of its pension funds as at 31st March 2020 and on 31st March in every third year afterwards;
- (b) a report by an actuary in respect of the valuation; and
- (c) a rates and adjustments certificate prepared by an actuary.

(2) Each of those documents must be obtained before the first anniversary of the date (“the valuation date”) as at which the valuation is made or such later date as the Scottish Ministers may agree.

(3) A report under paragraph (1)(b) must contain a statement of the demographic assumptions used in making the valuation; and the statement must show how the assumptions relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(4) A rates and adjustments certificate is a certificate specifying—

- (a) the primary rate of the employer's contribution; and
- (b) the secondary rate of the employer's contribution,

for each year of the period of 3 years beginning with 1st April in the year following that in which the valuation date falls.

(5) The actuary must have regard to—

- (a) the existing and prospective liabilities arising from circumstances common to all those bodies;
- (b) the desirability of maintaining as nearly constant a primary rate as possible;
- (c) the current version of the administering authority's funding strategy mentioned in regulation 56 (funding strategy statements); and
- (d) the requirement to secure the solvency of the pension fund and the long term cost efficiency of the Scheme, so far as relating to the pension fund.

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(6) A rates and adjustments certificate must contain a statement of the assumptions on which the certificate is given as respects—

- (a) the number of members who will become entitled to payment of pensions under the provisions of the Scheme; and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(7) The administering authority must provide the actuary preparing a valuation or a rates and adjustments certificate with the consolidated revenue account of the fund and such other information as the actuary requests.

(8) In this regulation—

- (a) the primary rate of an employer's contribution is the amount in respect of the cost of future accruals which, in the actuary's opinion, should be paid to a fund by all bodies whose employees contribute to it so as to secure its solvency, expressed as a percentage of the pay of their employees who are active members; and
- (b) the secondary rate of an employer's contributions is any percentage or amount by which, in the actuary's opinion, contributions at the primary rate should, in the case of a Scheme employer, be increased or reduced by reason of any circumstances peculiar to that employer.

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

**61.**—(1) Subject to paragraph (3), if a person—

- (a) ceases to be a Scheme employer (including ceasing to be an admission body participating in the Scheme); or
- (b) is or was a Scheme employer, but, irrespective of whether that employer employs active members contributing to one or more other funds, no longer has an active member contributing towards a fund which has liabilities in respect of benefits in respect of current and former employees of that employer,

that person becomes “an exiting employer” in relation to the relevant fund for the purposes of this regulation and is liable to pay the exit payment or to receive the exit credit.

(2) When a person becomes an exiting employer, the appropriate administering authority must obtain—

- (a) an actuarial valuation as at the exit date of the liabilities of the fund in respect of benefits in respect of the exiting employer's current and former employees; and
- (b) a revised rates and adjustments certificate showing the exit payment due from the exiting employer, or exit credit payable to the exiting employer, in respect of those benefits.

(3) An administering authority may by written notice (“suspension notice”) to an employer suspend that employer's liability to pay an exit payment starting from the date when that employer would otherwise become an exiting employer.

(4) If an administering authority serves a suspension notice the employer must continue to make such contributions towards the liabilities of the fund in respect of benefits for the employer's current and former employees until a new and satisfactory valuation is carried out and the suspension notice is withdrawn.

(5) Where for any reason it is not possible to obtain all or part of the exit payment due from the exiting employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the exiting employer, the administering authority must obtain a further revision of any rates and adjustments certificate for the fund showing—

- (a) in the case where a body is an admission body falling within paragraph 1(d) of Part 2 of schedule 2 of these Regulations (Scheme employers: bodies providing services as a result of transfer of a service), the revised contribution due from the body which is the related employer in relation to that admission body; and
- (b) in any other case, the revised contributions due from each Scheme employer which contributes to the fund,

with a view to providing that assets equivalent to the exit payment due from the exiting employer are provided to the fund over such period of time as the administering authority considers reasonable.

(6) Where in the opinion of an administering authority there are circumstances which make it likely that a Scheme employer (including an admission body) will become an exiting employer, the administering authority may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary's opinion—

- (a) the contribution at the primary rate should be adjusted; or
- (b) any prior secondary rate adjustment should be increased or reduced,

with a view to providing that assets equivalent to the exit payment that will be due from the Scheme employer are provided to the fund by the likely exit date or, where the Scheme employer is unable to meet that liability by that date, over such period of time thereafter as the administering authority considers reasonable.

(7) When an exiting employer has paid the exit payment into the appropriate fund (or received the exit credit), no further payments are due from that employer in respect of any liabilities relating to the benefits in respect of any current or former employees of that employer as a result of these Regulations.

(8) Paragraph (7) applies where—

- (a) a Scheme employer agrees to pay increased contributions to meet the cost of an award of additional pension under regulation 30 (award of additional pension); or
- (b) it appears likely to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with a Scheme employer exceeds the amount specified, or likely as a result of the assumptions stated, for that authority, in a rates and adjustments certificate by virtue of regulation 60(6) (actuarial valuations of pension funds: assumptions).

(9) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that Scheme employer.

(10) For the purposes of this regulation—

“exiting employer” means an employer of any of the descriptions specified in paragraph (1);

“exit payment” means the amount as set out in the rates and adjustments certificate referred to in sub-paragraph (2)(b) required to be paid by the exiting employer over such period of time as the administering authority considers reasonable, to meet the liabilities specified in paragraph (2);

“exit credit” means the amount required to be paid to the exiting employer by the administering authority to meet the excess of assets in the fund relating to that employer over the liabilities specified in paragraph (2)(a);

“exit date” means the date on which the employer becomes an exiting employer; and

“related employer” means any Scheme employer or other such contracting body which is a party to the admission agreement (other than an administering authority in its role as an administering authority).

## *Payments*

### **Employer's contributions**

**62.**—(1) A Scheme employer must contribute to the appropriate fund in each year covered by a rates and adjustment certificate under regulation 60 (actuarial valuations of pension funds) or 61 (special circumstances where revised actuarial valuations and certificates must be obtained) the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).

(2) During each of those years a Scheme employer must make payments to the appropriate fund on account of the amount required for the whole year.

(3) Those payments on account must—

- (a) be paid at the end of the intervals determined under regulation 64 (payment by Scheme employers to administering authorities); and
- (b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.

(4) An employer's contribution for any year is the primary percentage for that year of—

- (a) the pensionable pay on which contributions have been paid into the fund by active members in accordance with regulations 9 to 12, 14 and 15 (contributions), except where sub-paragraph (b) applies; and
- (b) the assumed pensionable pay in respect of members on leave due to sickness or injury on reduced contractual pay or no pay or on child-related leave,

increased or reduced by any secondary rate adjustments specified for that employer for that year in the rates and adjustments certificate except where actual pay received during child-related leave is greater than assumed pensionable pay.

(5) The primary percentage is the primary rate of the employer's contribution specified in that certificate expressed as a percentage of the pay of its employees who are active members.

(6) A Scheme employer must also pay into the appropriate fund in each year any employer contributions made under regulation 16 (additional pension contributions).

### **Employer's further payments**

**63.**—(1) Any extra charge on the appropriate fund resulting from a member becoming entitled to benefits under regulation 34 (early payment of retirement pension on ill-health grounds) must be paid into the fund by the Scheme employer concerned.

(2) An administering authority may require the Scheme employer concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund resulting from retirements benefits becoming immediately payable to a member under regulation 29(6) (early retirement) or under regulation 29(7) (flexible retirement) or (8) (early leavers on grounds of redundancy or business efficiency), including the cost as calculated by an actuary appointed by the administering authority, as a result of a waiver of any reduction under regulation 29(9).

(3) Other than where regulation 61(6) (special circumstances where revised actuarial valuations and certificates must be obtained) applies, a Scheme employer making an award under regulation 30 (award of additional pension) must pay a sum into the appropriate fund to meet the cost of any additional pension, in accordance with actuarial guidance issued by the Scottish Ministers.

### Payment by Scheme employers to administering authorities

64.—(1) Every Scheme employer must pay to the appropriate administering authority on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine—

- (a) all amounts received from time to time from employees under regulations 9 to 14 and 16 (contributions);
- (b) any charge payable under regulation 63 (employer's further payments) of which it has been notified by the administering authority during the interval;
- (c) a contribution towards the cost of the administration of the fund;
- (d) any amount specified in a notice given in accordance with regulation 65 (additional costs arising from Scheme employer's level of performance); and
- (e) all amounts received from time to time from the Ministry of Defence in respect of employee and employer contributions for a member on reserve forces service leave.

(2) But—

- (a) a Scheme employer must pay the amounts mentioned in paragraph (1)(a) within the prescribed period referred to in section 49(8) of the Pensions Act 1995<sup>M32</sup>; and
- (b) paragraph (1)(c) does not apply where the cost of the administration of the fund is paid out of the fund under regulation 4(6) of the Local Government Pensions Scheme (Management and Investment of Funds) (Scotland) Regulations 2010 (management of pension fund)<sup>M33</sup>.

(3) Every payment under paragraph (1)(a) must be accompanied by a statement showing—

- (a) the total pensionable pay received by members during the period covered by the statement whilst regulation 9 (contributions) applied (including the assumed pensionable pay members were treated as receiving during that period);
- (b) the total employee contributions deducted from the pensionable pay referred to in subparagraph (a);
- (c) the total pensionable pay received by members during the period covered by the statement whilst regulation 10 (temporary reduction in contributions) applied (including the assumed pensionable pay members were treated as receiving during that period);
- (d) the total employee contributions deducted from pensionable pay referred to in subparagraph (c);
- (e) the total employer contributions in respect of the pensionable pay referred to in subparagraphs (a) and (c);
- (f) the total additional pension contributions paid by members under regulation 16 (additional pension contributions) during the period covered by the statement; and
- (g) the total additional pension contributions paid by the employer under regulation 16 (additional pension contributions) during the period covered by the statement.

(4) An administering authority may direct that the information mentioned in paragraph (3) shall be given to the authority in such form and at such intervals as it specifies in the direction.

(5) If an amount payable under paragraph (1)(c) or (d) cannot be settled by agreement, it must be determined by the Scottish Ministers.

#### Marginal Citations

**M32** 1995 c.26. Section 49(8) was amended by the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), **Part 2**, section 10(1).

M33 S.S.I. 2010/233.

### **Additional costs arising from Scheme employer's level of performance**

65.—(1) This regulation applies where, in the opinion of an administering authority, it has incurred additional costs which should be recovered from a Scheme employer because of that employer's level of performance in carrying out its functions under these Regulations.

- (2) The administering authority may give written notice to the Scheme employer stating—
- (a) the administering authority's reasons for forming the opinion mentioned in paragraph (1);
  - (b) the amount the authority has determined the Scheme employer should pay under regulation 64(1)(d) (payments by Scheme employers to administering authorities) in respect of those costs and the basis on which the specified amount is calculated; and
  - (c) where the administering authority has prepared a pension administration strategy under regulation 57 (pension administration strategy), the provisions of the strategy which are relevant to the decision to give the notice and to the matters in sub-paragraph (a) or (b).

### **Interest on late payments by Scheme employers**

66.—(1) An administering authority may require a Scheme employer or former Scheme employer from which any payment under regulations 62 to 65 (employer's contributions or payments) is overdue to pay interest on that amount.

(2) The date on which any amount due under regulation 62 (employer's contributions), 63 (employer's further payments) or 65 (additional costs arising from Scheme employer's level of performance) is overdue is one month from the date specified by the administering authority for payment.

(3) The date on which any amount due under regulation 64 (payment by Scheme employers to administering authorities) (other than an extra charge payable under regulation 64 and referred to in regulation 64(1)(b)) is overdue is the day after the date when that payment is due.

(4) Interest payable under this regulation must be calculated at one per cent above base rate on a day to day basis from the due date to the date of payment and compounded with 3-monthly rests.

## *Decisions*

### **First instance decisions**

67.—(1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) In relation to any employment in which a person is a member or prospective member, the appropriate administering authority must decide—

- (a) any question concerning the person's previous service or employment;
- (b) any question about counting additional periods as membership or crediting additional pension.

(3) Such a decision must be made as soon as is reasonably practicable after the person becomes a member in the employment.

(4) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount.

(5) That decision must be made as soon as is reasonably practicable after the event by virtue of which the entitlement arises or may arise.

(6) Any question whether a person is entitled to a benefit under the Scheme must be decided by the Scheme employer who last employed the person.

(7) That decision must be made as soon as is reasonably practicable after the earlier of—

- (a) the date the employment ends; or
- (b) the date specified in the notification mentioned in regulation 5(4) or, where relevant, the date referred to in regulation 5(5) (ending active membership).

(8) In paragraphs (4) and (6) “benefit” includes a return of contributions.

(9) Any question concerning what rate of contribution a member is liable to pay to the appropriate fund must be decided by the member's Scheme employer.

(10) Other questions in relation to any member or prospective member must be decided by the member's Scheme employer as soon as is reasonably practicable after the member or prospective member becomes a member or a material change affects his or her employment.

#### **Notification of first instance decisions**

**68.**—(1) Every person whose rights or liabilities are affected by a decision under regulation 67 (first instance decisions) must be notified of it in writing by the body which made it as soon as is reasonably practicable.

(2) A notification of a decision that the person is not entitled to a benefit must include the grounds for the decision.

(3) A notification of a decision about the amount of a benefit must include a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

- (a) refer to the rights available under regulations 69 (applications to resolve disagreements) and 71 (reference of disagreement for reconsideration by Scottish Ministers);
- (b) specify the time limits within which the rights under those regulations may be exercised; and
- (c) specify the job title and the address of the person to whom applications under regulation 69 (applications to resolve disagreements) may be made.

#### **Applications to resolve disagreements**

**69.**—(1) This regulation applies where there is a disagreement about a matter in relation to the Scheme between a member (or an alternative applicant) and a Scheme employer or the administering authority.

(2) For the purposes of this Regulation, the following persons are alternative applicants—

- (a) a widow, widower or surviving civil partner or cohabiting partner of a deceased member;
- (b) a dependant of a deceased member or any other person to whom benefits in respect of the member may be paid;
- (c) a prospective member;
- (d) a person who ceased to be a member, or to fall within any of sub-paragraphs (a) to (c), during the period of 6 months ending with the date of the application; and

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- (e) in the case of a disagreement relating to the question whether a person claiming to be a member or to fall within any of sub-paragraphs (a) to (d) does so, the claimant.
- (3) The member or, as the case may be, the alternative applicant may apply to—
  - (a) the person specified under regulation 68(5)(c) (notification of first instance decision) to give a decision on the disagreement; or
  - (b) the appropriate administering authority for that authority to refer the disagreement to a person for decision.
- (4) An application for a decision under paragraph (3) must—
  - (a) set out the applicant's full name, address and date of birth;
  - (b) include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;
  - (c) be signed by or on behalf of the applicant; and
  - (d) be accompanied by a copy of any written notification under regulation 68 (notification of first instance decision).
- (5) An application by—
  - (a) a member or prospective member;
  - (b) a person who ceased to be a member or prospective member during the period of 6 months ending with the date of the application; or
  - (c) a person claiming to be a person within sub-paragraph (a) or (b),
 must also set out their national insurance number (if any) and the name of their Scheme employer.
- (6) An application by any other person must also set out—
  - (a) that person's relationship to the member; and
  - (b) the member's full name, address, date of birth and national insurance number (if any) and the name of the member's Scheme employer.
- (7) An application must be made before the end of—
  - (a) the period of 6 months beginning with the relevant date; or
  - (b) such longer period as the person giving the decision on the disagreement considers reasonable.
- (8) The relevant date is—
  - (a) in the case of a disagreement relating to a decision under regulation 67 (first instance decisions), the date notification of the decision is given under regulation 68 (notification of first instance decision); and
  - (b) in any other case, the date of the act or omission which is the cause of the disagreement or, if there is more than one, the last of them.
- (9) Paragraph (7)(b) does not apply where an appeal has been made under regulation 74(1) (appeals by administering authorities) in respect of a matter that is the subject of an application under this regulation.

### **Notice of decisions on disagreements**

- 70.**—(1) Subject to paragraph (2), a decision on a disagreement to which an application under regulation 69 (applications to resolve disagreements) relates must be given by notice in writing to—
- (a) the applicant;
  - (b) the Scheme employer; and



(c) if the Scheme employer is not the appropriate administering authority, to that authority, before the expiry of the period of 2 months beginning with the date the application was received.

(2) If no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out—

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision.

(3) A notice under paragraph (1) must include—

- (a) a statement of the decision;
- (b) a reference to any legislation or provisions of the Scheme on which the person making the decision relied;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (d) a reference to the rights of the applicant and the Scheme employer's right to refer the disagreement for reconsideration by the Scottish Ministers under regulation 71 (reference of disagreement for reconsideration by Scottish Ministers) and to the time within which the applicant may do so; and
- (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme that remains unresolved including the address at which the Pensions Advisory Service may be contacted.

#### **Reference of disagreement for reconsideration by Scottish Ministers**

**71.**—(1) This regulation applies where an application about a disagreement has been made under regulation 69 (applications to resolve disagreements) and—

- (a) notice of a decision has been given under regulation 70(1) (notice of decisions on disagreements);
- (b) an interim reply has been sent under regulation 70(2) but no such notice has been given before the expiry of the period of one month beginning with the expected decision date; or
- (c) no such notice has been given or interim reply sent before the expiry of the period of 3 months beginning with the date the application was made.

(2) The applicant under regulation 69 (applications to resolve disagreements) may, before the expiry of the period of 6 months beginning with the relevant date, make an application to the Scottish Ministers to reconsider the disagreement.

(3) The relevant date is—

- (a) in a case falling within paragraph (1)(a), the date of the notice given under regulation 70(1) (notice of decisions on disagreements);
- (b) in a case falling within paragraph (1)(b), the date on which the period mentioned in that sub-paragraph expires; and
- (c) in a case falling within paragraph (1)(c), the date on which the period mentioned in that sub-paragraph expires.

(4) The application must—

- (a) set out the applicant's full name, address and date of birth;
- (b) set out details of the grounds on which it is made (including any relevant supporting documentation);
- (c) include a statement that the applicant wishes the disagreement to be reconsidered by the Scottish Ministers;

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- (d) be accompanied by a copy of any written notification under regulation 70 (notice of decisions on disagreements); and
  - (e) be signed by or on behalf of the applicant.
- (5) An application by a member or prospective member or a person claiming to be such must also set out his or her national insurance number (if any) and the name of the Scheme employer.
- (6) An application by any other person must also set out—
- (a) the person's relationship to the member; and
  - (b) the member's full name, address, date of birth and national insurance number (if any) and the name of the member's Scheme employer.
- (7) Where notice of a decision on the disagreement has been given under regulation 70 (notice of decisions on disagreements), the application must also—
- (a) state why the applicant is dissatisfied with that decision; and
  - (b) be accompanied by a copy of that notice.
- (8) The Scottish Ministers must determine—
- (a) the procedure to be followed when exercising their functions under this regulation; and
  - (b) the manner in which those functions are to be exercised.

#### **Notice of decisions on reconsideration of disagreement**

**72.**—(1) Subject to paragraph (2), the Scottish Ministers must give their decision on an application under regulation 71 (reference of disagreement for reconsideration by Scottish Ministers) by notice in writing to—

- (a) the applicant; and
- (b) the Scheme employer,

before the expiry of the period of 2 months beginning with the date the application was received.

(2) If no such notice is given before the expiry of that period an interim reply must immediately be sent to those parties setting out—

- (a) the reasons for the delay; and
  - (b) an expected date for giving the decision.
- (3) A notice under paragraph (1) must include—
- (a) a statement of the decision;
  - (b) in a case where a decision was given under regulation 70 (notice of decisions on disagreements), an explanation of whether and, if so, the extent to which that decision is confirmed or replaced;
  - (c) a reference to any legislation or provisions of the Scheme on which the authority relied;
  - (d) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
  - (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme which remains unresolved including the address at which the Pensions Advisory Service may be contacted; and
  - (f) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes Act 1993<sup>M34</sup> including the address at which the Pensions Ombudsman may be contacted.

### Marginal Citations

M34 1993 c.48.

### Rights of representation

73.—(1) An application under regulation 69 (applications to resolve disagreements) or 71 (reference of disagreement for reconsideration by Scottish Ministers) may be made or continued on behalf of the applicant by a representative nominated by the applicant.

(2) Where a person who has the right to make or has made such an application dies, the application may be made or continued on the person's behalf by the person's executor.

(3) Where such a person is under a legal disability because of nonage or is or becomes otherwise incapable of acting for himself or herself, the application may be made or continued on the person's behalf by a member of the person's family or some other person suitable to represent the person.

(4) Where a representative is nominated before an application is made, the application must specify the representative's full name and address and whether that address is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used the representative must be sent a copy of—

- (a) a notice under regulation 70(1) (notice of decisions on disagreements) or 72(1) (notice of decisions on reconsideration of disagreement); or
- (b) an interim reply under regulation 70(2) (notice of decisions on disagreements) or 72(2) (notice of decisions on reconsideration of disagreement).

### Appeals by administering authorities

74.—(1) This regulation applies where a Scheme employer—

- (a) has decided, or failed to decide, any question falling to be decided by that employer under regulation 67 (first instance decisions) (otherwise than in the exercise of a discretion); and
- (b) is not an administering authority.

(2) The administering authority maintaining the pension fund to which the Scheme employer pays contributions may appeal to the Scottish Ministers to decide the question.

(3) Such an appeal must be made by notice in writing given before the end of—

- (a) the period of 6 months beginning with the relevant date; or
- (b) such longer period as the Scottish Ministers consider reasonable.

(4) The relevant date is—

- (a) in the case of an appeal relating to a decision notified under regulation 68(1), the date of the notification of the decision; and
- (b) in the case of an appeal relating to a failure to decide any question, the date of that failure.

(5) For the purposes of paragraph (4)(b), a Scheme employer is to be taken to have failed to decide a question at the expiry of the period of 3 months beginning with the date on which the administering authority have requested a decision in writing.

(6) The Scottish Ministers must issue their decision on the appeal by notice in writing to the appellant and to any other person appearing to them to be affected by it.

(7) Paragraph (8) applies where any other person—

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- (a) has made an application under regulation 69 (applications to resolve disagreements) or 71 (reference of disagreement for reconsideration by Scottish Ministers) which has not been determined in respect of any of the matters which are the subject of an appeal under this regulation; or
- (b) makes such an application—
  - (i) at the same time as such an appeal is made; or
  - (ii) after such an appeal is made and before it is determined.
- (8) The appeal must be sisted—
  - (a) pending notification of a decision under regulation 70 (notice of decisions on disagreements) or 72 (notice of decision on reconsideration of disagreement); or
  - (b) until the application is withdrawn.

### **Exchange of information**

**75.—**(1) A Scheme employer must—

- (a) inform the appropriate administering authority of all decisions made by the employer under regulation 67 (first instance decisions) or given under regulation 70 (notice of decisions on disagreements) by a person appointed by the Scheme employer under regulation 68(5)(c) (notification of first instance decisions) concerning members; and
  - (b) give that authority such other information as it requires for discharging its Scheme functions.
- (2) If—
- (a) an administering authority makes any decision under regulations 67 (first instance decisions) or 70 (notice of decisions on disagreements) about a person for whom it is not the Scheme employer; and
  - (b) information about that decision is required by the person's Scheme employer for discharging that employer's Scheme functions,

that authority must give that employer that information if asked to supply it.

(3) Within 3 months of the end of each Scheme year, each Scheme employer must give a statement to the appropriate administering authority giving the following details in respect of each employee who has been an active member during the Scheme year—

- (a) the employee's name and gender;
- (b) the employee's date of birth and national insurance number;
- (c) a unique reference number relating to each employment in which the employee has been an active member; and
- (d) the information relating to the employee for the Scheme year in question for each employment which is specified in paragraph (4).

(4) The information required by paragraph (3)(d) is—

- (a) the dates of active membership;
- (b) the pensionable pay received and employee contributions deducted while regulation 9 (contributions) applied;
- (c) the pensionable pay received and employee contributions deducted while regulation 10 (temporary reduction in contributions) applied;
- (d) any contributions by the employer in relation to the employee's pensionable pay;

- (e) any contributions by employee or employer under regulation 16 (additional pension contributions); and
- (f) any contributions by employee or employer under regulation 17 (additional voluntary contributions).

### Interest on late payment of certain benefits

76.—(1) Where all or part of a pension or lump sum payment due under these Regulations (other than a payment due under regulation 17 (additional voluntary contributions)) is not paid within the relevant period after the due date, an administering authority must pay interest on the unpaid amount to the person to whom it is payable.

(2) The relevant period is—

- (a) in the case of a survivor pension, the period ending one month after the date on which the administering authority receives notification of the member's death;
- (b) in the case of any other pension, one year; or
- (c) in the case of a lump sum payment, one month.

(3) The due date is—

- (a) in the case of a pension, the date on which it becomes payable;
- (b) in the case of a lump sum under regulation 32 (election for lump sum instead of pension) the benefit crystallisation event date;
- (c) in the case of a death grant, the date on which the member dies or, where notification of death is received more than 2 years after the date of death, the date of notification; or
- (d) in the case of a lump sum under regulation 33 (commutation and small pensions) the date of the commutation election or, if later, the nominated date within the meaning of paragraph 7(3) of Part 1 of schedule 29 of the Finance Act 2004 <sup>M35</sup>.

(4) Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with 3-monthly rests.

#### Marginal Citations

M35 2004 c.12.

### Payments due in respect of deceased persons

77.—(1) Paragraph (2) applies if, when a person dies, the total amount due to that person's personal representatives under the Scheme (including anything due at that person's death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965 <sup>M36</sup> and applying in relation to that person's death.

(2) An administering authority may pay the whole or part of the amount due from its pension fund to—

- (a) a person's personal representatives; or
- (b) any person or persons appearing to the authority to be beneficiaries to the estate,

without the production of confirmation of the person's estate.

(3) Such a payment discharges that authority from accounting for the amount paid.

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#### **Marginal Citations**

**M36** 1965 c.32; there are amendments to section 6 which are not relevant to this instrument.

### **Payments for persons incapable of managing their affairs**

**78.** If it appears to an administering authority that a person is entitled to payment of benefits under the Scheme but is incapacitated (within the meaning of section 1 of the Adults with Incapacity (Scotland) Act 2000) <sup>M37</sup>—

- (a) the authority may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the authority may determine, to be applied for the benefit of the person entitled; and
- (b) in so far as the authority does not pay the benefits in that manner, the authority may apply them in such manner as the authority may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

#### **Marginal Citations**

**M37** 2000 asp 4.

### **Non-assignability**

**79.**—(1) Every benefit to which a person is entitled under the Scheme is payable to or in trust for that person.

(2) No such benefit may be assigned or charged and any such assignment or charge is void.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with a debtor contribution order fixed by the Accountant in Bankruptcy under section 90(1) of the Bankruptcy (Scotland) Act 2016 <sup>M38</sup> or varied by a debtor's trustee under section 95(1) of that Act.

#### **Marginal Citations**

**M38** 2016 asp 21.

### **Deduction and recovery of member's contributions**

**80.**—(1) A Scheme employer may deduct from a person's pay any contributions payable by the member under these Regulations.

(2) Sums payable under regulation 13(1) (contributions during reserve forces leave) may be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 <sup>M39</sup>, to the extent that they are payable in respect of the same period.

(3) An administering authority may recover any contributions or sum remaining due and not deducted under paragraph (1) or (2)—

- (a) as a debt arising under a contract in any court of competent jurisdiction; or
- (b) by deducting it from any payment by way of benefits to or in respect of the person in question under these Regulations.

(4) But the sums mentioned in paragraph (2) are only recoverable under paragraph (3) if unpaid for 12 months after the person ceases to perform relevant reserve forces service.

(5) If—

- (a) a Scheme employer deducts in error any amount in respect of contributions from a person's pay or any other sum due to that person; and
- (b) the amount has not been repaid before the expiry of the period of one month beginning with the date of the deduction,

the appropriate body must pay interest on the amount, and the due date for the calculation of the interest payable is the date of the deduction.

(6) Where the employee's contributions have been paid into a fund, the repayment and any interest must be made out of that fund.

(7) Interest must be calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with 3-monthly rests.

(8) The “appropriate body” for the purposes of paragraph (5) is—

- (a) the appropriate administering authority, where the employee's contributions have been paid into a fund; and
- (b) the person's Scheme employer where the employee's contributions have not yet been paid into a fund.

#### Marginal Citations

**M39** 1951 c.65. Part 5 has been amended by the [Police and Magistrates' Court Act 1994 \(c.29\)](#), [schedule 9\(2\)](#), paragraph 1, the [Fire and Rescue Services Act 2004 \(c.21\)](#), [schedule 1](#), paragraph 12(2), the [Civil Partnership Act 2004 \(c.33\)](#), [schedule 26](#), paragraph 26, S.I. 2004/2306, S.I. 2014/560 and S.S.I. 2014/3229.

#### Joint liability in respect of annual allowance charge

**81.**—(1) This regulation applies where a member gives notice to the appropriate administering authority of joint and several liability under section 237B (liability of scheme administrator) of the Finance Act 2004 <sup>M40</sup> in respect of the member's annual allowance charge.

(2) Where the joint liability amount specified in the notice is met by the pension fund, the appropriate administering authority must reduce the value of the member's rights accrued under the Scheme in accordance with actuarial guidance issued by the Scottish Ministers.

#### Marginal Citations

**M40** 2004 c.12. Section 237B was inserted by the [Finance Act 2011 \(c.11\)](#), [schedule 17\(1\)](#), paragraph 15 and is amended by the [Finance Act 2013 \(c.29\)](#), [schedule 46\(4\)](#), paragraph 129, the [Taxation of Pensions Act 2014 \(c.30\)](#), [schedule 1\(4\)](#), paragraph 68, S.I. 2015/80, S.I. 2015/1810 and S.I. 2017/468.

#### Tax

**82.** The appropriate administering authority may deduct from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.

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### **Pension increase under the Pension Schemes Act 1993**

**83.** Any increase of pension required by reason of Chapter 3 of Part 4 of the Pension Schemes Act 1993 (protection of increases in guaranteed minimum pensions: anti-franking)<sup>M41</sup> must be paid from the appropriate fund held by the administering authority.

#### **Marginal Citations**

**M41** 1993 c.48 amended by S.I. 2005/2050 and the Pensions Act 2014 (c.19), **schedule 13(1)**, paragraph 38.

### **Annual benefit statements**

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

(2) Subject to paragraph (3), the statement must be issued no later than 5 months after the end of the Scheme year to which it relates.

(3) A statement must be issued before the end of the 5 month period mentioned in paragraph (2) where a member makes a request in writing to the administering authority, unless that authority is unable to comply with the request because relevant data is not available.

(4) The statement for an active member must be provided in accordance with section 14 of the Public Services Pensions Act 2013<sup>M42</sup>.

#### **Marginal Citations**

**M42** 2013 c.25.

### **Information to be supplied by employees**

**85.**—(1) Before the expiry of 3 months beginning with the date on which a person becomes a member, the Scheme employer must ask the member in writing for the documents specified in paragraph (2).

(2) Those documents are—

- (a) a statement in writing listing all the person's previous periods of membership of a public service pension scheme (including the Scheme); and
- (b) copies of all notifications previously given to the member under these Regulations and their equivalents under any previous Regulations.

(3) A request under this regulation must contain a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining the member's rights under the Scheme.

(4) The Scheme employer need not request any documents if it is satisfied that it, or the appropriate administering authority (if different), already has all material information.

### *Forfeiture*

#### **Forfeiture of pension rights after conviction for employment-related offences**

**86.**—(1) If a member is convicted of a relevant offence, the former Scheme employer may apply to the Scottish Ministers who may issue a forfeiture certificate.



(2) A relevant offence is an offence committed in connection with an employment in which the person convicted is a member.

(3) Where a former Scheme employer applies for a forfeiture certificate, it must at the same time send the convicted person and the appropriate administering authority a copy of the application.

(4) Where a forfeiture certificate is issued, the member's former Scheme employer may direct that any of the member's rights (including membership and survivor benefits) under these Regulations are forfeited, and in making the determination the Scheme employer must take into account any recommendations issued by Scottish Ministers when issuing a forfeiture certificate under paragraph (1).

(5) The former Scheme employer must serve a notice of its decision to make a direction on the member.

(6) A forfeiture certificate is a certificate that the offence—

- (a) was gravely injurious to the State; or
- (b) is liable to lead to a serious loss of confidence in the public service.

(7) If the former Scheme employer incurred loss as a direct consequence of the relevant offence, it may only give a direction under paragraph (4) if—

- (a) it is unable to recover its loss under regulation 87 (recovery or retention where former member has misconduct obligation); or
- (b) it is unable to recover its loss by any other means,

except after an unreasonable time or at disproportionate cost.

(8) A direction under paragraph (4) may only be given if an application for a forfeiture certificate has been made by the former Scheme employer before the expiry of the period of 3 months beginning with the date of conviction.

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

**87.**—(1) This regulation applies where a person—

- (a) has left an employment in which that person was or had at some time been a member of the Scheme, in consequence of grave misconduct or a criminal, negligent or fraudulent act or omission in connection with that employment;
- (b) has incurred some monetary obligation, arising out of that misconduct, act or omission, to the body that was the Scheme employer in that employment; and
- (c) is entitled to benefits under these Regulations, which for the purposes of this regulation includes entitlement to a refund of contributions.

(2) The former Scheme employer may recover or retain out of the appropriate fund the amount of the monetary obligation.

(3) The former Scheme employer must give the former employee—

- (a) not less than 3 months' notice of the amount to be recovered or retained under paragraph (2); and
- (b) a statement showing the amount recovered or retained, how it is calculated and the effect on the person's benefits or prospective benefits.

(4) If there is any dispute over the amount of the monetary obligation specified in paragraph (1) (b), the former Scheme employer may not recover or retain any amount under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbiter.

**Adjustment of accounts following forfeiture etc**

**88.**—(1) Where a direction for forfeiture is issued under regulation 86 (forfeiture of pension rights after conviction for employment-related offences) the appropriate administering authority must transfer out of the member's pension account the benefits which are forfeited and pay them to the relevant Scheme employer.

(2) Where an amount is recovered or retained under regulation 87 (recovery or retention where former member has misconduct obligation), the appropriate administering authority must transfer out of the member's pension account the amount recovered or retained and pay it to the relevant Scheme employer.

(3) If the effect of a forfeiture direction, or of the recovery or retention of an amount, is to extinguish the member's entitlement to benefits, the administering authority must close the member's pension account.

**Protection of guaranteed minimum pension rights**

**89.**—(1) The power to direct forfeiture of benefits under regulation 86 (forfeiture of pension rights after conviction for employment-related offences) or to recover or retain amounts under regulation 87 (recovery or retention where former member has misconduct obligation) may not be exercised so as to deprive a person of the guaranteed minimum pension or any widow's, widower's or surviving civil partner's guaranteed minimum pension.

(2) But such a power may be exercised if the person is convicted—

- (a) of the offence of treason; or
- (b) of one or more offences under the Official Secrets Acts 1911 to 1989 <sup>M43</sup> for which the person has been sentenced on the same occasion—
  - (i) to a term of imprisonment of at least 10 years; or
  - (ii) to 2 or more consecutive terms amounting in the aggregate to at least 10 years.

**Marginal Citations**

**M43** Section 16(2) of the [Official Secrets Act 1989 \(c.6\)](#) provides that that Act and the Official Secrets Acts 1911 to 1939 may be cited together as the Official Secrets Acts 1911 to 1989.

*Certificates of protection***Certificate of protection**

**90.**—(1) Where, otherwise than by virtue of a member's own circumstances—

- (a) the member's rate of pay is permanently reduced; or
- (b) the rate at which it may be increased is restricted in such a way that it is likely that the rate of the member's pension will be adversely affected,

the member is entitled to be issued with a certificate to that effect by the Scheme employer, (but see paragraph (3)).

(2) A certificate of protection issued by a Scheme employer after the coming into force of these Regulations has effect for 10 years from the date the member's pay is reduced or restricted and, where the member elects, the member's pay for the purposes of calculating the member's pension (and other benefits under these Regulations) is the member's pay but as if the reduction or other restriction specified in the certificate had not come into effect.

(3) A member is not entitled to be issued with a certificate under this regulation if the reduction in the member's rate of pay—

(a) is temporary; or

(b) consists of the termination of, or a reduction in, a temporary increase in the rate of pay.

(4) A certificate issued under this regulation must specify the date of the reduction or restriction.

(5) The Scheme employer may issue a certificate without an application of the member, but need not issue a certificate if the member does not apply for one within 12 months after the date of reduction or restriction.

(6) The Scheme employer must send a copy of the certificate to the member's appropriate administering authority.

(7) The Scheme employer must keep a record of the certificate including such information as would be necessary for applying paragraph (2) for the period of 10 years beginning with the date of reduction or restriction specified in it.

(8) If the member ceases to be an active member with the Scheme employer that issued the certificate, the certificate does not carry forward in relation to any further period of membership with another Scheme employer except where the member transfers employment from the Scheme employer that issued the certificate to employment with another Scheme employer as a result of a transfer—

(a) to which the TUPE Regulations apply; or

(b) which is treated as if it were a relevant transfer within the meaning of regulation 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

(9) If the member leaves the employment under which the certificate was issued, without becoming entitled to immediate or deferred pension benefits, the certificate lapses.

(10) The operation of a certificate issued under this regulation is subject to guidance issued by the Scottish Ministers.

### *Transfers*

#### **Rights to payment out of pension fund**

**91.**—(1) A member is entitled to request a transfer under Chapter 1 or 2 of Part 4ZA of the Pension Schemes Act 1993 <sup>M44</sup> and where the member does so the amount of any transfer payment due in respect of the member under the relevant transfer may only be paid by the administering authority from its pension fund if the transfer payment is a recognised transfer (within the meaning of section 169 of the Finance Act 2004 <sup>M45</sup>) in accordance with guidance from Scottish Ministers.

(2) Where such a transfer payment is to be or has been paid from a fund, no other payment or transfer of assets may be made from the fund as respects the accrued rights covered by the transfer payment.

(3) Paragraph (2) overrides anything to the contrary in these Regulations.

#### **Marginal Citations**

**M44** 1993 c.48.

**M45** 2004 c.12. Section 169 is amended by the [Finance Act 2005 \(c.7\)](#), [schedule 10](#), paragraph 36, the [Finance Act 2011 \(c.11\)](#), [schedule 16\(2\)](#), paragraph 66(a) and (b), the [Finance Act 2013 \(c.29\)](#), [section 53\(3\)](#), the [Taxation of Pensions Act 2014 \(c.30\)](#), [schedule 1\(1\)](#), paragraph 8, [schedule 1\(7\)](#),

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paragraph 92, [schedule 2\(1\)](#), paragraph 4 and schedule 7, paragraph 23(a) and the [Finance Act 2017](#) (c.10), [schedule 4\(2\)](#), paragraph 13(2) to (8).

### Contracting-out requirements affecting transfers out

**92.**—(1) There must be deducted from the transfer payment to be made in respect of any person to a contracted-in defined benefit registered pension scheme—

- (a) the amount of any contributions equivalent premium payable pursuant to section 55 of the Pension Schemes Act 1993 <sup>M46</sup>; or
- (b) an amount sufficient to meet the liability in respect of the person's contracted-out rights.

(2) Where the amount mentioned in paragraph (1)(a) is deducted, the appropriate administering authority must use that amount to pay the premium.

(3) Where the amount mentioned in paragraph (1)(b) is deducted, the appropriate administering authority may use the amount in preserving the liability mentioned in that sub-paragraph in the appropriate fund unless the member wishes a transfer payment in respect of it to be paid to the trustees or managers of a contracted-out defined benefit or contracted-in defined contribution registered pension scheme.

(4) Contracted-out rights, in relation to a member, are—

- (a) the member's, and any surviving spouse, civil partner or cohabiting partner's rights to guaranteed minimum pensions; and
- (b) the member's section 9(2B) rights as defined in regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 <sup>M47</sup>.

#### Marginal Citations

**M46** Section 55 was repealed by the [Pensions Act 2014](#) (c.19), [schedule 13\(1\)](#), paragraph 37 subject to savings by [S.I. 2015/1502](#).

**M47** [S.I. 1996/1172](#); the definition of section 9(2B) rights in regulation 1(2) was amended by [S.I. 1997/786](#), [S.I. 1999/3198](#) and [S.I. 2011/1246](#) which was also amended by [S.I. 1996/1462](#), [S.I. 2015/1677](#) and [S.I. 2016/200](#).

### Bulk transfer (transfers of undertakings etc)

**93.**—(1) This regulation applies where—

- (a) 2 or more members' active membership ends on their joining a different registered pension scheme (“the new scheme”);
- (b) it is agreed by—
  - (i) the members' appropriate administering authority;
  - (ii) the members' Scheme employers (if different); and
  - (iii) the trustees or managers of the new scheme;
 that a payment should be made under this regulation; and
- (c) the members—
  - (i) agree in writing that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993; and

(ii) waive any rights they might have under those Chapters by virtue of the cessation of their active membership.

(2) The appropriate administering authority must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993, as they apply as modified by these Regulations (assuming in any case where a member would not be entitled to such a payment that the member was so entitled).

(3) The appropriate administering authority must calculate the appropriate amount of earned pension in accordance with actuarial guidance issued by the Scottish Ministers.

(4) The appropriate administering authority must provide each member with sufficient information in writing to check that the matters of which the authority must be satisfied under paragraph (2) are satisfied, before the member agrees as mentioned in paragraph (1)(c).

(5) The appropriate administering authority must—

(a) set aside (whether in cash or in assets or both) such part of the appropriate fund (“transfer payment”) as an actuary appointed by the authority and an actuary appointed by the trustees or managers of the new schemes for the purpose may agree as appropriate for the acquisition of such rights in that scheme as they may so agree; and

(b) pay or transfer the transfer payment to the trustees or managers of the new scheme for the benefit of the relevant members.

(6) The appropriate administering authority must certify to the new scheme's trustees or managers the amount included in the transfer payment which represents each member's contributions and interest on them.

(7) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets will be made from the pension fund by reason of membership covered by the transfer payment.

(8) Paragraph (7) overrides anything to the contrary in these Regulations.

### Calculation of amount of transfer payment

**94.**—(1) The amount of the transfer payment to be paid under regulation 93 (bulk transfers) is the amount determined by an actuary appointed by the members' appropriate administering authority to be equal to the value at the date those members join the new scheme, of the actual and potential liabilities payable from its fund which have then accrued in respect of the members and the persons who are or may become entitled to benefits under the Scheme through the members.

(2) The actuary may make such adjustments as are thought fit in calculating that amount and in particular as respects the period from the date mentioned in paragraph (1) to the date of actual payment of the transfer value.

(3) The actuary must specify in the valuation the actuarial assumptions used in making it.

(4) The Scheme employer pays the costs of determining the appropriate part of the fund and apportioning the fund.

(5) But if there is more than one Scheme employer involved, each pays such part of the costs as the actuary determines to be appropriate.

**Inward transfers of pension rights**

**95.**—(1) An active member with relevant pension rights may request the appropriate administering authority to accept a transfer value for some or all of those rights from the relevant transferor.

(2) In this regulation “relevant pension rights” are—

- (a) accrued rights under a registered pension scheme other than rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit; and
- (b) accrued rights under a European pensions institution.

(3) Accrued rights under a registered pension scheme include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993 <sup>M48</sup>.

(4) The relevant transferor for the rights specified in paragraph (1) is the trustees or managers of the scheme under which the transferring person's relevant pension rights arise.

(5) But the relevant transferor for the rights specified in paragraph (3) are the trustees and managers of the scheme, or the insurance company, to which a payment in respect of the person's accrued rights has been made.

(6) A request from a transferring person under paragraph (1) must be made by notice in writing given to the appropriate administering authority before the expiry of the period of 12 months beginning with the date on which the person first became an active member in an employment (or such longer period as the Scheme employer may allow).

(7) Where a request under paragraph (1) is duly made, the administering authority may accept the transfer value and credit it to its pension fund.

(8) The calculation of the appropriate amount of earned pension is to be in accordance with actuarial guidance issued by the Scottish Ministers.

**Marginal Citations**

**M48** Section 19 was amended by [S.I. 2001/3649](#), [S.I. 2005/2050](#) and [S.I. 2007/3014](#).

**Effect of acceptance of transfer value**

**96.**—(1) Where a transfer value has been accepted under regulation 95 (inward transfer of pension rights), the administering authority must credit the active member's pension account with the appropriate amount of earned pension.

(2) The calculation of the appropriate amount of earned pension for the purposes of paragraph (1) is to be in accordance with actuarial guidance issued by the Scottish Ministers.

**Changes of administering authority**

**97.**—(1) Subject to paragraph (7), this regulation applies where—

- (a) an administering authority becomes an active member's appropriate administering authority;
- (b) immediately before it does so, another administering authority was that member's appropriate administering authority; and
- (c) a member's past period of membership has been aggregated with the current period of membership.

(2) An administering authority which has ceased to be a member's appropriate administering authority must make a transfer value payment to the member's new appropriate administering authority in accordance with actuarial guidance issued by the Scottish Ministers.

(3) Where paragraph (2) applies as respects 10 or more members by virtue of a single event, the amount of the payment under that paragraph is determined by agreement between an actuary appointed by the administering authority by which the payment must be made and an actuary appointed by the administering authority to which it must be made.

(4) Where the actuaries cannot agree on the amount within 12 months of the date of transfer, or where there is more than one date of transfer, within 12 months of the date of the last transfer which relates to the single event—

- (a) the matter will be referred to a third actuary, chosen by agreement between the actuaries, or in default of agreement, by the President of the Institute and Faculty of Actuaries<sup>M49</sup>; and
- (b) that actuary's determination is final.

(5) The costs of determining the amount to be transferred shall be paid in equal shares by the fund held by the member's former appropriate administering authority and the fund held by the member's new appropriate administering authority.

(6) Any payment under paragraph (2) must be credited to the new appropriate administering authority's fund.

(7) This regulation does not apply where a member enters an employment in local government service which is concurrent with another in which the member is also an active member.

**Marginal Citations**

**M49** The Institute and Faculty of Actuaries can be contacted at Staple Inn Hall, High Holborn, London WC1V 7QJ and at [www.actuaries.org.uk](http://www.actuaries.org.uk).

*Councillors*

**Councillors**

**98.** For the purposes of these Regulations, councillors of a local authority is treated as employees of a local authority subject to the modifications listed in schedule 5.

*Separate employments*

**Separate employments etc.**

**99.**—(1) Where a person holds separate employments under one Scheme employer, these Regulations apply as if each of them were under a different employer.

(2) This regulation also applies where an employee of a Scheme employer is also employed to carry out one or more of the additional duties.

(3) The additional duties are duties as—

- (a) a returning officer at—
  - (i) local government elections; or
  - (ii) elections for the Scottish Parliament; or
- (b) an acting returning officer (including as a regional or local returning officer at a European Parliamentary election).

*Status: Point in time view as at 01/06/2018.*

*Changes to legislation: There are currently no known outstanding effects for the The Local Government Pension Scheme (Scotland) Regulations 2018. (See end of Document for details)*

### *Scheme actuary and employer cost cap*

#### **Scheme actuary**

**100.**—(1) The Scottish Ministers must appoint an actuary as Scheme actuary to carry out valuations of the Scheme and any connected scheme in accordance with Treasury directions made under section 11(2) of the Public Service Pensions Act 2013 <sup>M50</sup> (“the Treasury directions”).

(2) The person appointed as Scheme actuary under paragraph (1) must, in the opinion of the Scottish Ministers, be appropriately qualified to carry out a valuation of the Scheme.

(3) The Scottish Ministers must secure that the Scheme actuary carries out actuarial valuations of the assets and liabilities of the Scheme on the dates specified in regulation 60(1)(a) (actuarial valuations of pension funds) and prepare valuation reports in accordance with the Treasury directions, within such period as enables the requirements in those directions to be met.

(4) An administering authority must provide the Scheme actuary with any data that the Scheme actuary reasonably requires, in accordance with the Treasury directions, in order to carry out a valuation and prepare a report on the valuation.

#### **Marginal Citations**

**M50** 2013 c.25.

#### **Employer cost cap**

**101.**—(1) The employer cost cap for the Scheme is 15.5% of pensionable earnings of members of the Scheme.

(2) Where the cost of the Scheme, calculated following a valuation in accordance with Treasury directions under section 11(2) of the Public Service Pensions Act 2013, is more than the margins specified in the Public Service Pensions (Employer Cost Cap) Regulations 2014 <sup>M51</sup> above or below the employer cost cap, the Scottish Ministers must follow the procedure specified in paragraph (3) for reaching agreement with administering authorities, employers and members (or representatives of employers and members) as to the steps required to achieve the target cost specified in those Regulations.

(3) The procedure specified for the purposes of section 12(6)(a) of the Public Service Pensions Act 2013 is consultation for such period as the Scottish Ministers consider appropriate with the Scheme Advisory Board with a view to reaching an agreement endorsed by all members of that Board.

(4) If, following such consultation, agreement is not reached within 3 months of the date on which the consultation period ends, the Scottish Ministers must take steps to adjust the rate at which benefits accrue under regulation 23(4) or (5) (active member's pension accounts) so that the target cost for the Scheme is achieved.

#### **Marginal Citations**

**M51** S.I. 2014/575.

#### **Revocations and transitional provisions**

**102.**—(1) The Regulations specified in Schedule 6 are revoked.



(2) Anything done under or by virtue of any regulation revoked by these Regulations if it could have been done under or for the purpose of these Regulations, is deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under or by virtue of any such regulation may be continued under these Regulations as if begun under these Regulations.

St Andrew's House,  
Edinburgh  
1st May 2018

*DEREK MACKAY*  
A member of the Scottish Government

**Status:**

Point in time view as at 01/06/2018.

**Changes to legislation:**

There are currently no known outstanding effects for the The Local Government Pension Scheme (Scotland) Regulations 2018.