
STATUTORY INSTRUMENTS

1998 No. 366

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

PART II

PRIMARY PROVISIONS

CHAPTER IV

BENEFITS

Children's pensions

Meaning of “eligible child”

- 43.**—(1) The eligible child of a deceased member is—
- (a) a child of the deceased's marriage or his adopted child; or
 - (b) a child who was wholly or mainly dependent on the deceased at the time of his death.
- (2) A person counts as a child only if—
- (a) he is aged under 17;
 - (b) since he became 17 he has been engaged continuously in full-time education or in training for a trade, profession or vocation; or
 - (c) he is physically or mentally incapacitated and became so whilst a child within subparagraph (a) or (b).
- (3) If an appropriate administering authority wish, they may treat education or training as continuous despite a break.

Children's short-term pensions

- 44.**—(1) If an active or pensioner member dies leaving one or more eligible children, they are entitled to a children's short-term pension.
- (2) If a short-term pension is payable to a surviving spouse under regulation 39, the children's short-term pension is payable only for three months after the death.
- (3) Otherwise, it is payable for six months after the death.
- (4) Where the deceased was an active member, the pension is the greater of—
- (a) the deceased's final pay; or
 - (b) ~~(3 x his final pay)~~ $\frac{3}{80}$ x his total membership.
- (5) Where the deceased was a pensioner member, the pension is equal to his retirement pension immediately before the death.

(6) Where, if a children’s long-term pension and a surviving spouse’s long-term pension were payable instead of short-term pensions, that would result in a greater aggregate pension, long-term pensions shall be payable instead of short-term pensions.

(7) Where—

- (a) a children’s short-term pension is payable for a child who is not in the care of a person to whom a short-term pension is payable (or would be payable apart from paragraph (6)); and
- (b) a children’s long-term pension would be greater,

the long-term pension shall be payable instead of the short-term pension.

(8) In this regulation “pensioner member” includes a person whose retirement pension has been commuted under regulation 49 (commutation: exceptional ill-health).

Children’s long-term pensions

45.—(1) If a member dies leaving one or more eligible children, they are entitled to a children’s long-term pension.

(2) If the deceased was an active or pensioner member, it is payable from the end of the period for which the short-term pension is payable.

(3) The pension payable on a deferred member’s death is payable from the death.

(4) An eligible child ceases to be entitled to a long-term pension when he ceases to be a child within regulation 43(2).

(5) If the deceased was an active member, the pension is the appropriate fraction of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 26(1) (ill-health).

(6) If the deceased was a deferred member, the pension is the appropriate fraction of the amount of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 24 (normal retirement).

(7) If the deceased was a pensioner member, the pension is the appropriate fraction of his retirement pension.

(8) If, apart from this paragraph the calculation of the long-term pension would be based on a member’s retirement pension calculated on the basis of membership of less than—

- (a) 10 years; or
- (b) the period he would have been entitled to count if his active membership had continued until his 65th birthday,

(whichever is the shorter), then that period should be used instead in calculating it.

(9) The appropriate fractions are—

- (a) where there is one eligible child—
 - (i) if a surviving spouse’s long-term pension is payable, one quarter,
 - (ii) otherwise, one third;
- (b) where there is more than one eligible child—
 - (i) if a surviving spouse’s long-term pension is payable, one half,
 - (ii) otherwise, two-thirds.

(10) If a child in full-time training for a trade, profession or vocation is receiving pay at an annual rate exceeding the training rate—

- (a) the pension is reduced by the excess; but
- (b) if the pension would be greater without the child, he need not be counted.

(11) In paragraph (10) “the training rate” means the current annual rate of an official pension which began to be paid on 1st April 1994 at an annual rate of £1,450.

Discretion as to payment of children’s pensions

46.—(1) If a children’s pension is payable for more than one eligible child, the appropriate administering authority may apportion it amongst the children as they think fit.

(2) The appropriate administering authority may pay the whole or part of a children’s pension to a person other than an eligible child, to be applied for the benefit of one or more eligible children as the authority direct.

Dependants of re-employed pensioners

47.—(1) If—

- (a) after a member became entitled to an unreduced retirement pension, he entered further local government employment in which he died; and
- (b) assuming that immediately before he died he had retired from the further employment, he would have been entitled to elect under regulation 28 for a single pension,

the benefits payable under the Scheme on his death (except short-term pensions) and any surrendered benefits must be calculated in the case of each beneficiary using whichever of assumptions A and B gives that beneficiary the more favourable benefits.

(2) Assumption A is that the deceased did so retire and assumption B is that he did so retire and so elect.

(3) An unreduced retirement pension is a pension which is not reduced under regulation 30(4) (early leavers).

(4) If after a member became entitled to a relevant pension, he entered further local government employment in which he died, the benefits payable under the Scheme on his death (except short-term pensions) must be calculated on assumption A.

(5) A relevant pension is a superannuation allowance under Part I of the Act of 1937 or a pension under the former Regulations, a local Act scheme, or a retirement pension under the 1974 Regulations, the 1987 Regulations or these Regulations, which was reduced or suspended on account of the further employment.

(6) Where—

- (a) a member dies in a new employment; and
- (b) assuming he had retired from it on the date he died, he would have been entitled to a retirement pension under this Chapter (whether payable immediately or not),

the short-term pension under regulation 39 is the sum of—

- (i) his final pay in the new employment; and
- (ii) the rate at which his retirement pension from his former employment is payable (after taking into account any reduction under regulation 110 (application of abatement policy in individual cases)).

(7) Where a member dies in a new employment, the long-term pension under regulation 40 is the greater of amount A or amount B.

(8) Amount A is half the sum of—

- (a) the member’s retirement pension; and
- (b) the retirement pension to which he would have been entitled if on the date of death he had become entitled to a pension under regulation 26(1) (ill-health) from the new employment.

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(9) Amount B is half the retirement pension to which the member would have been entitled if on the date of death he had become entitled under regulation 26(1) and had elected under regulation 28 for a single pension.

(10) Amount A and amount B are both to be calculated on the basis that the retirement pensions have not been—

- (a) reduced by virtue of a surrender under regulation 32; or
- (b) increased under regulation 53 (effect of increases under Chapter II of Part III for older members).