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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 468**

**PENSIONS**

**The Local Government Pension Scheme  
(Scotland) Amendment (No. 2) Regulations 2006**

*Made - - - - 12th September 2006*  
*Laid before the Scottish*  
*Parliament - - - - 14th September 2006*  
*Coming into force in accordance with regulation 1(3)*

The Scottish Ministers, in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, after consultation with such associations of local authorities as appeared to them to be concerned and such representatives of other persons likely to be affected by the proposed Regulations as appeared to them to be appropriate, and not having considered consultation with any individual local authority to be desirable, all in accordance with section 7(5) of that Act, hereby make the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) Amendment (No. 2) Regulations 2006.

(2) These Regulations extend to Scotland only.

(3) These Regulations shall come into force on 6th October 2006 but regulations 10, 14, 18(3), 21, 23, 24, 31 and 35 shall have effect from 6th April 2006.

**Amendment of Regulations**

2. The Local Government Pension Scheme (Scotland) Regulations 1998<sup>(2)</sup> (“the principal Regulations”) are amended in accordance with regulations 3 to 7, 8(1) and 9 to 40.

**Requirements for admission agreements**

3. Omit regulation 4B(4).

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(1) 1972 c. 11. The functions of the Secretary of State exercised in the making of these Regulations were transferred to the Scottish Ministers as regards Scotland by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I.1999/1750).

(2) S.I. 1998/366; the relevant amending instruments are S.I. 2000/199 and 2005/293 and 554.

### Further restrictions on eligibility

4. In regulation 5–
  - (a) after paragraph (2A) insert–
 

“(3A) A person may not become a member after the day before his 75th birthday.”; and
  - (b) omit paragraphs (4) and (5).

### Periods of membership: “total membership”

5. In regulation 8–
  - (a) omit paragraph (1A); and
  - (b) in paragraph (2) insert “10A,” after “10” and omit “and Schedule 4”.

### High earners

6. After regulation 10, insert–

#### “High earners

**10A.**—(1) This regulation applies to a member who was subject to regulation 15(1) immediately before 1st October 2006 and whose pay (calculated in accordance with regulation 12) in the year ending 5th April 2006 exceeds £105,600.

(2) In such a case, his period of membership for calculating his benefits payable under these Regulations is obtained by aggregating his period of membership after that date with the period obtained by applying the formula set out in paragraph (3).

- (3) That formula is–

$$\left(M \times \frac{105,600}{P}\right) + T;$$

where–

M is his period of membership after 5th April 1989 and before 1st October 2006 (excluding any membership credited by virtue of a transfer under regulation 121);

P is his pay as mentioned in paragraph (1); and

T is the aggregate of his period of membership before 6th April 1989 and any membership credited by virtue of a transfer under regulation 121.”.

### Members' contributions

7. In regulation 11–
  - (a) in paragraph (1), omit “(but see regulation 14)”; and
  - (b) in paragraph (7), for “Regulations 15 to 17” substitute “Regulations 16 and 17”.

### Employer’s discretion to reduce members' contribution rate

- 8.—(1) Omit regulation 14.
- (2) Where, before its omission by paragraph (1), a member’s liability to make contributions to the Scheme has been reduced or, as the case may be, extinguished in accordance with regulation 14, his employing authority may recover any such contributions as would otherwise have been made.

## **Inland Revenue limits on contributions**

9. Omit regulation 15.

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

10. After regulation 18 insert–

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

**18A.**—(1) A member and any dependant of his shall not be entitled, under any provision of these Regulations, to receive benefits the capital value of which exceeds his lifetime allowance, increased where applicable by his primary protection or enhanced protection, except in accordance with guidance issued by the Government Actuary.

(2) In this regulation, “lifetime allowance”, “primary protection” and “enhanced protection” are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004(3).

(3) Any calculation of the capital value of a member’s benefits is to be carried out in accordance with guidance issued by the Government Actuary.

### **Deduction of tax**

**18B.** The appropriate administering authority is responsible for deducting from any payments of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.”.

## **Calculations**

- 11.—(1) Regulation 19 is amended as follows.

- (2) After paragraph (3) insert–

“(3A) A member in respect of whom a benefit crystallisation event occurs on or after 1st October 2006 may elect in writing to the appropriate administering authority before any benefits become payable to increase the retirement grant payable under paragraph (3) by commuting his pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered.

(3B) But the total amount of the member’s retirement grant, including any sum received–

- (a) in accordance with an election under paragraph (3A);
- (b) as benefits provided in the form of a lump sum in accordance with regulation 63;  
or
- (c) as additional lump sum benefits in accordance with regulation 65,

shall not exceed 25% of the capital value of his accrued rights.

(3C) For the purposes of this regulation, a member’s accrued rights include rights accrued in respect of any payments made by or for him in accordance with Chapter IV of Part III (Additional Voluntary Contributions).

(3D) The capital value of a person’s accrued rights shall be calculated as shown in guidance issued by the Government Actuary.

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(3) 2004 c. 12; relevant provisions of Schedule 36 are amended by the Finance Act 2005 (c. 7), Schedule 10, paragraphs 52 to 54 and modified by S.I. 2006/572.

(3E) In paragraph (3A), “member” includes a deferred member to whom regulation 4 of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998(4) (Deferred members and pensioners: general) applies.”.

(3) For paragraph (4A) substitute—

“(4A) Where a benefit crystallisation event has not occurred before the day after a member’s 65th birthday in respect of any benefit payable under the Scheme, that benefit shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary.”.

(4) In paragraph (6) omit sub paragraphs (c), (e) and (f).

### **Final pay**

12. In regulation 20(1), omit “and Schedule 4”.

### **Revenue limits**

13. Omit regulation 23.

### **Retirement after age 65**

14. In regulation 24A—

(a) in paragraph (1), for “when he retires from service” substitute “in accordance with paragraph (2)”;

(b) for paragraph (2) substitute—

“(2) The pension and retirement grant are payable immediately on retirement or, if earlier, on the day before the member’s 75th birthday.”.

### **Other early leavers: deferred retirement benefits and elections for early payment**

15.—(1) In regulation 30(7), at the beginning insert “Subject to paragraph (7A)”.

(2) After regulation 30(7), insert—

“(7A) A member who continues to be employed by a Scheme employer listed in Schedule 2 is only entitled to receive a pension and grant without reduction payable from his NRD if his employer consents to his doing so.”.

### **Re employed and rejoining deferred members**

16. In regulation 31, omit paragraph (2).

### **Surrenders of pension**

17. Omit regulation 32.

### **Requirements as to time of payment**

18.—(1) Regulation 34 is amended as follows.

(2) After paragraph (1) insert—

“(1A) But where, after 1st October 2006, a member who has attained the age of 50, with his employer’s consent, reduces the hours he works, or the grade in which he is employed,

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(4) S.I. 1998/364; to which there are amendments not relevant to these Regulations.

he may elect in writing to the appropriate administering authority for benefits to be paid and such benefits may, with his employer's consent, be paid to him notwithstanding that he has not retired from that employment.

(1B) If the payment of benefits referred to in paragraph (1A) takes effect before the member's 65th birthday, the benefits payable are reduced in accordance with guidance issued by the Government Actuary.

(1C) But the employer may choose to waive, in whole or in part, any such reduction.

(1D) Where the employer so chooses, it shall pay to the fund the cost incurred as a result of such waiver as calculated by the fund's actuary.

(1E) Any benefits paid following an election under paragraph (1A) are not subject to abatement under regulation 110 in respect of any subsequent employment with the person who is his employer at the date of his election."

(3) For paragraph (2), substitute "In any event, retirement benefits under this Chapter must begin to be paid no later than the day before the member's 75th birthday even if he has not retired (and see regulation 35(3))."

#### **Guaranteed minimum pensions etc.**

19. In regulation 35, omit paragraphs (7), (8) and (9).

#### **Surviving spouse's or civil partner's long-term pension**

20. In regulation 40(6), after "death" insert "or half his pension before any commutation under regulation 19(3A), whichever is the greater".

#### **Meaning of "eligible child"**

21. In regulation 43–

(a) at the beginning of paragraph (2) insert "Subject to paragraph (2A)"; and

(b) after paragraph (2) insert–

"(2A) Notwithstanding paragraph (2)(b), a pension coming into payment on or after 6th April 2006 which would otherwise be payable by virtue of that paragraph shall only continue while the child is aged under 23.

(2B) Paragraph (2A) shall not apply where the member was a pensioner member on 5th April 2006 and the child was born on or before 5th April 2007."

#### **Children's long-term pensions**

22. In regulation 45(7), at the end insert "or of his pension before any commutation under regulation 19(3A), whichever is the greater".

#### **Commutation: small pensions**

23. For regulation 48 substitute–

"(1) Where a member has become entitled to a retirement pension and the capital value of that pension and of any benefits that might otherwise have become payable on that member's death would be a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to the Finance Act 2004, the appropriate administering authority may pay to that member a lump sum representing such capital value.

(2) No payment may be made under paragraph (1) if the pension includes a guaranteed minimum unless the member to whom it is paid has reached state pensionable age or any pension in respect of the guaranteed minimum is otherwise payable.

(3) Where a member has died and the capital value of any long-term pension which is payable to any surviving spouse or civil partner or to or in respect of an eligible child or children would be a trivial commutation lump sum death benefit as defined in paragraph 20 of Schedule 29 to the Finance Act 2004, the appropriate administering authority may pay to the dependant or dependants a lump sum representing such capital value.

(4) The capital value of a pension must be calculated as shown in guidance issued by the Government Actuary.”.

#### **Commutation: exceptional ill health**

24.—(1) After regulation 49(1) insert—

“(1A) An administering authority cannot be satisfied as mentioned in paragraph (1) unless they have first obtained a certificate from a fully registered person within the meaning of the Medical Act 1983(5) to the effect that the member’s life expectancy is less than one year.”.

(2) In regulation 49(2), omit the words “(except the guaranteed minimum)”.

(3) Omit regulation 49(3).

#### **Scope of Part III: limits on benefits**

25. In regulation 50, omit paragraph (2).

#### **Power of employing authority to increase total membership**

26. In regulation 51—

(a) at the end of sub-paragraph (2)(a) insert “or”; and

(b) omit sub paragraph (2)(b).

#### **Payments to increase total membership**

27. For regulation 54(2) substitute—

“(2) That period must not exceed 6 $\frac{2}{3}$  years.”.

#### **Election for lump sum in lieu of pension**

28. Omit regulation 58.

#### **Retirement benefits**

29.—(1) Regulation 63 is amended as follows.

(2) In paragraph (2)(c), for “65(11)” substitute “65(7)”.

(3) For paragraph (6) substitute—

“(6) The accumulated value of the contributions invested under paragraph (1) may be used, in whole or in part, to provide benefits in the form of a lump sum, provided that the

limit on the total amount of a member's retirement grant and other lump sums set out in regulation 19(3B) is not exceeded.”.

### **Elections as to use of accumulated value of AVCs**

**30.**—(1) Regulation 65 is amended as follows.

(2) For paragraph (6) substitute—

“(6) The accumulated value may be used, in whole or in part, to provide benefits in the form of a lump sum, provided that the limit on the total amount of a member's retirement grant and other lump sums set out in regulation 19(3B) is not exceeded.”.

(3) After paragraph (8) insert—

“(8A) Paragraph (6) shall also apply to a person who made an election under regulation 59(1) or 59(11) prior to 30th June 2005, notwithstanding any provision to the contrary in the former provisions of regulation 65 treated as continuing to have effect under paragraph (8).”.

### **Accounts and audit**

**31.** For regulation 75 substitute—

“**75.**—(1) After any audit of any pension fund of theirs an administering authority shall immediately send copies—

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

to each body whose employees are active members.

(2) The input period for the purposes of section 238 of the Finance Act 2004 is the year ending 31st March 2007 and each year ending 31st March thereafter.”.

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

**32.** In regulation 79(4)(a) omit “a determination under regulation 14 or”.

### **Over-provision: calculation and return of surplus AVC and SCAVC funds**

**33.** Omit regulation 84.

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

**34.** In regulation 86(6), for “under section 598 of the Taxes Act (charge to tax on repayment of employee's contributions)” substitute “as a short service refund lump sum charge under section 205 of the Finance Act 2004”.

### **Commencement of pensions**

**35.** For regulation 92(2)(c) substitute—

“(c) otherwise, unless he elects to defer payment, with his NRD (but any such deferral shall not extend beyond the day before his 75th birthday).”.

### **First instance decisions**

**36.** In regulation 96(6)—

- (a) at the end of sub paragraph (b), insert “and”;
- (b) in sub paragraph (c), for “membership; and” substitute “membership.”; and
- (c) omit sub paragraph (d).

### **Interpretation**

#### **37.** In Schedule 1–

- (a) after the definition of “base rate” insert–  
““benefit crystallisation event” shall be construed in accordance with section 216 of the Finance Act 2004;”;
- (b) omit the definitions of “Class A member”, “Class B member” and “Class C member”;
- (c) omit the definition of “continuity conditions”;
- (d) omit the definition of “revenue agreement”;
- (e) omit the definition of “revenue permitted maximum”; and
- (f) in the definition of “unaggregated period” for “regulation 32(6)” substitute “regulation 31(6)”.

### **Matters to be included in an admission agreement in certain cases**

#### **38.** In Schedule 2A, omit paragraph 4.

### **Excluded membership**

#### **39.** In Schedule 3–

- (a) omit paragraphs 1, 2, 4 and 5 of the Table; and
- (b) omit notes 3 to 5.

### **Revenue restrictions**

#### **40.** Omit Schedule 4.

### **Application of Modification Regulations**

**41.** The modifications made by the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(6) shall no longer apply to the principal Regulations.

St Andrew’s House Edinburgh  
12th September 2006

*TOM McCABE*  
A member of the Scottish Executive

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(6) S.I. 2006/364. By virtue of paragraph 3(2) of Schedule 36 to the Finance Act 2004 (as amended by paragraph 51 of Schedule 10 to the Finance Act 2005) the modifications made by those Regulations have effect until the date after 5th April 2006 when amendments of the rules of the pension scheme which state that the modifications no longer apply in relation to it take effect.



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## EXPLANATORY NOTE

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

These Regulations make a number of amendments to the Local Government Pension Scheme (Scotland) constituted by the Local Government Pension Scheme (Scotland) Regulations, as amended (“the principal Regulations”).

The Regulations make a number of amendments to the principal Regulations to address changes in the tax regime consequent on the Finance Act 2004.

Regulations 11, 29 and 30 amend the rules which govern the amount of pension that can be taken as a lump sum, to allow scheme members to choose to take up to 25% of the capital value of their pension as a lump sum.

Regulation 21 amends regulation 43 of the principal Regulations so that a child’s pension can only be paid to the age of 23. Transitional arrangements allow a pension to be paid beyond that age if permitted by the current rules where the child is in receipt of benefits under the principal Regulations on 5th April 2006, or where the number in question was already in receipt of retirement benefits on 5th April 2006, and the child was born on or before 5th April 2007.

Regulation 40 removes the current limitations on contributions and total membership found in Schedule 4 to the principal Regulations.

Other amendments are minor amendments consequential on the new taxation provisions. These include a requirement that all benefits start to be paid by a member’s 75th birthday, and amendments referring to provisions in the Finance Act which allow payments to be made without incurring a charge to tax.