
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 228

**The Local Government Pension Scheme
(Administration) (Scotland) Regulations 2008**

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 and come into force on 1st April 2009.

Interpretation

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

(2) References to members or membership refer to active members of the Scheme or active membership under the Scheme respectively unless otherwise stated or the context indicates a different meaning.

(3) The definition of “Reference Banks” in Schedule 1 must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000⁽¹⁾;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

PART 2

MEMBERSHIP OF SCHEME

General eligibility for membership

3.—(1) A person may only be an active member if—

- (a) this regulation, regulation 4 (employees of non-scheme employers: community admission bodies) to 7 (eligibility in certain cases of persons who are not employers); or
- (b) regulation 3(3) (active members) of the Benefits Regulations,

enables the person to be one and the person is not prevented from being one by regulation 9 (further restrictions on eligibility).

(2) A person may be a member if the person is employed by a body which is listed in Schedule 2.

Employees of non-Scheme employers: community admission bodies

4.—(1) Subject to the requirements of this regulation and regulation 6 (admission agreements further provisions), an administering authority may make an admission agreement with any community admission body.

(2) The following are community admission bodies—

- (a) a body, which provides a public service in the United Kingdom otherwise than for the purposes of gain and which either—
 - (i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise); or
 - (ii) is approved by the Scottish Ministers for the purposes of admission to the Scheme;
- (b) a body to the funds of which a Scheme employer contributes;
- (c) a body representative of—
 - (i) local authorities;
 - (ii) local authorities and officers of local authorities;
 - (iii) officers of local authorities where it is formed for the purpose of consultation on the common interests of local authorities and the discussion of matters relating to local government; or
 - (iv) Scheme employers;
- (d) A voluntary organisation engaged in the provision of services under—
 - (i) Part III of the National Health Service (Scotland) Act 1978(2);
 - (ii) Part III of the National Assistance Act 1948(3);
 - (iii) The Disability Discrimination Act 1995(4);
 - (iv) The Mental Health (Scotland) Act 1984(5) or the Mental Health (Care and Treatment) (Scotland) Act 2003(6); or
 - (v) Section 14 of the Social Work (Scotland) Act 1968 (which places a duty on local authorities to provide domiciliary services and laundry facilities to certain households)(7).

(3) An approval under paragraph (2)(a)(ii) may be subject to such conditions as the Scottish Ministers think fit and they may withdraw an approval at any time if such conditions are not met.

(4) Where, at the date that an admission agreement is made with a body mentioned in paragraph (2)(b), the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, it must be a term of the admission agreement that the Scheme employer paying contributions (or, if more than one pays contributions, all of them) guarantees the liability of the body to pay all amounts due from it under these Regulations or the Benefit Regulations.

(2) 1978 c. 29.
 (3) 1948 c. 29.
 (4) 1995 c. 50.
 (5) 1984 c. 36.
 (6) 2003 asp 13.
 (7) 1968 c. 49.

Employees of non-Scheme employers: transferee admission bodies

5.—(1) Subject to the requirements of this regulation and regulation 6 (admission agreements further provisions), an administering authority may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing or will provide—

(a) a service or assets in connection with the exercise of a function of a Scheme employer as a result of—

- (i) the transfer of the service or assets by means of a contract or other arrangement; or
- (ii) guidance provided under section 2 of the Local Government in Scotland Act 2003⁽⁸⁾ (requiring a local authority to have regard to guidance provided by the Scottish Ministers on performance of its duties) or a statement of findings under section 3 of that Act (which allows Audit Scotland to take certain actions following a report on a local authority by the Controller of Audit); or

(b) a public service and which is approved by the Scottish Ministers for the purposes of admission to the Scheme.

(3) In the case of an admission agreement with a transferee admission body referred to in paragraph (2)(a) the Scheme employer, if it is not also the administering authority, must be a party to the admission agreement.

(4) An approval under paragraph (2)(b) may be subject to such conditions as the Scottish Ministers think fit and they may withdraw an approval at any time if such conditions are not met.

(5) An admission agreement with a transferee admission body shall require—

(a) that in the case of a body under—

- (i) paragraph (2)(a), the Scheme employer; or
- (ii) paragraph (2)(b), the transferee admission body, to the satisfaction of the administering authority,

shall carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee body; and

(b) that, where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.

(6) The indemnity or bond must be with—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000⁽⁹⁾ to accept deposits or to effect and carry out contracts of general insurance;
- (b) an EEA firm of the kind mentioned in paragraph (5)(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or
- (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.

(7) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 3.

⁽⁸⁾ 2003 asp 1.

⁽⁹⁾ 2000 c. 8.

(8) This paragraph applies where a transferee admission body undertakes to meet the relevant requirements of this regulation and—

- (a) in the case of a body under paragraph (2)(a), the Scheme employer undertakes to meet the relevant requirements of this regulation; or
- (b) in the case of a body under paragraph (2)(b), the Scottish Ministers approve the body for admission to the Scheme and the conditions, if any, to which the approval is subject have been met.

(9) Where paragraph (8) applies—

- (a) an administering authority must admit to the Scheme the eligible employees of the transferee admission body specified by the body; and
- (b) where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

(10) Only those employees of the transferee admission body who are employed in connection with the provision of a service or assets mentioned in paragraph (2) are eligible to be designated, under regulation 6(1) (admission agreements – further provisions), members of the Scheme.

Admission agreements – further provisions

6.—(1) A person employed by a community admission body or an eligible person employed by a transferee admission body may only be a member if the person, or a class of employees to which the person belongs, is designated in the admission agreement by the body as being eligible for membership of the Scheme.

(2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.

(3) When an administering authority makes an admission agreement it must promptly inform the Scottish Ministers of—

- (a) the date the agreement takes effect;
- (b) the admission body's name; and
- (c) in the case of an agreement with a transferee admission body under regulation 5(2)(a) (transferee admission bodies) the name of the relevant Scheme employer.

(4) An administering authority and an admission body may make an admission agreement despite the fact that they do not exercise their functions or provide services or assets in areas that overlap or adjoin each other.

(5) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Scottish Ministers for determination.

(6) These Regulations and the Benefits Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the admission body were a Scheme employer.

Eligibility in certain cases of persons who are not employees

7.—(1) A person may be an active member if that person is an eligible officer.

(2) These are eligible officers—

- (a) a registration officer;

- (b) a person who immediately before 16th May 1974 was a member of a passenger transport executive or a director of a subsidiary of a passenger transport executive who was a contributory employee in that position and continues in it; or
- (c) a councillor.

(3) If a registration officer is an active member, the registration officer must be treated as being in employment with the local authority who are the local registration authority for the purposes of section 5 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965⁽¹⁰⁾ and by whom the registration officer was appointed or deemed to have been appointed under section 7 of that Act.

(4) If a person mentioned in paragraph (2)(b) is an active member that person must be treated as being in the employment of the passenger transport executive.

(5) A person who has been appointed as a rent officer under section 43 of the Rent (Scotland) Act 1984⁽¹¹⁾ must be treated as being in employment of the local authority with whom the Scottish Ministers have made arrangements under that section to provide for the superannuation of the officer.

(6) A member of a passenger transport executive or a director of a subsidiary of such an executive must be treated as being in employment with the relevant executive.

(7) Regulation 8(1) (separate employments etc.) applies to the persons holding the positions specified in paragraph (6) as it applies to the employees specified in that regulation.

(8) If a councillor member is an active member, the councillor must be treated as being in the whole time employment of the local authority of which the councillor is a member and references to employment by or under such an employer and all similar expressions shall be construed accordingly.

Separate employments etc.

8.—(1) Where a person holds separate employments under one employing authority, these Regulations and the Benefits Regulations apply as if each of them were under a different employer.

(2) This paragraph applies where a whole time or a part-time employee of an employing authority 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 which are required by regulations made under paragraph 2 of Schedule 1 to the European Assembly Elections Act 1978⁽¹²⁾ to be discharged by a returning officer).

(4) This paragraph applies where, immediately before 1st April 1974, an employee mentioned in paragraph (2) was in whole time or part time employment and had duties which included one or more of the additional duties.

(5) Where paragraphs (2) or (4) apply, each additional duty must be treated as a separate variable time employment with a different employing authority from the employing authority with whom the employee is in the whole time or, as the case may be, part time employment.

(6) Where—

- (a) paragraph (2) applies; and

⁽¹⁰⁾ 1965 c. 49. Section 5 was substituted by the [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), section 37(2).

⁽¹¹⁾ 1984 c. 58.

⁽¹²⁾ 1978 c. 10.

(b) paragraph (4) does not apply,
the employee's employment to carry out an additional duty (or duties) must be treated as a single separate variable time employment with a different Scheme employer.

(7) A person who—

- (a) is a member in any employment; and
- (b) is also a medical inspector of immigrants appointed under the Immigration Act 1971⁽¹³⁾ who receives his or her pay in that appointment from a Scheme employer listed in Schedule 2,

is eligible to be an active member in that appointment and shall be deemed to be in the employment of that Scheme employer.

Further restrictions on eligibility

9.—(1) Subject to paragraph (6) if a person's employment entitles the person to belong to another public service pension scheme, or would so entitle him were it not for his age, that employment does not entitle the person to be a member, unless that other scheme was made under section 7 of the Superannuation Act 1972.

(2) "Public service pension scheme" has the meaning given by section 150 of the Finance Act 2004⁽¹⁴⁾ (meaning of "pension scheme").

(3) An employee of an admission body may not be a member if the employee is a member of another occupational pension scheme in relation to the employment in respect of which that employee would otherwise be eligible to be a member of the Scheme under regulation 6(1) (admission agreements – further provisions).

(4) A person may not become a member after the day before the person's 75th birthday.

(5) Part-time employment as an employee of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005⁽¹⁵⁾) on terms under which the retained or voluntary member is or may be required to engage in fire fighting does not entitle the member to be a member of the Scheme.

(6) 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⁽¹⁶⁾ ("the NHS Scheme") 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⁽¹⁷⁾ (delegation etc. between local authorities and NHS bodies);
- (b) the person is specified in, or within a class of employees specified in, an admission agreement made between an administering authority and an NHS Scheme employing authority; and
- (c) the person was an active member of the scheme immediately before that person's employment by the NHS Scheme employing authority.

⁽¹³⁾ 1971 c. 77.

⁽¹⁴⁾ 2004 c. 12.

⁽¹⁵⁾ 2005 asp 5.

⁽¹⁶⁾ 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 (Scotland) Regulations 1995, S.I.1995/365, as amended.

⁽¹⁷⁾ 2002 asp 5.

Joining the Scheme

10.—(1) A person who is eligible to be an active member of the Scheme on the day the employment begins becomes an active member on that day unless the person notifies his or her employer in writing before his or her employment begins that he or she does not wish to become a member on that date.

(2) A person who applies to become a member after the date the member would otherwise become a member under paragraph (1) becomes a member on the first day of the first payment period following the application.

(3) Subject to paragraph (5), a person who only becomes eligible to be a member of the Scheme on a date after the employment begins becomes an active member on that date unless the person notifies his or her employer in writing before that date that he or she does not wish to become a member on that date.

(4) A person who applies to become a member after the date the person would otherwise become a member under paragraph (3) becomes a member on the first day of the first payment period following the application.

(5) A person referred to in paragraph (3) who is employed by a body listed in Schedule 2 may be an active member from the date that the employment began if the person applies to be so and pays contributions in respect of that earlier period at the appropriate contribution rate as provided in regulation 4 of the Benefits Regulations (contributions payable by active members).

(6) A former active member who is eligible for membership may reapply for membership of the Scheme and becomes an active member on the first day of the first payment period following the application.

(7) In paragraphs (2), (4) and (6), regulation 11(5) (ending of membership) and regulation 20(7) (payment of additional regular contributions), a payment period is a period of service to which the employee's wages or salary payment relate.

Ending of membership

11.—(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 one month, that person must be treated as not having been a member in that period.

(7) A person who is a member and is an employee of a transferee admission body is treated for the purposes of these Regulations and the Benefit Regulations as leaving a local government employment when the person ceases to be employed in connection with the provision of the service or assets under regulation 5(2) (employees of non-Scheme employers: transferee admission bodies) by virtue of which the person became eligible to join the scheme.

Periods of membership

12.—(1) A person may not count any period of membership if the person's contributions for that period have been returned to the person.

(2) A person may not count any period of membership if the person's rights in respect of it have been transferred by payment of a transfer value (see Part 9).

(3) A person may not count as a period of membership for the purpose of calculating any benefit under regulations 16 (retirement benefits) to 20 (early leavers: ill health) or 29 (calculation on leaving early) to 31 (early payment of pensions: ill-health) of the Benefits Regulations so much of that person's membership as requires to be excluded to reduce the value referred to in regulation 68(2)(b) of these Regulations by the amount recovered or retained under regulation 68 (recovery or retention where former member has misconduct obligation) of these Regulations.

(4) Where a person pays contributions under regulation 17 (contribution during trade dispute absence) for any period, that period counts as a period within regulation 7 of the Benefits Regulations (periods of membership) even if the person's contract of employment did not subsist throughout that period.

(5) A period of membership under regulation 7(1)(a) of the Benefits Regulations includes any period for which a member is treated as having paid contributions under regulation 14 (concurrent employments) and regulation 41(4) (rights to return of contribution) of these Regulations.

Re-employed and rejoining deferred members

13.—(1) Subject to paragraph (2), where a deferred member becomes an active member in an employment ("the new employment") before becoming entitled to the immediate payment of retirement benefits, the member may, by giving notice in accordance with paragraph (8), elect to have his or her membership in any former employment aggregated with his or her membership in the new employment.

(2) In the case of a deferred member who has been a councillor member, an election under paragraph (1) may only aggregate councillor membership with former councillor membership and, as the case may be, membership which is not councillor membership with former membership which is not councillor membership.

(3) Where a member elects under paragraph (1)—

- (a) the member ceases to be entitled to rights under the Scheme in respect of the member's former membership (except in so far as the member is entitled by virtue of having become an active member again to rights in respect of the aggregated total membership); and
- (b) the member ceases to count as a deferred member for these Regulations as respects the member's former membership (unless the member becomes a deferred member again after ceasing to be an active member).

(4) Where the member has ceased to be an active member more than once, the member may choose to aggregate under paragraph (1)—

- (a) the membership at each of the times the member so ceased; or
- (b) only such periods of membership as are specified in the notice.

(5) Where a member who may elect under paragraph (1) does not do so or does not elect as respects all periods of the membership—

- (a) in applying regulations 6(1) (benefits), 8 (calculation of periods of length of membership) and 20 (early leavers: ill health) of the Benefits Regulations as respects any later membership, the total membership excludes unaggregated periods; and
- (b) as respects each unaggregated period of the member's former membership—
 - (i) paragraph (3) does not apply;
 - (ii) the member shall continue to be treated as a deferred member or, as the case may be, as a pensioner member (and not as an active member); and

(iii) the member shall be entitled to the same rights as if the member were not also an active member;

and references in these provisions to the member's appropriate administering authority or appropriate fund shall be construed accordingly.

(6) For this regulation a period of membership is an unaggregated period if—

- (a) no previous election has been made under this regulation for its aggregation; and
- (b) in the case of a period as respects which the member was entitled to elect under regulation E2(9)(c) of the 1987 Regulations (elections to remain entitled to preserved benefits) or any previous corresponding provision of the Scheme, such an election was made.

(7) But a member cannot choose to aggregate any period of former membership which the member could have chosen to aggregate with another period of former membership but did not before the expiry of the period mentioned in paragraph (8)(a).

(8) Notice for the purposes of paragraph (1) must be given in writing—

- (a) while the deferred member is an active member in the new employment;
- (b) to the member's appropriate administering authority in that employment; and
- (c) if the appropriate fund for membership in the new employment is different from that for any former employment to which the notice relates, to the appropriate administering authority in that former employment.

(9) References in this regulation to former membership include all membership which the member was entitled to count as membership immediately before the member ceased former active membership.

(10) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, the person shall be treated for the purposes of this regulation as if the person were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

Concurrent employments

14.—(1) Where a person—

- (a) ceases to be an active member in one employment in respect of which the person has at least two years' total membership ("the first employment"); and
- (b) continues as an active member in another employment the person held concurrently with the first employment,

the person may elect to have the former membership in respect of the first employment aggregated with the person's membership in that other employment.

(2) If the person so elects, the provisions of regulation 13 (re-employed and rejoining deferred members) shall apply as if references to—

- (a) the person's former membership or former active membership were references to the person's membership from the person's first employment;
- (b) the new employment were references to the person's concurrent employment; and
- (c) the employment in which the person becomes an active member again were references to that concurrent employment.

(3) If no election is received within one month of a notification by an administering authority to a person of the person's right to elect under paragraph (1), the administering authority may aggregate the person's former membership in respect of the first employment with the membership in the other employment.

(4) In the case of a person to whom this regulation applies, the period of membership which will be aggregated with the person's membership from the concurrent employment will be equal to the person's membership from the person's first employment, as reduced under regulation 8(3) and (4) (calculation of length of periods of membership) of the Benefits Regulations if the first employment was part time, multiplied by the fraction—

$$\frac{\text{whole – time rate of pay in the first employment}}{\text{whole – time rate of pay in concurrent employment}}$$

where

the rate of pay in each case is the annual rate of pay on the last day of the first employment.

PART 3 CONTRIBUTIONS

Contributions during child-related leave

15.—(1) If a person who is a member, or has applied to be a member, goes on maternity, paternity or adoption leave, the person must make contributions as respects any part of that person's period of maternity, paternity or adoption absence for which the person is a member and entitled to receive pay (including statutory pay).

(2) But that pay does not include any amount that reduces the person's actual pay on account of the person's possible entitlement to statutory pay.

(3) Such contributions must be made at the contribution rate on that pay.

(4) If a person who is a member or has applied to be a member—

- (a) goes on ordinary maternity leave, paternity leave or ordinary adoption leave; and
- (b) is not entitled to receive pay (including statutory pay) for all or any part of that period of leave,

the person shall be treated for the purposes of these Regulations and the Benefits Regulations as if the person had paid contributions under paragraph (1) for the unpaid period of that leave and on the pay that the person would have received during that period but for the absence.

(5) If a person who is a member or has applied to be a member—

- (a) is on maternity or adoption leave (other than ordinary maternity or adoption leave); and
- (b) for all or part of the period of maternity or adoption absence is not entitled to receive pay (including statutory pay) but is a member,

the person may make contributions at the contribution rate as respects the unpaid period of that absence as if the person's pay in the employment were equal to the adjusted pay.

(6) The adjusted pay shall be the pay the person was entitled to receive immediately before the unpaid period began (including statutory pay) but not including any amount that reduces the person's actual pay on account of his or her possible entitlement to statutory pay and disregarding any amount that the person receives on account of a day's work carried out under regulation 12A of the Maternity and Parental Leave etc. Regulations 1999⁽¹⁸⁾ or regulation 21A of the Paternity and Adoption Leave Regulations 2002⁽¹⁹⁾.

⁽¹⁸⁾ S.I. 1999/3312; regulation 12A was inserted by S.I. 2006/2014, regulations 3, and 9.

⁽¹⁹⁾ S.I. 2002/2788; regulation 21A was inserted by S.I. 2006/2014, regulation 4.

(7) A member to whom paragraph (5) applies may continue to pay contributions under regulation 22 (additional voluntary contributions) which the member was paying immediately before the leave began.

(8) If an active member goes on maternity, paternity or adoption leave, the member must continue to make any payments that member was making under regulation 20 (payment of additional regular contributions) or regulation 54 of the 1998 Regulations (payments to increase total membership) on the pay that the person would have received but for the leave.

(9) In this regulation—

“ordinary adoption leave” means leave under section 75A of the Employment Rights Act 1996⁽²⁰⁾;

“ordinary maternity leave” means leave under section 71 of that Act ⁽²¹⁾;

“paternity leave” means leave under regulations 4 or 8 of the Paternity and Adoption Leave Regulations 2002;

“period of maternity, paternity or adoption absence” means any period throughout which a member is absent from duty because that member is exercising the right to take—

- (a) ordinary maternity or adoption leave;
- (b) additional maternity or adoption leave under section 73 or 75B of the Employment Rights Act 1996⁽²²⁾; or
- (c) paternity leave; and

“statutory pay” means any statutory maternity, paternity or adoption pay payable under the Social Security Contributions and Benefits Act 1992⁽²³⁾.

Contributions during reserve forces service leave

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

- (a) is a member or has applied to be a member; and
- (b) goes on reserve forces service leave.

(2) The person must pay contributions under regulation 4 (contributions payable by active members) of the Benefits Regulations and any payments under regulation 20 (payment of additional regular contributions) of these Regulations or regulation 54 of the 1998 Regulations (payments to increase total membership) which that person was paying immediately before the relevant reserve forces service began if (and only if) that person’s reserve forces pay during the service equals or exceeds the pay that person would have received if that person had continued to be employed in the former employment.

(3) Those contributions continue to be payable to the appropriate fund at the same rates on that pay.

(4) If the person is not obliged to pay contributions under paragraph (2) the person must be treated for the purposes of these Regulations and the Benefits Regulations as if the person had paid them and also any payments under regulation 20 (payment of additional regular contributions) of these Regulations or regulation 54 of the 1998 Regulations which the person would have been liable to pay if the person had continued to be employed in the former employment.

⁽²⁰⁾ 1996 c. 18. Section 75A was inserted by section 3 of the Employment Act 2002 (c. 22).

⁽²¹⁾ Section 71 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 (c. 26).

⁽²²⁾ Section 73 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 and section 75B was inserted by section 3 of the Employment Act 2002.

⁽²³⁾ 1992 c. 4.

(5) If the person was paying any contributions under regulation 22(1) (additional voluntary contributions and shared cost additional voluntary contributions) immediately before the leave began—

- (a) the person may continue to pay, or may stop paying, them; and
- (b) unless the person has stopped paying them, the appropriate administering authority must, throughout the period of the person's relevant reserve forces service, continue to pay any such contributions which were to be used to provide benefits for the person on the person's death.

(6) The person's relevant reserve forces service counts as a period of membership in that person's former employment.

(7) If during that service, the person—

- (a) dies;
- (b) attains normal retirement age; or
- (c) becomes incapable for health reasons of working efficiently in local government employment,

the person must be treated as if the person were in that employment at that time.

(8) In this regulation—

“cancelling notice” in relation to a person's relevant reserve forces service, means—

- (a) an agreement, by a member who has not waived his or her right to receive a return of contributions under regulation 41 (rights to return of contributions), to receive a return of contributions; or
- (b) a notice in writing given by the person to the appropriate administering authority not later than 12 months after the end of the period of service to which the notice relates (or within such longer period as the administering authority may allow) that the service should not be treated as relevant reserve forces service;

“relevant reserve forces service” means service (other than service for the purposes of training only or service for a period in respect of which a cancelling notice has been served)—

- (a) in pursuance of any notice or directions given under any enactment which provides for the calling out on permanent service, or the calling into actual service, or the embodiment of, any reserve or auxiliary force, or members of such a force, or the recall of service pensioners;
 - (b) in pursuance of any obligation or undertaking to serve when called upon as a commissioned officer; or
 - (c) rendered by virtue of section 14(1) or 34 of the Reserve Forces Act 1980(24),
- and paragraph (b) applies whether or not the obligation or undertaking is legally enforceable, but not in the case of an obligation or undertaking to accept a permanent commission or a commission for a fixed term or to serve for the purposes of periodical training;

“reserve forces pay” in relation to any person, is the total of—

- (a) the person's pay for performing relevant reserve forces service (including marriage, family and similar allowances); and
- (b) any payments under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(25);

“reserve forces service leave” in relation to a person, means being away from work—

(24) 1980 c. 9.

(25) 1951 c. 65.

- (a) after the person—
 - (i) has left the employment in which the person is an active member; or
 - (ii) has been granted leave of absence from such an employment, in order to perform relevant reserve forces service;
- (b) without having agreed to receive a return of contributions under regulation 41; and
- (c) without having elected that the absence is not to count as such by giving notice in writing to the appropriate administering authority not later than 12 months after the end of the period of relevant reserve forces service to which the notice relates (or within such longer period as the administering authority may allow);

“reserve or auxiliary force” means the whole or part of the Royal Navy Reserve (including the Royal Fleet Reserve), the Royal Marines Reserve, the Territorial Army, the Army Reserve, the Air Force Reserve, the Royal Air Force Volunteer Reserve or the Royal Auxiliary Air Force; and

“service pensioner” means a person in receipt of a pension (other than a pension awarded in respect of disablement) granted—

- (a) in respect of service in the Royal Navy, the Royal Marines, the regular army and the regular air force or any reserve or auxiliary force which has been called out on permanent service or which has been embodied; or
- (b) in respect of that and other service.

Contributions during trade dispute absence

17.—(1) If a person—

- (a) is away from work without permission for a period of one or more days during and because of a trade dispute (“a trade dispute absence”); and
- (b) was a member immediately before—
 - (i) that period; or
 - (ii) where two or more periods of absence have occurred because of one such dispute, the first such period,

the person may make a contribution for the relevant contribution period at the rate of 16% on the person’s lost pay for that period.

(2) A person’s lost pay is the difference between—

- (a) the person’s actual pay (if any); and
- (b) the pay the person would have received but for any trade dispute absence,

and, in determining that difference, any guarantee payments under Part 3 of the Employment Rights Act 1996(26) must be disregarded.

(3) A period is a person’s relevant contribution period if—

- (a) it is co extensive with one of the intervals at which the person is required under regulation 4 (contributions payable by active members) of the Benefits Regulations to make standard contributions; and
- (b) it includes all or part of that person’s trade dispute absence.

(4) The termination of a person's contract of employment because of a trade dispute does not prevent this regulation applying to the person if the person again becomes an employee of the same employing authority and a member not later than the day after the dispute ends.

(5) A member to whom paragraph (1) applies—

- (a) may continue to pay contributions under regulation 22 (additional voluntary contributions) which the member was paying immediately before the trade dispute absence leave began; and
- (b) must continue to make any payments the member was making under regulation 20 (payment of additional regular contributions) of these Regulations or regulation 54 of the 1998 Regulations (payments to increase total membership) on the day the member would have received but for the absence.

(6) In this regulation, "trade dispute" has the meaning given in section 218 of the Trade Union and Labour Relations (Consolidation) Act 1992⁽²⁷⁾.

Contributions during absences with permission

18.—(1) If a member—

- (a) is away from the member's employment with permission (otherwise than because of illness or injury)—
 - (i) for a continuous period of less than 31 days; or
 - (ii) on jury service for any period; and
- (b) is receiving reduced pay or no pay,

the member must make the payments specified in paragraph (2) on the pay the member would have received during that period but for the absence ("the deemed pay").

(2) The payments are—

- (a) contributions at the contribution rate; and
- (b) any payments the member was making under regulation 20 of these Regulations (payment of additional regular contributions (ARCs)) or regulation 54 of the 1998 Regulations.

(3) The member may continue to pay contributions under regulation 22 (additional voluntary contributions) which the member was paying immediately before the absence began.

(4) If a member—

- (a) is away from the member's employment with permission (otherwise than because of illness or injury) for a continuous period of more than 30 days; and
- (b) is receiving reduced pay or no pay,

the member must make the payments specified in paragraph (5) on the deemed pay.

(5) The payments are—

- (a) contributions for the first 30 days' absence; and
- (b) any payments the member was making under regulation 20 (payment of additional regular contributions) of these Regulations or regulation 54 of the 1998 Regulations.

(6) The member may—

- (a) make contributions at the contribution rate on the deemed pay for the remainder of the period of absence subject to a maximum of 36 months; and

(27) 1992 c. 52.

- (b) continue to pay contributions under regulation 22 (additional voluntary contributions) which the member was paying immediately before the absence began.

Applications to make absence contributions

19.—(1) To make contributions under regulation 15(5) (contributions during child-related leave), 17 (contributions during trade dispute absence) or 18(6)(a) (contributions during absences with permissions) a person must apply to his or her employing authority in writing before the expiry of a period of 30 days beginning with the day—

- (a) on which the person returns to work, if the person returns to work following the absence; or
- (b) on which the person ceases to be employed, if the person ceases to be employed by that authority without returning to work.

(2) In either case, the authority may allow a longer period.

(3) A person's executor may make an application under paragraph (1) if the person has died without making an application.

Payment of additional regular contributions (ARCs)

20.—(1) A member who chooses to pay additional contributions under regulation 14 (election in respect of additional pension) of the Benefits Regulations must make the request in writing to the appropriate administering authority.

(2) The member's request must be copied to the member's employing authority and must state the length of the period ("the ARC payment period") over which the member wishes to pay the additional regular contributions ("ARCs").

(3) If—

- (a) the member's appropriate administering authority pass a resolution requiring the member to satisfy them that the member is in reasonably good health by producing to them a report by a registered medical practitioner of the results of a medical examination undertaken at the member's own expense; but
- (b) it is not so satisfied,

it may refuse the request.

(4) The length of the ARC payment period must be such that it ends before the member's normal retirement age.

(5) The member may only pay ARCs if the appropriate administering authority notifies the member in writing that it agrees to the request.

(6) The scheme actuary shall from time to time determine the amount of ARCs required for any given amount of increased pension and may determine different amounts of ARCs—

(a) for—

- (i) persons of different ages; or
- (ii) men or women; or

(b) depending on the length of different payment periods.

(7) Where the appropriate administering authority agrees to the member's request—

(a) it must notify the member and the member's employing authority of the amount of ARCs payable by the member in accordance with the scheme actuary's determination, expressed as an amount in pounds sterling; and

(b) the member must pay those ARCs from the next payment period (as defined in regulation 10(7)) following the administering authority's notification under paragraph (5).

(8) The scheme actuary may at any time redetermine any amount determined under paragraph (6); and, if the scheme actuary does so, the member must, from 1st April following the redetermination, pay ARCs in accordance with the redetermination.

(9) If the member pays (or is treated under regulation 21 (discontinuance of ARCs) as having paid) ARCs for the whole of the ARC payment period, the member must be credited with additional pension of an amount corresponding to them.

Discontinuance of ARCs

21.—(1) A member—

- (a) may stop paying ARCs before the end of the ARC payment period if the member notifies the appropriate administering authority and the employing authority in writing that the member wishes to do so; and
- (b) must stop doing so on ceasing to be an active member.

(2) If a member stops paying ARCs before the end of the ARC payment period—

- (a) on leaving employment on the grounds of ill health and the member’s employing authority makes a determination in respect of the member under regulation 20(2) or (3) (early leavers: ill health) of the Benefits Regulations; or
- (b) on the member’s death,

the member is to be treated as having paid ARCs up to the end of that period.

(3) If a member stops paying ARCs and paragraph (2) does not apply to the member, the member must be credited with additional pension of an amount determined by the scheme actuary, having regard to the ARCs paid by the member before the member stopped.

Additional voluntary contributions and shared cost additional voluntary contributions

22.—(1) An active member may elect to pay voluntary contributions (“AVCs”) into a scheme established under contract between the member’s appropriate administering authority and a body approved for the purposes of the Finance Act 2004(28) (“an additional voluntary contributions scheme”).

(2) The additional voluntary contributions scheme must be a money purchase pension scheme registered in accordance with the Finance Act 2004 and administered in accordance with that Act and the Pensions Act 2004(29).

(3) Where the member’s employing authority at its discretion contributes to the scheme, the additional voluntary contribution scheme is known as a shared cost additional voluntary contributions scheme and contributions to it as “SCAVCs”.

(4) Such AVCs or SCAVCs are in addition to any other contributions the member may pay under regulation 20 (payment of additional regular contributions).

(5) Where the member elects to pay AVCs or SCAVCs, the member must first—

- (a) notify his or her administering authority in writing; and
- (b) in the notification specify—
 - (i) the percentage of the member’s pensionable pay the member wishes to pay or the amount the member wishes to pay on the member’s usual pay days from his or her pay;

(28) 2004 c. 12.

(29) 2004 c. 35.

- (ii) whether the member wishes any of the member's AVCs or SCAVCs to be used to provide benefits payable on the member's death ("death benefits"); and
 - (iii) if the member does, the proportion to be so used.
- (6) Subject to paragraph (7), a member may—
- (a) vary—
 - (i) the amount of the member's AVCs or SCAVCs; or
 - (ii) the proportion of them to be used to provide death benefits; or
 - (b) stop paying AVCs or SCAVCs.

(7) Where the member wishes to take the steps in paragraph (6), the member must first notify his or her administering authority in writing.

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

(9) An election to pay AVCs or SCAVCs may be made in respect of each employment in respect of which a person is a member.

Use of accumulated value of AVCs and SCAVCs

23.—(1) This regulation applies where a person who has paid AVCs or SCAVCs during the person's employment or made a transfer under regulation 22(8) (additional voluntary contributions)—

- (a) leaves his or her employment with the employing authority notified under regulation 22(5)
 - (a)—
 - (i) without entitlement to the immediate payment of retirement benefits; or
 - (ii) with such entitlement under regulation 16 (retirement benefits), 17 (retirement after the normal retirement date), 18 (flexible retirement), 19 (early leavers: business efficiency and redundancy), 30 (choice of early payment of pension) or 31 (early payment of pension: ill-health) of the Benefits Regulations;
 - (b) stops being an active member without leaving that employment; or
 - (c) becomes entitled to ill health benefits under regulation 20 (early leavers: ill health) of those Regulations.

(2) A person mentioned in paragraph (1)(a)(i) must notify that employing authority in writing that the person wishes the accumulated value of the AVCs or SCAVCs ("the accumulated value") to be used in one or more of the permissible ways specified in the notification.

- (3) The permissible ways are—
- (a) to subscribe to a registered scheme (other than the Scheme);
 - (b) to purchase an appropriate policy from one or more insurance companies (within the meaning of section 275 of the Finance Act 2004).

(4) A person mentioned in paragraph (1)(a)(ii) or (c) may notify his or her employing authority in writing that the person wishes the accumulated value to be used to provide additional pension for the person under the Scheme, or partly to provide such pension for the person.

(5) If the person does so, the person becomes entitled to such additional pension as is shown as appropriate in guidance issued by the scheme actuary.

(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 21(2) (election for lump sum in lieu of pension) of the Benefits Regulations is not exceeded.

(7) The employing authority must send a notification under paragraph (2) or (4) to the appropriate administering authority as soon as possible.

(8) In the case of a person mentioned in paragraph (1)(b)–

(a) the employing authority must, as soon as possible, inform the appropriate administering authority that the person has stopped being an active member; and

(b) the accumulated value must be used to subscribe to a registered scheme that is not an occupational pension scheme.

(9) The appropriate administering authority must make such arrangements as are necessary for the use of the accumulated value in accordance with a notification under paragraph (2) or (4) or with paragraph (8)(b).

Separate treatment of AVCs and SCAVCs from other contributions

24.—(1) Regulations 41 (rights to return of contributions) and 42 (exclusion of rights to return of contributions) do not apply to–

(a) AVCs or SCAVCs payable under these Regulations or under any agreement made for the payment of AVCs before the commencement date; or

(b) interest on late payments which relate to AVCs or SCAVCs.

(2) The regulations mentioned in paragraph (3) do not apply in relation to benefits under–

(a) such a policy as is mentioned in regulation 23(3)(b); or

(b) any agreement made for the payment of AVCs or SCAVCs before the commencement date.

(3) Those regulations are–

(a) regulation 51 (first instance decisions);

(b) regulation 66 (forfeiture of pension rights);

(c) regulation 67 (interim payments directions); and

(d) regulation 68 (recovery or retention where former member has misconduct obligations).

Cost of calculations of additional pension where no notification given under regulation 23(4)

25.—(1) This regulation applies where, at a member's request, an administering authority gives the member information concerning the amount of additional pension which would be payable if the member were to give a notification under regulation 23(4) (use of accumulated value of AVCs and SCAVCs).

(2) If the member does not give such a notification before the expiry of the period of three months beginning with the date the authority gives the member the information, it may deduct the cost of calculating that amount from the accumulated value of the additional contributions mentioned in regulation 15(1) (elections to pay AVCs) of the Benefits Regulations.

PART 4

PENSION FUNDS AND EMPLOYERS PAYMENTS

The pension funds

26. The bodies responsible for maintaining pension funds for the Scheme immediately before the commencement date must continue to maintain them unless the fund is vested in a different body by or under any enactment.

Governance compliance statement

- 27.—**(1) An administering authority must prepare a written statement setting out—
- (a) whether they delegate their function, or part of their function, in relation to maintaining a pension fund to a committee, a sub-committee or an officer of the authority;
 - (b) if they do 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 employing authorities (including authorities which are not Scheme employers) or members and, if so, whether those representatives have voting rights; and
 - (c) the extent to which a delegation, or the absence of a delegation, complies with guidance given by Scottish Ministers and, to the extent that it does not so comply, the reasons for not complying.
- (2) An administering authority must publish the first such statement on or before 1st April 2010.
- (3) An administering authority must—
- (a) revise their statement following a material change in respect of any of the matters mentioned in paragraph (1); and
 - (b) publish the statement as revised.
- (4) In preparing or revising their statement an administering authority must consult such persons as they consider appropriate.
- (5) When they publish their statement, or the statement as revised, an administering authority must send a copy of it to the Scottish Ministers.

Appropriate funds

- 28.—**(1) The appropriate fund for a member or a person who is entitled to any benefit in respect of a person who has been a member is—
- (a) in the case of an active member, the fund specified for a member of the description of such member in accordance with Schedule 4 (appropriate funds);
 - (b) in the case of—
 - (i) a deferred or pensioner member who is an active member on the commencement date or has been an active member since that date, the fund so specified for a member of the description of such member when the member ceases to be an active member; or
 - (ii) a person who is entitled under the Benefits Regulations in respect of a member, the fund so specified for a member of the description of such member when the member ceased to be an active member;

(c) in the case of any other deferred or pensioner member, the fund specified for such member by virtue of regulation 11 (appropriate funds) of the Transitional Regulations.

(2) Where these Regulations or the Benefits Regulations refer to payments being made without referring to the fund to which or from which they are to be made, the reference is to payments being made to or from the fund which is the appropriate fund for the member in question.

(3) Paragraph (2) does not apply where the payments made are benefits paid under an additional voluntary contributions scheme or a shared cost additional voluntary contributions scheme.

Admission agreement funds

29.—(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 26 (“the main fund”).

(2) Immediately after an 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 in 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 32 (actuarial valuations and certificates) 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 a transfer statement from an actuary appointed by the authority.

(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.

Accounts and audit

30.—(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 is the year ending on 31st March 2009 and each year ending on 31st March after that year.

Funding strategy statement

31.—(1) This regulation applies to the funding strategy statement prepared and published by an administering authority under regulation 75A of the 1998 Regulations(**30**).

(30) Regulation 75A was inserted by [S.S.I. 2005/293](#).

- (2) The authority must—
 - (a) keep the statement under review;
 - (b) make such revisions as are appropriate following a material change—
 - (i) in its policy on the matters set out in the statement; or
 - (ii) to the current version of its statement under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998⁽³¹⁾ (statement of investment principles); and
 - (c) if revisions are made, publish the statement as revised.
- (3) In reviewing and making revisions to the statement, the authority must—
 - (a) have regard to the guidance set out in the document published in March 2004 by CIPFA and called “CIPFA Pensions Panel guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No. 6)”;
 - (b) consult such persons as it considers appropriate.

Actuarial valuations and certificates

- 32.**—(1) Each administering authority must obtain—
- (a) an actuarial valuation of the assets and liabilities of each of its pension funds as at 31st March 2011 and 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 common rate of employer’s contribution; and
 - (b) any individual adjustments,

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

(5) The common rate of employer’s contribution is the amount which, in the actuary’s opinion, should be paid to the 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.

- (6) The actuary must have regard to—
- (a) the existing and prospective liabilities of the fund arising from circumstances common to all those bodies;
 - (b) the desirability of maintaining as nearly constant a common rate as possible; and
 - (c) the current version of the administering authority’s funding strategy statement mentioned in regulation 31 (funding strategy statement).

⁽³¹⁾ S.I. 1998/2888. Regulation 9A was inserted by S.S.I. 2000/74 and amended by S.S.I. 2003/138.

(7) An individual adjustment is any percentage or amount by which, in the actuary's opinion, contributions at the common rate should, in the case of a particular body, be increased or reduced by reason of any circumstances peculiar to that body.

(8) 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 provisions of the Scheme; and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(9) The 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.

Supply of copies of valuations, certificates etc

33.—(1) An administering authority must send copies of any valuation, report, certificate or revised certificate obtained under regulation 32 (actuarial valuations and certificates) or 34 (special circumstances where revised actuarial valuations and certificates must be obtained) to—

- (a) the Scottish Ministers;
- (b) each body with employees who contribute to the fund in question; and
- (c) any other body which is or may become liable to make payments to that fund.

(2) An administering authority must also send to the Scottish Ministers—

- (a) a copy of the consolidated revenue account with which the actuary was provided under regulation 32(9); and
- (b) a summary of the assets of the fund at the valuation date (unless such a summary is contained in the report under regulation 32(1)(b)).

Special circumstances where revised actuarial valuations and certificates must be obtained

34.—(1) When obtaining a transfer statement under regulation 29(5) (admission agreement funds), an administering authority must also obtain from the actuary a rates and adjustments certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for its main fund.

(2) Where an admission agreement ceases to have effect, the administering authority which made it must obtain—

- (a) an actuarial valuation as at the date it ceases of the liabilities of the fund in respect of current and former employees of the admission body which is a party to that agreement (“the outgoing admission body”); and
- (b) a revision of any rates and adjustments certificate for any fund which is affected, showing the revised contributions due from that body, and any other admission body in respect of which revised contributions are due.

(3) Where, for any reason, it is not possible to obtain revised contributions from the outgoing admission body, or from an insurer or any person providing an indemnity or bond on behalf of that body, the administering authority may obtain a further revision of any rates and adjustments certificate for the fund, showing—

- (a) in a case where that body is a transferee admission body within regulation 5(2)(a) or (b) (employees of non-scheme employers), the revised contributions due from the body which is the Scheme employer in relation to that admission body; and

- (b) in any other case, the revised contributions due from each employing authority which contributes to the fund.
- (4) An administering authority may obtain from an actuary a certificate specifying, in the case of an admission body, the percentage or amount by which, in the actuary's opinion—
 - (a) the contribution at the common rate should be adjusted; or
 - (b) any prior individual adjustment should be increased or reduced,with a view to providing that the value of the assets of the fund in respect of current and former employees of that body is neither materially more nor materially less than the anticipated liabilities of the fund in respect of those employees at the date the admission agreement is to end.
- (5) Paragraph (6) applies where—
 - (a) an administering authority agrees with an employing authority as mentioned in regulation 36(4) (employer's payment following decision to increase membership or award additional pension); or
 - (b) it appears to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with an employing authority exceeds the amount specified in, or likely as a result of, the assumptions stated for that authority in a rates and adjustments certificate by virtue of regulation 32(8) (actuarial valuations and certificates).
- (6) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that employing authority.

Employer's contributions

- 35.**—(1) An employing authority must contribute to the appropriate fund in each year covered by a rates and adjustments certificate under regulation 32 (actuarial valuations and certificates) or 34 (special circumstances) the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).
- (2) During each of those years an employing authority 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 38 (payment by employing authorities to appropriate 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 common percentage for that year of the pay on which contributions have, during that year, been paid to the fund under regulations 15 (contributions during child-related leave), 16 (contributions during reserve forces service leave) or 18 (contributions during absences with permission) of these Regulations or regulation 4 of the Benefits Regulations (contributions payable by active members) by employees who are active members, increased or reduced by any individual adjustment specified for that employer for that year in the rates and adjustments certificate.
 - (5) The common percentage is the common rate of employer's contribution specified in that certificate, expressed as a percentage.
 - (6) Where an employee—
 - (a) is treated under paragraph (4) of regulation 16 (contributions during child-related leave) as if the employee had paid contributions; or

- (b) has paid contributions during a period of maternity, paternity or adoption absence (within the meaning of that regulation),

the pay on which the common percentage is calculated is the pay the employee would have received if the employee had not been absent.

Employer's payment following resolution to increase membership or award additional pension

36.—(1) This regulation applies where an employing authority makes a resolution under—

- (a) regulation 12 of the Benefits Regulations (which confers power to increase the membership of an active member by an additional period); or
- (b) regulation 13 of those Regulations (which confers power to award additional pension).

(2) Unless paragraph (4) applies, the employing authority must pay the appropriate sum for the person to whom the resolution relates to the appropriate fund before the expiry of the relevant period.

(3) The appropriate sum for a person is such sum as is shown as appropriate in guidance issued by the scheme actuary.

(4) This paragraph applies where the administering authority and the employing authority agree before the expiry of the relevant period, that the employing authority will pay increased contributions under regulation 35 (employers contributions) or an amount to meet the cost of the increase in membership or the additional pension.

(5) Any extra charge on the appropriate fund resulting from the decision must be repaid to the fund by the employing authority concerned but only so far as not paid under paragraphs (2) or (4).

(6) In the case of a resolution under regulation 12 of the Benefits Regulations, the additional period in question may only be counted as a period of membership if one of the conditions in paragraph (8) is met.

(7) In the case of a resolution under regulation 13 of those Regulations, a person is only entitled to the additional pension awarded if one of those conditions is met.

(8) The conditions are that either—

- (a) the employing authority makes the payment required by paragraph (2) within the relevant period; or
- (b) paragraph (4) applies.

(9) The relevant period is—

- (a) the period of one month beginning with the date of the decision; or
- (b) such longer period as the employing authority and the administering authority agree.

(10) If neither of the conditions in paragraph (8) is met, the decision ceases to have effect.

Employer's further payments

37.—(1) Any extra charge on the appropriate fund resulting from a member's becoming entitled to benefits calculated under paragraphs (2)(b), (3)(b) or (4) of regulation 20 (early leavers: ill-health) or regulation 31 (early payment of pension: ill-health) of the Benefits Regulations must be repaid to the fund by the employing authority concerned.

(2) The appropriate administering authority may require the employing authority concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund resulting from retirement benefits becoming immediately payable to a member under regulation 18 (flexible retirement), 19 (early leavers: inefficiency or redundancy) or 30 (choice of early payment of pension)

of the Benefits Regulations, including the costs, as calculated by the fund's actuary, incurred by the fund as a result of a waiver of such reduction as is referred to in regulation 18(3) of those Regulations.

(3) Where on such benefits and retirement grant becoming payable, the benefits and retirement grant also become payable to the member in respect of service with one or more other employing authorities, the employing authority in relation to whom the redundancy arose or by whom the consent to early retirement was given shall be responsible for making any additional payments in accordance with paragraph (2) in respect of all such service.

(4) Any additional payments that are due under paragraph (2) shall be made, if the administering authority agree, by—

- (a) a single payment of an amount determined by the administering authority on the advice of the fund actuary; or
- (b) instalments, each of an amount determined by the administering authority on the advice of the fund actuary, covering a period not exceeding the period between the member's leaving local government employment and reaching normal retirement age, or a period not exceeding 5 years, the first and subsequent instalments becoming payable as agreed between the administering authority and the employing authority.

Payment by employing authorities to appropriate administering authorities

38.—(1) Every employing authority 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 from time to time deducted from the pay of its employees under these Regulations;
- (b) any amount it has received by deduction or otherwise under regulation 15(5) (child related leave), 17 (trade dispute absence), 18(2) (absences with permission) or 22 (AVCs and SCAVCs) during the interval;
- (c) any extra charge payable under regulation 36 (employers payment following increase) or 37 (employers further payments) of which it has been notified by the administering authority during the interval; and
- (d) a contribution towards the cost of the administration of the fund.

(2) But—

- (a) an employing authority must pay the amounts mentioned in paragraph (1)(a), not later than the time required under section 49(8) of the 1995 Act; and
- (b) paragraph (1)(d) does not apply where the cost of the administration of the fund is paid out of the fund under regulation 5(6) of the Local Government Pensions Scheme (Management and Investment of Funds) (Scotland) Regulations 1998(32).

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

- (a) the name, pay and band (as set out in column 1 of the table in regulation 4(2) (contributions payable by active members) of the Benefits Regulations) of each of the employing authority's employees who is an active member;
- (b) which employees are paying contributions under regulation 20(1) (payment of additional regular contributions) or 22(1) (additional voluntary contributions and shared cost additional voluntary contributions);

- (c) the amounts which represent deductions from the pay of each of the employees and the periods covered by the deductions, distinguishing amounts representing deductions for any such voluntary contributions.
- (4) An appropriate administering authority may direct that the information mentioned in paragraph (3) shall be given to the authority instead in such form and at such intervals (not exceeding 12 months) as it specifies in the direction.
- (5) If an annual amount payable under paragraph (1)(d) cannot be settled by agreement, it must be determined by the Scottish Ministers.
- (6) Paragraphs (1) and (3) do not apply to an employing authority which is an appropriate administering authority.
- (7) An administering authority must pay to the fund of which it is the administering authority its fair share of any contribution towards the cost of the administration of the fund in circumstances where it has required a contribution towards such cost from employing authorities as referred to in paragraph (1)(d).
- (8) An administering authority must also pay any additional costs due to the fund which are incurred because of its level of performance in carrying out its functions under these Regulations.

Interest

- 39.**—(1) An administering authority may require an authority from which payment of any amount due under regulations 35 to 38 (employers' contributions or payments) or 81 (changes of fund) is overdue to pay interest on that amount.
- (2) The date on which any amount due under regulations 35 to 37 is overdue is the date one month from the date specified by the administering authority for payment.
- (3) The date on which any amount due under regulation 38 (payment by employing authorities to appropriate administering authorities) is overdue is the day after the date when that payment is due.
- (4) Interest due under paragraph (1) or payable to a person under regulation 40(5) (deduction and recovery of member's contributions), 41(2) (rights to return of contributions) or 47 (interest on late payment of certain benefits) 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 three monthly rests.
- (5) Interest on any amount due in respect of regulation 81 shall be calculated in accordance with guidance issued by the scheme actuary.

Deduction and recovery of member's contributions

- 40.**—(1) An employing authority may deduct from a person's pay any contributions payable by him under these Regulations or the Benefits Regulations.
- (2) Sums payable under regulation 16(2) or (5)(b) (reserve forces) may be deducted by the member's former employer from any payment made to the member under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(**33**), to the extent that they are payable in respect of the same period.
- (3) The appropriate 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 or the Benefits 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) an employing authority deduct in error any amount in respect of contributions from a person's pay or any other sum due to the person; and
- (b) the amount has not been repaid to the person before the expiry of the period of one month beginning with the date of deduction,

the appropriate body must pay the person interest on that amount; and the due date for the calculation of the interest under regulation 39(4) (interest) is the date of deduction.

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

(7) The “appropriate body” for the purpose of paragraph (5) is—

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

Rights to return of contributions

41.—(1) If a member with less than two years' membership ceases to be employed by an employing authority or to be an active member without becoming entitled to a retirement pension, the member is entitled to be repaid his or her contributions from the appropriate fund.

(2) If repayment of the contributions has not been made before the expiry of the period of one year beginning with the date when active membership ceases, the person is entitled to interest on the repayment which should have been made, calculated as provided in regulation 39(4) (interest), the due date being the date when active membership ceased.

(3) A person who is entitled to a repayment of contributions under paragraph (1) may waive his or her entitlement for any period and, if the person becomes an active member again before the expiry of that period, the person shall cease to be so entitled (but without prejudice to any entitlement arising later under that paragraph in respect of those contributions).

(4) Where a person who continues as an active member in another employment held concurrently with the employment in which that person has ceased to be an active member, an amount equal to the repayment is to be treated as contributions to the Scheme as respects that person's membership in that concurrent employment, entitling that person to a period of membership equal to the period of membership in the employment which has ceased, as reduced under regulation 8(3) (calculations of length of periods of membership) of the Benefit Regulations if the employment which has ceased was part time, multiplied by the fraction—

$$\frac{\textit{Whole – time rate of pay which has ceased}}{\textit{whole – time rate of pay which is continuing}}$$

where

the rate of pay in each case is the annual rate of pay on the last day of employment in the employment which has ceased.

Exclusion of rights to return of contributions

42.—(1) A person is not entitled to a repayment under regulation 41 (rights to return of contributions) if—

- (a) the person becomes a member again within one month and one day;
- (b) that person left the employment because of—
 - (i) an offence of a fraudulent character; or
 - (ii) grave misconduct,
 in connection with that person's employment; or

(c) regulation 74(2) (right to payment out of fund authority's pension fund) applies.

(2) But where paragraph (1)(b) applies the employing authority may direct the payment out of the appropriate fund to the person or, in a case of an offence of a fraudulent character, to the person or to the person's spouse, civil partner or any dependant of the person's, of a sum equal to all or part of the person's contributions.

(3) A person is not entitled to a repayment under regulation 41(1) if a transfer value has been credited to the appropriate fund for the person and the person ceases to be entitled to such a repayment if the person returns to local government employment before receiving it.

Permanent reductions in pay: certificates of protection of pension benefits

43.—(1) Where a certificate has been issued as respects a member's pay under paragraph (3) or (5) and the date of reduction or, as the case may be, restriction specified in the certificate is not more than 10 years before the date on which the member ceases to be an active member, that member may elect that his or her final pay period should be—

- (a) a year ending with a day—
 - (i) falling within in the period of five years ending with the last day on which the member was an active member; and
 - (ii) of which that last day is the anniversary; or
- (b) any three consecutive years—
 - (i) falling within the period of 13 years ending with the last day on which the member was an active member; and
 - (ii) ending with a day of which that last day is the anniversary.

(2) Where a member elects for the period specified in paragraph (1)(b), the member's final pay is the annual average of the member's pay during that period.

(3) If, otherwise than by virtue of a member's own circumstances (including the member's ill health)—

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

the member is entitled to be issued with a certificate to that effect by the employing authority (but see paragraph (5)).

(4) 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, temporary increase in the rate of pay.

(5) The employing authority may issue a certificate without an application from 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) A certificate issued under this regulation must specify the date of the reduction or restriction.

(7) The employing authority must send a copy of the certificate to the member's appropriate administering authority.

(8) The employing authority must keep a record of the certificate including such information as would be necessary for applying paragraph (1) for the period of 10 years beginning with the date of reduction or restriction specified in it.

(9) An election under this regulation by a member must be made by notice in writing given to the appropriate administering authority before the expiry of the period of one month beginning with the date on which the member is notified of his or her entitlement to a benefit.

(10) Where a member has died without having made an election under this regulation, the appropriate administering authority may make an election on the member's behalf (whether or not the period within which the member could have elected has expired).

PART 5

PAYMENT OF BENEFITS ETC

Pension increases under the Pension Schemes Act 1993

44. Any increase in a pension required by reason of Chapter 3 of Part 4 of the Pension Schemes Act 1993⁽³⁴⁾ (protection of increases in guaranteed minimum pensions: anti franking) must be paid from the appropriate fund.

Contributions equivalent premiums

45.—(1) Where an employing authority pays a contributions equivalent premium under section 55 of the Pension Schemes Act 1993 in respect of a member, that employer may recover or, if an administering authority, may retain from the appropriate fund a sum not exceeding the premium.

(2) But if the employing authority may recover or retain any sum under section 61 of that Act in respect of the premium, only the balance may be recovered or retained under paragraph (1).

(3) Where a contributions equivalent premium is refunded under regulation 54(1)(c) of the Occupational Pension Schemes (Contracting out) Regulations 1996 (re entry into employment which is contracted out by reference to the same scheme)⁽³⁵⁾, the authority to whom it is refunded must pay to the appropriate fund a sum equal to the amount of the premium.

Commencement of pensions

46.—(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) In the case of a member who leaves local government employment and is not entitled to immediate payment of retirement pension under any of regulations 16 (retirement benefits) to 20 (early leavers: ill health) of the Benefits Regulations and does not make a choice under regulation 30 (choice of early payment of pension) of those Regulations the first period for which any retirement

⁽³⁴⁾ 1993 c. 48.

⁽³⁵⁾ S.I. 1996/1172.

pension is payable begins, unless the member asks by notice in writing to the member's administering authority to defer payment, with the member's 65th birthday (but any such deferral shall not extend beyond the day before the member's 75th birthday).

(3) The first period for which any retirement pension under regulation 30 (choice of early payment of pension) of the Benefits Regulations is payable begins with the day on which the member chooses under paragraph (1) of that regulation.

(4) The first period for which any retirement pension under regulation 31 (early payment of pension: ill-health) of the Benefits Regulations is payable begins on the date when the member became permanently incapable as determined under regulation 31 of those Regulations.

(5) The first period for which any survivor's benefits are payable under regulation 24 (survivor benefits: active members), 27 (children's pensions), 33 (survivor benefits: deferred members), 34 (children's pensions: deferred members), 36 (survivor benefits: pensioners) or 37 (children's pensions: pensioner members) of the Benefits Regulations on the death of a member begins with the day after the date on which the member dies.

(6) A person who is entitled to a retirement pension under regulation 16 (retirement benefits) or 17 (retirement after normal retirement date), of the Benefit Regulations may choose to defer payment until a date no later than the day before that person's 75th birthday.

(7) The person must notify his or her appropriate administering authority in writing of that person's choice of date and such notice must be given not less than 3 months or such longer period as the administering authority agrees before the beginning of the first period for which the benefit would otherwise be payable.

(8) A person may by notice in writing to the person's administering authority alter the date specified in a notice referred to in paragraph (7) or any such subsequent notice but any such notice must be given not less than 3 months or such longer period as the administering authority agrees before the date specified in the preceding notice in order for the change of payment date to take effect.

Interest on late payment of certain benefits

47.—(1) Where all or part of a pension or lump sum payment due under these Regulations, the Benefits Regulations or the Earlier Regulations is not paid within the relevant period after the due date, the appropriate administering authority must pay interest on the unpaid amount to the person to whom it is payable (see regulation 39(4) (interest)).

(2) The relevant period is—

- (a) in the case of a pension, one year;
- (b) in the case of a payment under regulation 24(1) (survivor benefits: active members), 27(1) (children's pensions), 33(1) (survivor benefits: deferred members), or 36(1) (survivor benefits: pensioners) of the Benefits Regulations, the period ending one month after the date on which the administering authority receives notification of the member's death; and
- (c) otherwise, 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 the Transitional Regulations or regulation 21 of the Benefits Regulations (election for lump sum in lieu of pension), the benefit crystallisation date;
- (c) in the case of a death grant under regulations 23 (death grants: active members), 32 (death grants: deferred members), or 35 (death grants: pensioner members) of the Benefits Regulations, the date on which the member dies or, where notification of death is received more than two years after the date of death, the date of notification; and

- (d) in the case of a payment of a lump sum under regulation 39 (commutation: small pensions) of the Benefits Regulations, the date of the commutation election or, if later, the nominated date (within the meaning of paragraph 7(3) of Part I of Schedule 29 to the Finance Act 2004⁽³⁶⁾).

Payments due in respect of deceased persons

48.—(1) Paragraph (2) applies if, when a person dies, the total amount due to the person's executors under the Scheme (including anything due to the person at the person's death) ("the amount due") 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⁽³⁷⁾ and applying in relation to the person's death.

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

- (a) the person's executors; or
- (b) any person or persons appearing to the authority to be beneficially entitled to the estate, without the production of confirmation, probate or letters of administration of the person's estate.

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

Non-assignability

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

(2) No such benefit is assignable or chargeable with that or any other person's debts or other liabilities.

(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 an income payments order under section 32(2) of the Bankruptcy (Scotland) Act 1985⁽³⁸⁾.

PART 6

DETERMINATION OF QUESTIONS AND DISPUTES

Interpretation of Part

50. In this Part a reference to the employing authority or the appropriate administering authority of a prospective member is a reference to the body that would be the prospective member's employer or appropriate administering authority if the prospective member were to become an active member in the employment by virtue of which the prospective member would be eligible to join the Scheme.

First instance decisions

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

⁽³⁶⁾ 2004 c. 12.

⁽³⁷⁾ 1965 c. 32.

⁽³⁸⁾ 1985 c. 45.

(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 employing authority 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 11(4) (ending of 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 employing authority.

(10) Other questions in relation to any member or prospective member must be decided by the member's 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.

First instance determinations: ill-health

52.—(1) The independent registered medical practitioner referred to in regulation 20(6) (early leavers: ill health) of the Benefit Regulations must be in a position to certify that the practitioner—

- (a) has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and
- (b) is not acting, and has not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case.

(2) If the employing authority is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of registered medical practitioner for the purposes of regulation 20 (early leavers: ill health) and 31 (early payment of pension: ill health) of the Benefit Regulations.

Notification of first instance decisions

53.—(1) Every person whose rights or liabilities are affected by a decision under regulation 51 (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 54 (applications to resolve disagreements) and 56 (reference of disagreement);
- (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 54 may be made.

Applications to resolve disagreements

54.—(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 an employing authority or the administering authority.

(2) These persons are alternative applicants—

- (a) a widow, widower or surviving civil partner or nominated cohabiting partner (as defined in regulation 25 of the Benefits Regulations) of a deceased member;
- (b) a dependant of a deceased member or any other person to whom benefits in respect of him or her 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 six months ending with the date of the application; and
- (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 53(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 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 53 (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 six 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 his or her national insurance number (if any) and the name of his or her employing authority.

(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 employing authority.
- (7) An application must be made before the end of—
- (a) the period of six 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 51 (first instance decisions), the date notification of the decision is given under regulation 53 (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 59(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

55.—(1) Subject to paragraph (2), a decision on a disagreement to which an application under regulation 54 (applications to resolve disagreements) relates must be given by notice in writing to—

- (a) the applicant;
 - (b) the employing authority; and
 - (c) if the employing authority is not the appropriate administering authority, to that authority,
- by notice in writing before the expiry of the period of two 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 (“the expected decision date”).
- (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 employing authority's right to refer the disagreement for reconsideration by the Scottish Ministers under regulation 56 (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 it may be contacted.

Reference of disagreement for reconsideration by Scottish Ministers

56.—(1) This regulation applies where an application about a disagreement has been made under regulation 54 (applications to resolve disagreements) and—

- (a) notice of a decision has been given under regulation 55(1) (notice of decision on disagreements); or
- (b) an interim reply has been sent under regulation 55(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 three months beginning with the date the application was made.

(2) The applicant under regulation 54 may, before the expiry of the period of six 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 55(1);
- (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 sub 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 appropriate administering authority;
- (d) be accompanied by a copy of any written notification under regulation 53; 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 employing authority.

(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 employing authority.

(7) Where notice of a decision on the disagreement has been given under regulation 55, 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 its functions under this regulation;
- (b) the manner in which those functions are to be exercised.

Notice of decisions on reconsideration of disagreement

57.—(1) Subject to paragraph (2), the Scottish Ministers must give their decision on an application under regulation 56 by notice in writing to—

- (a) the applicant; and

(b) the employing authority,
before the expiry of the period of two 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 55, 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 it 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 including the address at which the Pensions Ombudsman may be contacted.

Rights of representation

58.—(1) An application under regulation 54 (applications to resolve) or 56 (reference of disagreements) 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 non age 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 55(1) or 57(1); or
- (b) an interim reply under regulation 55(2) or 57(2).

Appeals by administering authorities

59.—(1) This regulation applies where an employing authority—

- (a) has decided, or failed to decide, any question falling to be decided by that employer under regulation 51 (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 employing authority 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 six 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 53(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), an employing authority is to be taken to have failed to decide a question at the expiry of the period of three 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—
- (a) has made an application under regulation 54 or 56 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 55 or 57; or
 - (b) until the application is withdrawn.

PART 7

POLICY STATEMENTS AND INFORMATION

Exchange of information by authorities

- 60.**—(1) An employing authority which is not an administering authority must—
- (a) inform the appropriate administering authority of all decisions made by the employer under this Part 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 this Part about a person for whom it is not the employing authority; and
 - (b) information about the decision is required by that person’s employing authority for discharging that employer’s Scheme functions,
- that authority must give that employer that information.

Statements of policy about exercise of discretionary functions

- 61.**—(1) Each employing authority must prepare a written statement of its policy in relation to the exercise of its functions under regulations 12 (power of employing authority to increase total

membership of active members), 13 (power of employing authority to award additional pension), 18 (flexible retirement) and 30 (choice of early payment of pension) of the Benefits Regulations.

(2) Before the expiry of the period of three months beginning with the commencement date each employing authority must send a copy of its statement to each relevant administering authority and must publish its statement.

(3) An employing authority 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 the period of one month beginning with the date any such revisions are made each employing authority 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 an employing authority must have regard to the extent to which the exercise of any 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 an employing authority, is any authority which is an appropriate administering authority for that employer's employees.

Annual benefit statements

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

(2) The first such statement must be issued on or before 1st April 2011 and subsequent statements must be issued on or before 1st April in each year after that year.

(3) A statement must contain an illustration of the amount of benefit entitlement, in respect of the rights that may arise under the Scheme, which—

- (a) has been accrued by the member at the relevant date; and
- (b) in the case of an active member, is capable of being accrued by the active member if the active member remains in the Scheme until the active member's normal retirement age.

(4) The illustration must be calculated—

- (a) in the case of active members on the member's pay (or as respects part time employees the whole time equivalent) for the 12 month period ending with the relevant date;
- (b) in the case of deferred members, on the member's final pay; and
- (c) in the case of pension credit members, in accordance with regulation 95(3) ("appropriate rights"/ "pension credit benefits" under the scheme).

(5) The relevant date is—

- (a) 31st March before the date that the statement is issued, or
- (b) such later date as the authority may choose.

Information to be supplied by employees

63.—(1) Before the expiry of the period of three months beginning with the date a person becomes a member, the employing authority must ask the person 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 employment; and

(b) copies of all notifications previously given to the person under these Regulations and the Earlier Regulations.

(3) It must also ask for those documents before the expiry of the period of three months beginning with the occurrence of any change as respects the person's employment which is material for the Scheme.

(4) A request under paragraph (1) or (3) must include 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.

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

PART 8

SPECIAL ADJUSTMENTS

Statements of policy concerning abatement of retirement pensions in new employment

64.—(1) Each administering authority must formulate and keep under review its policy concerning abatement (that is, the extent, if any, to which the amount of retirement pension payable to a member from any pension fund maintained by it under the Scheme should be reduced (or whether it should be extinguished) where the member has entered a new employment with a Scheme employer, other than one in which it is eligible to belong to a teachers scheme).

(2) Before formulating that policy an administering authority must consult with the authorities who employ active members for whom it is the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with the 1st April 2009, each administering authority shall publish a statement as to the policy which is being applied by it where a member who is so entitled enters such a new employment on or after that date.

(4) Where, as a result of reviewing its policy concerning abatement, an administering authority determines to amend it, it must publish a statement of the amended policy before the expiry of the period of one month beginning with the date it determines to do so.

(5) In formulating its policy concerning abatement, an administering authority must have regard to—

- (a) the level of potential financial gain at which it wishes abatement to apply;
- (b) the administrative costs which are likely to be incurred as a result of abatement in the different circumstances in which it may occur; and
- (c) the extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.

(6) In paragraph (5)(a) the reference to financial gain is a reference to the financial gain which it appears to the administering authority may be obtained by a member as a result of the member's entitlement both to a pension and to pay under the new employment.

Application of abatement policy to individual cases

65.—(1) Where a member who is entitled to the payment of a retirement pension proposes to enter a new employment with an employing authority, the member must inform the employer about that entitlement.

(2) If such a member enters such a new employment the member must immediately notify in writing the body from whom the member has become entitled to receive the pension.

(3) Paragraphs (1) and (2) do not apply where the new employment is employment in which the person is eligible to belong to a teachers scheme.

(4) The authority which is the member's appropriate administering authority as respects the retirement pension to which the member is entitled—

- (a) must have regard to regulation 12 (application of abatement policy) of the Transitional Regulations;
- (b) must apply the policy published by them under regulation 64 (statements of policy) to the member; and
- (c) may reduce the annual rate of that pension or, as the case may be, may cease to pay it, during the period while the member holds the new employment, in accordance with that policy.

(5) Any retirement pension paid following a request under regulation 18(1) of the Benefits Regulations (flexible retirement) is not subject to abatement under regulation 64 in respect of any subsequent employment with the person who is the member's employer at the date of the request.

Forfeiture of pension rights after conviction of employment-related offences

66.—(1) If a member is convicted of a relevant offence, the Scottish Ministers may issue a forfeiture certificate.

(2) Where a forfeiture certificate is issued the member's former employing authority may direct that any of the rights in respect of the member under the Benefits Regulations, these Regulations or the Earlier Regulations as respects the member's previous membership are forfeited.

(3) A relevant offence is an offence, committed in connection with an employment in which the person convicted is a member, and because of which the member has left that employment.

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

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

(5) If the former employing authority incurred loss as a direct consequence of the relevant offence, it may only give a direction under paragraph (2) if it is unable to recover its loss under regulation 68 (recovery or retention where former member has misconduct obligation) or 70 (transfer of sums from pension fund to compensate) or otherwise, except after an unreasonable time or at disproportionate cost.

(6) A direction under paragraph (2) may only be given if an application for a forfeiture certificate has been made by the former employing authority before the expiry of the period of three months beginning with the date of the conviction.

(7) Where a former employing authority 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.

Interim payments directions

67.—(1) If—

- (a) a person leaves an employment in which the person was a member, because of an offence in connection with that employment; and
- (b) a forfeiture certificate has been issued under regulation 66(1) (forfeiture of pension rights) in respect of that offence,

the person's former employing authority may give an interim payments direction to the appropriate administering authority.

- (2) But it may not give such a direction if it has—
 - (a) notified the person of a decision under regulation 51 (first instance decisions) on any question as to entitlement to benefit; or
 - (b) given any direction under regulation 66(2) (“a forfeiture direction”).
- (3) An interim payments direction is a direction to make interim payments to any person who appears to the former employing authority to be a person who would be entitled to receive payment of a benefit under the Scheme if no forfeiture direction were given.
- (4) The person to whom payments must be made and the amounts must be specified in the direction.
- (5) The amounts must not exceed the amounts which the person specified would be entitled to be paid if no forfeiture direction were given.
- (6) An interim payments direction is not a decision under regulation 51 as to any person’s entitlement to a benefit.
- (7) Payments in accordance with an interim payments direction shall be deemed to be payments in respect of a benefit to which the recipient was entitled (regardless of any contrary forfeiture direction or decision under regulation 51).

Recovery or retention where former member has misconduct obligation

- 68.**—(1) This regulation applies where a person—
- (a) has left an employment, in which the person was or had at some time been a member, in consequence of a criminal, negligent or fraudulent act or omission on the person’s part in connection with that employment;
 - (b) has incurred some monetary obligation, arising out of that act or omission, to the body that was the person’s employing authority in that employment; and
 - (c) is entitled to benefits under the Benefits Regulations.
- (2) The former employing authority may recover or retain out of the appropriate fund—
- (a) the amount of the monetary obligation; or
 - (b) the value at the time of the recovery or retention of all rights in respect of the former employee under the Scheme with respect to the employee’s previous membership (as determined by an actuary),
- whichever is less.
- (3) The rights specified in paragraph (2)(b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of AVCs or SCAVCs.
- (4) The former employing authority must give the former employee—
- (a) not less than three months’ notice of the amount to be recovered or retained under paragraph (2); and
 - (b) a certificate showing the amount recovered or retained, how it is calculated, and the effect on the former employee’s benefits or prospective benefits.
- (5) If there is any dispute over the amount of the monetary obligation specified in paragraph (1)(b), the former employing authority 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 arbitrator.

Protection of guaranteed minimum pension rights

- 69.**—(1) The power—

(a) to give directions under regulation 66(2); or
 (b) to recover or retain amounts under regulation 68(2),
 may not be exercised so as to deprive a person of the person's guaranteed minimum pension or any widow's, widower's or surviving civil partner's guaranteed minimum pension.

- (2) But such a power may be so exercised if the person left his or her employment—
- (a) because of the offence of treason; or
 - (b) because of one or more offences under the Official Secrets Act 1911 to 1989 for which the former member has been sentenced on the same occasion—
 - (i) to a term of imprisonment of at least 10 years; or
 - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years.

Transfer of sums from the pension fund to compensate for former member's misconduct

70.—(1) This regulation applies where—

- (a) a person has left an employment in which the person was a member because of—
 - (i) an offence involving fraud; or
 - (ii) grave misconduct,
 in connection with that employment;
 - (b) the person's former employing authority in that employment has suffered direct financial loss by reason of the offence or misconduct; and
 - (c) either—
 - (i) the former employee became entitled to benefits under the Benefits Regulations and these Regulations or the 1998 Regulations and a forfeiture direction has been given; or
 - (ii) the former employee did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 41 (rights to return of contributions) (whether or not the former employee has waived his or her right).
- (2) If the former employing authority is an administering authority, it may transfer an appropriate amount from its pension fund to the appropriate fund or account.
- (3) Otherwise, the appropriate administering authority must pay the former employing authority an appropriate amount out of the pension fund, if requested to do so.
- (4) But if a payment in lieu of contributions is due or has been made in respect of the former employee, the administering authority may reduce a payment under paragraph (3) by half the amount of the payment in lieu of contributions.
- (5) An appropriate amount is an amount not exceeding—
- (a) the amount of the direct financial loss; or
 - (b) the amount of any contributions which could have been returned to the former employee, or paid to his spouse, civil partner or a dependant, under regulation 42(2) (exclusion of rights to return of contributions) of these Regulations or regulation 87(2) of the 1998 regulations, less the amount of any which have been so returned or paid,
- whichever is the less.

(6) If after making a payment under paragraph (3) the appropriate administering authority is required to make any transfer payment under Chapter 4 or Chapter 5 of Part 4 of the 1993 Act or to make a payment under regulation 81 (changes of fund) for a former employee, the former employing authority must repay it, if requested to do so.

Members of local authorities

71. These Regulations apply to councillor members in respect of their councillor membership with the modifications set out in Schedule 5.

PART 9 TRANSFERS

Interpretation of Part

72. In this Part—

“the 1993 Act” means the Pension Schemes Act 1993⁽³⁹⁾;

“Chapters 4 and 5” means Chapters 4 and 5 of Part 4 of that Act (transfer values and early leavers)

“club scheme” means an occupational pension scheme which—

- (a) (except where it is established and maintained in the Channel Islands or the Isle of Man) is a registered scheme;
- (b) provides benefits calculated by reference to final pay;
- (c) is open to new participants, or is a closed scheme the trustees or managers of which also provide an open scheme which is a club scheme for new employees of the same employer and of the same grade or level of post as the participants in the closed scheme; and
- (d) complies with reciprocal arrangements for the payment and receipt of transfer values with the schemes made under section 7 of the Superannuation Act 1972.

Application of Chapter 4 etc

73.—(1) For the purposes of—

- (a) sections 12C (requirements as to transfer, commutation etc. for contracting out), 19 (discharge of liability) and 20 (transfer of accrued rights);
- (b) Chapters 4 and 5; and
- (c) any regulations made under any of those sections or Chapters 4 and 5,

of the 1993 Act, the managers of the Scheme in relation to a member are the fund authority.

(2) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996⁽⁴⁰⁾ (pre 1986 leavers), Chapter 4 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service.

(3) A member with a period of membership of under three months shall have the same rights to a cash transfer sum as if the three month condition in section 101AA(1)(b)(i) of the 1993 Act⁽⁴¹⁾ were satisfied and Chapter 5 applied to that member.

(4) Regulation 5 of those Regulations (treatment of a number of employments as a single employment) only applies if the employments are treated as a single employment for the purposes of the Scheme.

(5) Regulation 10(2)(a) of those Regulations (interest on late payment of cash equivalents) does not apply where the member has required the cash equivalent to be paid to a club scheme.

⁽³⁹⁾ 1993 c. 48; Part 5 was inserted by the Pensions Act 2004 (c. 35), section 264.

⁽⁴⁰⁾ S.I. 1996/1847.

⁽⁴¹⁾ Section 101AA was inserted by section 264 of the Pensions Act 2004.

(6) Regulation 18 of those Regulations (termination of pensionable service in certain circumstances to be disregarded) only applies if, in any case, no election has been made under regulation 13(1) (re-employed and rejoining deferred members) or regulation 14 (concurrent employments) to have the service which terminated aggregated with later or concurrent service or regulation 41(4) (rights to return of contributions) of these Regulations does not apply.

(7) For this regulation and regulation 74 (rights to payment out of fund authority's pension funds)–

- (a) the fund authority, in relation to a member, is the body maintaining the pension fund to which the member was contributing immediately before the member's pensionable service terminated; but
- (b) if that fund has been closed, the fund authority is the body which would be liable to pay to the member the member's pension for that employment if the member had been entitled to receive payment of such a pension when the member's pensionable service terminated.

(8) In this regulation “pensionable service” has the same meaning as in section 70 of the 1993 Act.

Rights to payment out of fund authority's pension fund

74.—(1) A member may apply for a transfer under Chapters 4 or 5 (as modified by regulation 73) and where the member does so the amount of any transfer payment due in respect of the member under the relevant Chapter may only be paid by the fund authority from its pension fund if it is a recognised transfer (within the meaning of section 169 of the Finance Act 2004⁽⁴²⁾).

(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–

- (a) the former regulations;
- (b) any local Act scheme;
- (c) the Earlier Regulations;
- (d) the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998⁽⁴³⁾; or
- (e) any other provision of these Regulations, the Benefits Regulations or the Transitional Regulations.

Contracting-out requirements affecting transfers out

75.—(1) Subject to paragraph (2), there must be deducted from the transfer payment to be made in respect of any person–

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

(2) The amount mentioned in paragraph (1) may not be deducted where the transfer payment is made to a registered pension scheme which is contracted out.

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

⁽⁴²⁾ 2004 c. 12.

⁽⁴³⁾ S.I. 1998/364.

(4) 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 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 non contracted out registered pension scheme.

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

- (a) the member and the member's surviving spouse's or civil partner's or nominated 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~~(44)~~).

Bulk transfers (transfers of undertakings etc.)

76.—(1) This regulation applies where—

- (a) two or more members' active membership ends on their joining a registered non local government scheme (“the new scheme”);
- (b) it is agreed by—
 - (i) the members' appropriate administering authority;
 - (ii) the members' employing authorities (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 that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5; 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 each of the members would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5, as it applies by virtue of regulation 73 (application of chapter 4) (assuming in any case where the member would not be entitled to such a payment that the member was).

(3) The appropriate administering authority must provide each member with sufficient information in writing to check that fact before each member agrees as mentioned in paragraph (1) (c).

(4) The appropriate administering authority must—

- (a) set aside (whether in cash or in assets or both) such part of the appropriate fund (“the transfer payment”) as an actuary appointed by the authority and an actuary appointed by the scheme managers of the new scheme 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 it to the trustees or managers of the new scheme for the benefit of the relevant members.

(5) 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.

~~(44)~~ S.I. 1996/1172. The definition of “section 9(2B) rights” was substituted by S.I. 1997/786 and amended by S.I. 1999/3198.

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

(7) Paragraph (6) overrides anything to the contrary in—

- (a) the former regulations;
- (b) any local Act scheme;
- (c) the Earlier Regulations;
- (d) the Local Government Pension Scheme (Scotland) (Transitional Provisions) Regulations 1998⁽⁴⁵⁾; or
- (e) these Regulations or the Benefits Regulations.

Calculation of amount of transfer payment under regulation 76

77.—(1) The amount of the transfer payment to be paid under regulation 76 is the amount determined by an actuary appointed by the members' appropriate administering authority to be equal to the value at the date they 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 them.

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

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

(4) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund.

(5) But if there is more than one employing authority involved, each shall bear such part of the costs as the actuary determines to be appropriate.

Inward transfers of pension rights

78.—(1) If a person who becomes an active member has relevant pension rights, the person may request the fund authority to accept a transfer value for some or all those rights from the relevant transferor.

(2) Relevant pension rights are accrued rights under a registered scheme but do not include rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit.

(3) Accrued rights include rights to preserved benefits and rights appropriately secured under section 19 of the 1993 Act.

(4) For the purposes of this regulation and regulation 79 (right to count credited period), the fund authority, in relation to a transferring person, is the body maintaining the pension fund of the Scheme to which the person is contributing.

(5) The relevant transferor is the trustees or managers of the scheme under which the transferring person's relevant pension rights arise.

(6) But the relevant transferor for the rights specified in paragraph (3) is the trustees or managers of the scheme, or the insurance company, to which a payment in respect of his accrued rights has been made.

(7) A request from a transferring person under paragraph (1) must be made by notice in writing.

(45) S.I. 1998/364.

(8) That notice must be given before the expiry of the period of 12 months beginning with the date the person became an active member (or such longer period as the person's employer may allow).

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

Right to count credited period

79.—(1) Where a transfer value has been accepted under regulation 78 (inward transfers of pension rights), the member may count the credited period as a period of membership for these Regulations⁽⁴⁶⁾.

(2) If the transfer value—

- (a) is paid by the trustees or managers of a club scheme and the member has made the request under regulation 78 before the expiry of 12 months beginning with the date the member became an active member;
- (b) represents all the rights relating to the member in that scheme; and
- (c) has been calculated—
 - (i) in a case where Chapter 4 or Chapter 5 applies, in accordance with that Chapter; and
 - (ii) otherwise, in a manner consistent with that prescribed under the relevant Chapter,the credited period is the period which, if used to calculate a transfer value to be paid by the Scheme, would produce an amount equal to the transfer value received.

(3) If paragraph (2) does not apply, the credited period must be calculated in a manner consistent with Chapter 4 or Chapter 5.

(4) In calculating the credited period under paragraph (3) due allowance must be given for the expected increase in the member's pensionable pay between the date the member became a member (or, if more than twelve months later, the date on which the transfer value is received) and the member's normal retirement age.

(5) The fund authority must give the member a written notice—

- (a) stating the period of membership the member may count under paragraph (1); and
- (b) containing a conspicuous statement giving the address from which further information may be obtained.

Community scheme transferees

80.—(1) The persons mentioned in paragraph (2) are entitled to such rights under the Scheme as are specified in guidance issued by the scheme actuary.

(2) Those persons are—

- (a) a person who became employed by a Community institution after having been employed in local government employment; or
- (b) a surviving spouse, civil partner, nominated cohabiting partner or dependant or child of such a person.

(3) In this regulation—

- (a) "Community institution" means a body treated as one of the Communities' institutions for the purposes of the Communities' scheme; and

⁽⁴⁶⁾ See also regulation 7(1)(c) of the Benefits Regulations.

- (b) “the Communities' scheme” means the pension scheme provided for officials and other servants of the Communities in accordance with regulations adopted by the Council of the European Communities.

Changes of fund

81.—(1) This regulation applies where—

- (a) a pension fund becomes an active member’s appropriate fund;
- (b) immediately before it does so, another fund was the member’s appropriate fund; and
- (c) in a case where regulation 13 (re-employed and rejoining deferred members), 14 (concurrent employment) or 41(4) (rights to return of contributions) applies to the member, the member has made a choice or election under the relevant regulation.

(2) Where the member’s appropriate administering authority has also changed, the authority which has ceased to be the member’s appropriate administering authority must make such payment to the member’s later appropriate administering authority as is indicated in guidance issued by the scheme actuary for this regulation.

(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 shall be determined by agreement between the actuary appointed by the administering authority by which the payment must be made and the 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, the date of the last transfer which relates to the single event—

- (a) the matter shall be referred to a third actuary, chosen by agreement between the actuaries or, in default of agreement, by the President of the Scottish Faculty of Actuaries; and
- (b) that actuary’s determination shall be final.

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

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

(7) Where the member’s appropriate administering authority has not changed, it must arrange for a payment such as is indicated in guidance issued by the scheme actuary for this regulation to be made from the member’s former appropriate fund to the member’s new appropriate fund.

(8) Paragraph (1) does not apply where a member enters an employment which is concurrent with another in which the member is also an active member.

Changes of fund and variable time employees

82.—(1) An inter fund transfer under regulation 81(2) in respect of a member who is a variable time employee prior to the transfer and who remains a variable time employee after the transfer shall be on the basis that his period of membership transfers on a day for day basis.

(2) An inter fund transfer under regulation 81(2) in respect of a member who is a variable time employee prior to the transfer and who becomes a whole time or part time employee after the transfer shall be on the basis that his period of membership transfers on a pro rata basis using the formula—

$$\text{period of membership} \times \frac{\text{annual rate of pay in the variable – time employment}}{\text{annual rate of pay in the employment post transfer}}$$

= period of membership credited in the post transfer employment.

PART 10

PENSION SHARING

CHAPTER I

PRELIMINARY PROVISIONS

Pension debit member

83.—(1) The amount of a pension or retirement grant payable to a pension debit member shall be reduced to take into account the debit to which the shareable rights of the pension debit member are subject under a pension sharing order.

(2) The amount of the reduction shall be calculated in accordance with guidance issued for this purpose by the scheme actuary.

CHAPTER II

SHARING OF RIGHTS

Pension sharing mechanism in the Scheme

84.—(1) Pension sharing is available under the Scheme in respect of any of a person's shareable rights under the Scheme except as otherwise provided in this regulation.

(2) Excluded from shareable rights for the purposes of this Part of these Regulations are any rights under the Scheme in respect of which a person is in receipt of a pension by virtue of being the surviving spouse or other dependant of a deceased member with pension rights under the Scheme⁽⁴⁷⁾.

Pension sharing order activates pension sharing creating pension debits and credits

85. On the coming into effect of a pension sharing order—

- (a) the transferor's shareable rights under the Scheme become subject to a debit of the appropriate amount ("pension debit"⁽⁴⁸⁾) as defined in regulation 86 (calculation of "appropriate amount"); and
- (b) the transferee becomes entitled to a credit of that amount ("pension credit"⁽⁴⁹⁾) as against the administering authority.

⁽⁴⁷⁾ See regulation 2(1) of the Pension Sharing (Valuation) Regulations 2000 (S.I. [2000/1052](#)) which describes rights of a description which are not to be classed as shareable rights for the purposes of section 27(2) of the Welfare Reform and Pensions Act 1999 (c. 30).

⁽⁴⁸⁾ This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.

⁽⁴⁹⁾ This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

Calculation of “appropriate amount”

86.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation 85 (pension sharing order) is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of regulation 85 is the lesser of—

- (a) the specified amount; and
- (b) the cash equivalent of the relevant benefits on the valuation day.

(3) Where the transferor is in pensionable service under the Scheme on the transfer day, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which the transferor would be entitled under the Scheme by virtue of the transferor’s shareable rights under it had the transferor’s pensionable service terminated immediately before that day.

(4) Otherwise, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the Scheme by virtue of the transferor’s shareable rights under it.

(5) For the purposes of this regulation, the valuation day is such day within the implementation period for the discharge of the credit referred to in regulation 85(b) as the administering authority may specify by notice in writing to the transferor and transferee.

(6) In this regulation, the transfer day means the day on which the relevant pension sharing order or provision takes effect⁽⁵⁰⁾.

Pension debits and reduction of benefit

87.—(1) Subject to paragraph (2), where a member’s shareable rights are subject to a pension debit, each benefit or future benefit—

- (a) to which the member is entitled under the Scheme by virtue of those rights; and
- (b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under the Scheme of a member who is in pensionable service under the Scheme on the transfer day, each benefit or future benefit—

- (a) to which the person is entitled under the Scheme by virtue of those rights; and
- (b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) A benefit is a qualifying benefit for the purposes of paragraphs (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) In this Part⁽⁵¹⁾—

“appropriate percentage”, in relation to a pension debit, means—

- (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;
- (b) if the relevant order or provision specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of section 29(1) of the 1999 Act represents of the amount mentioned in subsection (3)(b) of that section;

⁽⁵⁰⁾ This definition is that in section 29(8) of the 1999 Act.

⁽⁵¹⁾ The definitions in this paragraph are those in section 31(5) of the 1999 Act.

“relevant order or provision”, in relation to a pension debit, means the pension sharing order on which the debit depends;

“transfer day” in relation to a pension debit, means the day on which the relevant order or provision takes effect.

Effect of pension sharing on protected rights and guaranteed minimum pension

88. Where a member has protected rights or a guaranteed minimum in relation to a pension provided by the Scheme, these shall in the case of a pension debit in relation to the member’s rights under the Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the Pension Schemes Act 1993(**52**).

CHAPTER III

MODE OF DISCHARGE AND “IMPLEMENTATION PERIOD”

Discharge of pension credit liability by conferring “appropriate rights” or making transfer payment to another scheme

89.—(1) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse or ex civil partner—

- (a) with the consent of the ex-spouse or ex civil partner; or
- (b) in accordance with regulations made by the Secretary of State under paragraph 1(2)(b) of Schedule 5 to the 1999 Act(**53**).

(2) The administering authority in relation to a pension credit derived from the Scheme may discharge its liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the ex-spouse or ex civil partner if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit;
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit; and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State under paragraph 1(3)(c) of Schedule 5 to the 1999 Act(**54**).

(3) For the purposes of paragraph (1), no account is to be taken of consent of the person entitled to the pension credit unless—

- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under paragraph (2); or
- (b) it is not withdrawn within 7 days of receipt of such notice.

(4) For the purposes of this Part, rights conferred on the ex-spouse or ex civil partner are appropriate if—

- (a) they are conferred with effect from, and including, the day on which the pension sharing order, under which the credit arises takes effect; and

(52) 1993 c. 30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

(53) See regulation 7(1) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

(54) See regulation 7(2) of S.I. 2000/1053.

- (b) their value, when calculated in accordance with regulations made by the Secretary of State under section 30(1) of the 1999 Act in relation to the calculation of cash equivalents⁽⁵⁵⁾, equals the amount of the credit.

Qualifying arrangements

90.—(1) The following are qualifying arrangements for the purposes of regulation 89 (discharge of pension credit liability)—

- (a) an occupational pension scheme;
- (b) a personal pension scheme;
- (c) an appropriate annuity contract;
- (d) an appropriate policy of insurance; and
- (e) an overseas arrangement within the meaning of the Contracting-out (Transfer and Transfer Payment) Regulations 1996⁽⁵⁶⁾.

(2) An annuity contract or policy of insurance is appropriate for the purposes of paragraph (1) if, at the time it is entered into or taken out, the insurance company with which it is entered into or taken out—

- (a) is carrying on ordinary long-term insurance business in the United Kingdom or any other member State; and
- (b) satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 6(2)(b) of Schedule 5 to the 1999 Act⁽⁵⁷⁾.

(3) Paragraph (2)(a) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000⁽⁵⁸⁾;
- (b) any relevant order made under that section; and
- (c) Schedule 2 to that Act.

Disqualification as destination for pension credit

91.—(1) If a pension credit derives from a pension arrangement which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988, an arrangement is disqualified as a destination for the credit unless—

- (a) it is also approved for those purposes; or
- (b) it satisfies such requirements as the Secretary of State may prescribe by regulations made under paragraph 7(1)(b) of Schedule 5 to the 1999 Act (disqualification as destination for pension credit)⁽⁵⁹⁾.

(2) If the rights by reference to which the amount of a pension credit is determined are or include contracted-out rights, an arrangement is disqualified as a destination for the credit unless—

- (a) it is of a description prescribed by the Secretary of State by regulations made under paragraph 7(2)(a) of Schedule 5 to the 1999 Act⁽⁶⁰⁾; and
- (b) it satisfies such requirements as the Secretary of State may so prescribe under paragraph 7(2)(b) of Schedule 5 of the 1999 Act⁽⁶¹⁾.

⁽⁵⁵⁾ See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).

⁽⁵⁶⁾ S.S.I. 1996/1462.

⁽⁵⁷⁾ See Regulation 11 of S.I. 2000/1053.

⁽⁵⁸⁾ 2000 c. 8.

⁽⁵⁹⁾ See regulation 12 of S.I. 2000/1053.

⁽⁶⁰⁾ See regulation 13(1) of S.I. 2000/1053.

⁽⁶¹⁾ See regulation 13(2) of S.I. 2000/1053.

(3) An occupational pension scheme is disqualified as a destination for a pension credit unless the rights to be acquired under the arrangement by the person entitled to the credit are rights whose value, when calculated in accordance with regulations made by the Secretary of State under paragraph 7(3) of Schedule 5 to the 1999 Act(62), equals the credit.

(4) An annuity contract or insurance policy is disqualified as a destination for a pension credit in such circumstances as the Secretary of State may prescribe by regulations made under paragraph 7(4) of Schedule 5 to the 1999 Act(63).

(5) The requirements which may be prescribed under sub-paragraph (1)(b) include, in particular, requirements of HM Revenue and Customs.

(6) In paragraph (2)–

“contracted-out rights” means such rights under, or derived from–

- (a) an occupational pension scheme contracted-out by virtue of section 9(2) or (3) of the 1993 Act; or
- (b) a personal pension scheme which is an appropriate scheme for the purposes of that Act, as the Secretary of State may prescribe by regulations made under paragraph 7(6)(b) of Schedule 5 to the 1999 Act(64).

Adjustment to the amount of the pension credit – payments made without knowledge of the pension debit

92. If–

- (a) a person’s shareable rights under the Scheme have become subject to a pension debit;
- (b) the administering authority makes a payment which is referable to those rights without knowing of the pension debit; and
- (c) the cash equivalent of the member’s shareable rights after deduction of the payment is less than the amount of the pension debit,

the pension credit shall be reduced to that lesser amount(65).

“Implementation period” for discharge of pension credit

93.—(1) The administering authority shall discharge its liability in respect of a pension credit within “the implementation period”(66), which for a pension credit is the period of 4 months beginning with the later of–

- (a) the day on which the relevant pension sharing order takes effect; and
- (b) the first day on which the administering authority in relation to the relevant pension sharing order is in receipt of–
 - (i) the relevant documents; and
 - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations made under section 34(1)(b)(ii) of the 1999 Act(67).

(2) The reference in paragraph (1)(b)(i) to the relevant documents is to copies of–

(62) See regulation 14 of S.I. 2000/1053.

(63) See regulation 15 of S.I. 2000/1053.

(64) See regulation 13(3) of S.I. 2000/1053. The definition used here of “contracted-out rights” is found in section 68A(5) of the 1993 Act, as inserted by section 36 of the 1999 Act, and in paragraph 7(6) of Schedule 5 to the 1999 Act.

(65) See the 1999 Act, Schedule 5, paragraph 9 and regulation 17 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

(66) See section 33(1) of the 1999 Act.

(67) See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).

- (a) the relevant pension sharing order; and
- (b) the order, decree or declarator responsible for the divorce, dissolution or annulment to which it relates,

and, if the pension credit depends on provision falling within sub-section (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which sub-section (3)(a) of that section applies.

(3) Paragraph (1) is subject to any provision made by regulations under section 41(2)(a) of the 1999 Act(68).

(4) The provisions of this regulation are subject to any provisions or requirements which the Secretary of State may make by regulations under sections 34(4)(a) and (c) of the 1999 Act which—

- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;
- (b) provide for that section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time(69).

Failure to discharge liability in respect of pension credit within the implementation period and death of ex-spouse within period

94.—(1) Where the administering authority has not done what is required to discharge its liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) the administering authority shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act(70), notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe; and
- (b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties)(71) shall apply to any administering authority which has failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.

(2) If the administering authority fails to perform the obligation imposed by paragraph (1)(a), section 10 of the 1995 Act shall apply.

(3) Where the administering authority is subject to liability in respect of a pension credit, the Regulatory Authority may on the application of the administering authority extend the implementation period for the credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations made under section 33(4) of the 1999 Act(72).

(4) In this regulation “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.

(5) Where an ex-spouse or ex civil partner dies before the administering authority has discharged its liability in respect of the pension credit, that liability may be discharged by the appropriate authority by the payment of a lump sum, to a person other than the person entitled to the pension credit.

(68) See regulation 7 of the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049), which specifies circumstances in which the implementation period may be postponed.

(69) See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

(70) See regulation 2 of S.I. 2000/1053 which prescribes a 21 day period beginning with the day immediately following the end of the implementation period.

(71) 1995 c. 26.

(72) See regulation 3 of S.I. 2000/1053.

(6) The lump sum shall be equal to 3 times the annual rate of the pension which would have been paid to the ex-spouse or ex civil partner if on the date of the death the ex-spouse or ex civil partner had become entitled to a pension as a pension credit member, calculated in accordance with guidance issued by the scheme actuary.

(7) The appropriate administering authority shall pay the lump sum to the deceased's personal representatives.

CHAPTER IV

APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

“Appropriate Rights”/“Pension credit benefits” under the Scheme

95.—(1) Except as referred to in this regulation or otherwise in this Part of the Scheme, the appropriate rights under the Scheme to which a pension credit member shall be entitled shall consist only of a pension, a retirement grant and rights in relation to a death grant as provided under the Scheme.

(2) Pension credit benefits are subject to the same indexing as other benefits payable under the Scheme.

(3) The amount of the retirement grant to which a pension credit member shall be entitled shall be calculated on the same basis as if the pension credit member's pension were a deferred pension under the Scheme, except that no retirement grant shall be paid to the pension credit member if the corresponding pension debit member has already received a retirement grant from the Scheme before the date of the implementation of the pension sharing order.

(4) Regulations 23 (death grants: active members), 32 (death grants: deferred members) or 35 (death grants: pensioner members) of the Benefits Regulations shall apply in relation to a pension credit member.

(5) A pension credit member is entitled to his or her pension credit benefits on reaching his or her normal benefit age.

(6) The pension credit benefits are payable immediately on reaching normal retirement age and may not be deferred.

Additional Voluntary Contributions (“AVCs”)

96. Where a pension debit member has an accumulated value of AVCs, the amount of the cash equivalent in respect of the corresponding pension credit, which is attributable to the accumulated value of the pension debit member's AVCs, shall not be allocated to the pension credit benefits described in regulation 95(1) (“appropriate rights”) but, at the election of the pension credit member, must be used in one of the permissible ways specified in regulation 23(3) (use of accumulated value of AVCs and SAVCs).

Additional contributions and additional periods

97.—(1) Subject to paragraph (2) an active member, whose benefits have been made subject to a pension sharing order, shall not be allowed to replace any rights debited to the member as a consequence of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made⁽⁷³⁾.

(2) The provisions of paragraph (1) shall be relaxed if in line with any taxation exception or concession, which the Inland Revenue may stipulate in relation to “moderate earners” in accordance with the limits imposed in Schedule 10 to the Finance Act 1999 and any modifications thereto made

⁽⁷³⁾ See section 590(3)(bb) of the Taxes Act, inserted by the Finance Act 1999, Schedule 10, paragraph 2(3) (c.16).

by the Inland Revenue from time to time under paragraph 18(10) and (11) of that Schedule(74), or otherwise.

Commutation: small pensions

98.—(1) Regulation 39 of the Benefits Regulations (commutation: small pensions) shall apply, if as a result of a pension sharing order the annual rate of the retirement pension which a member who has attained state pensionable age is entitled to be paid falls below the sum mentioned in that regulation.

(2) Regulation 39 of those Regulations shall apply in respect of the retirement pension payable to a pension credit member in respect of a pension credit and the amount of that pension shall for the purpose of this regulation be aggregated with any other pension payable to that member under the Scheme.

Commutation: exceptional ill-health

99.—(1) The whole of the pension element payable in respect of a pension credit benefit may be commuted for a lump sum before normal benefit age in circumstances where the person entitled to the pension credit benefit is suffering from serious ill-health prior to the normal benefit age.

(2) In this regulation, “serious ill-health” means ill-health which is such as to give rise to a life expectancy of less than one year from the date on which the commutation of the pension credit benefit is applied for.

(3) The lump sum shall be equal to five times the annual rate of the pension to which the pension credit member would have been entitled if on the date of commutation he had already reached the normal benefit age.

Pension Transfers

100.—(1) The Scheme shall not accept any transfer into the Scheme in respect of any pension credit rights or pension credit benefits under any other pension scheme.

(2) No transfer of pension credit rights may be made from a pension credit member’s appropriate fund to another fund of the Scheme notwithstanding that that fund may be an appropriate fund for that member in respect of other rights he may have accrued under the Scheme.

CHAPTER V

MISCELLANEOUS

Charges in respect of pension sharing costs

101.—(1) The administering authority may recover from the parties involved in pension sharing charges as set out in paragraph (2).

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by the administering authority in connection with pension sharing activity other than those costs specified in paragraph (3).

(3) The costs specified in this paragraph are any costs which are not directly related to the costs which arise in relation to an individual case.

(4) The administering authority shall, before a pension sharing order is made, inform the member or the member’s spouse or civil partner, as the case may be, in writing of its intention to recover costs incurred with any description of pension sharing activity and provide the member or the member’s

(74) See S.I.s 2000/1085 and 1093.

spouse or civil partner, as the case may be, with a written schedule of charges in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act⁽⁷⁵⁾.

Excluded membership

102.—(1) Pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under the Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member, the member may not count any period which may count for any purpose in connection with the member's pension credit benefit towards any membership period required under the Scheme.

Appropriate fund and appropriate administering authority

103. For a pension credit member—

- (a) the appropriate fund is the fund which is the appropriate fund for the transferor on the transfer date; and
- (b) the appropriate administering authority is the administering authority of the fund.

Assignment

104. Except as may be required by law, or is necessary in law to give effect to a pension sharing order or is otherwise permitted for the purpose of this Part of the Scheme, pension credit benefits under the Scheme may not be assigned, charged or otherwise made subject to a security.

St Andrew's House,
Edinburgh
4th June 2008

JOHN SWINNEY
A member of the Scottish Executive

(75) See regulations 2 to 9 of S.I. 2000/1049.