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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 228**

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

**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<sup>(1)</sup> or regulation 21A of the Paternity and Adoption Leave Regulations 2002<sup>(2)</sup>.

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

(2) 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<sup>(3)</sup>;

“ordinary maternity leave” means leave under section 71 of that Act <sup>(4)</sup>;

“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<sup>(5)</sup>; 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<sup>(6)</sup>.

### **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.

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

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

(5) 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.

(6) 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(7), 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(8);

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

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(7) 1980 c. 9.  
(8) 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(9) 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<sup>(10)</sup>.

### **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

- (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(11) (“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(12).

(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;

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(11) 2004 c. 12.

(12) 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.