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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 234**

**PENSIONS**

**The Local Government Pension Scheme  
Amendment (Scotland) Regulations 2010**

<i>Made</i>	- - - -	<i>10th June 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>11th June 2010</i>
<i>Coming into force</i>	- -	<i>5th July 2010</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 7 and 12 of, and Schedule 3 to, the Superannuation Act 1972<sup>(1)</sup> and of all other powers enabling them to do so.

In accordance with section 7(5) of that Act, they have consulted such associations of local authorities as appeared to them to be concerned, such local authorities with whom consultation appeared to them to be desirable, and such representatives of other persons likely to be affected by the proposed regulations as appeared to them to be appropriate.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme Amendment (Scotland) Regulations 2010.

(2) These Regulations come into force on 5th July 2010 and, subject to paragraph (3), have effect from that date.

(3) Regulation 2 (insofar as it relates to regulation 3) and regulation 3 have effect from 1st April 2010.

**Amendment of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008**

2. The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008<sup>(2)</sup> are amended in accordance with regulations 3 to 6.

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

(2) [S.S.I. 2008/228](#), as amended by [S.S.I. 2009/93](#) and [S.S.I. 2009/187](#).

3. In regulation 27(2) (governance compliance statement), for “1st April 2010” substitute “31st March 2011”.

4. After regulation 31 (funding strategy statement) insert—

**“Pension fund annual report**

**31A.**—(1) An administering authority must, in relation to each year beginning on 1st April 2010 and each subsequent year, prepare a document (“the pension fund annual report”) which contains—

- (a) a report about the management and financial performance during the year of each of the pension funds maintained by the authority;
- (b) a report explaining the authority’s investment policy for each of those funds and reviewing the performance during the year of the investments of each fund;
- (c) a report of the arrangements made during the year for the administration of each of those funds;
- (d) for each of those funds, a statement by the actuary who carried out the most recent valuation of the assets and liabilities of the fund in accordance with regulation 32 (actuarial valuations and certificates), of the level of funding disclosed by that valuation;
- (e) the current version of the statement under regulation 27 (governance compliance statement) or details of where that statement may be obtained;
- (f) for each of those funds, the fund account and net asset statement with supporting notes and disclosures prepared in accordance with proper practices;
- (g) an annual report dealing with—
  - (i) the extent to which the authority and the employing authorities in relation to which it is the administering authority have achieved any levels of performance set out in the pension administration strategy in accordance with regulation 60A(2)(b)(3) (pension administration strategy); and
  - (ii) such other matters arising from its pension administration strategy as it considers appropriate;
- (h) the current version of the statement referred to in regulation 31 (funding strategy statement) or details of where that statement may be obtained.
- (i) the current version of the statement under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 2010(4) (statement of investment principles) or details of where that statement may be obtained; and
- (j) any other material which the authority considers appropriate.

(2) The authority must publish the pension fund annual report on or before 1st December following the year end.

(3) In preparing and publishing the pension fund annual report, the authority must have regard to guidance given by the Scottish Ministers.”.

5. In regulation 42(1) (exclusion of rights to return of contributions)—

- (a) at the end of paragraph (b) omit “or”; and
- (b) after paragraph (c) insert:—

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(3) Regulation 60A was inserted by [S.S.I. 2009/187](#), regulation 33.

(4) [S.S.I. 2010/233](#).

“; or

- (d) the person continues as an active member in another employment held concurrently with the employment in which that person has ceased to be an active member.”.

6. In Schedule 5 (councillor members), omit paragraph 6 (members’ contributions).

**Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008**

7. The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008(5) are amended in accordance with regulations 8 and 9.

8. In regulation 9 (final pay: general)—

- (a) at the end of paragraph (2) insert—

“or, if it would produce a higher figure, either of the two immediately preceding years”;  
and

- (b) paragraph (3) is omitted.

9. In regulation 30(1) (choice of payment of pension), omit “or otherwise ceases to be a member”.

St Andrew’s House,  
Edinburgh  
10th June 2010

*JOHN SWINNEY*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

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

These Regulations amend the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (“the Administration Regulations”) and the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (“the Benefits Regulations”).

Regulations 3 to 6 amend the Administration Regulations. Regulation 3 amends regulation 27(2) of the Administration Regulations (governance compliance statement) to change the date by which the governance compliance statement must be published to 31st March 2011.

Regulation 4 inserts a new regulation 31A into the Administration Regulations (pension fund annual report) which requires administering authorities to publish a pension fund annual report and specifies what the report must contain, when it must be published and that in preparing and publishing such a report administering authorities must have regard to guidance given by the Scottish Ministers.

Regulation 5 amends regulation 42(1) of the Administration Regulations (exclusion of rights to return of contributions) to include a further restriction on the right to a refund of contributions in circumstances where a person holding two concurrent employments ceases to be an active member in one of them. A refund of contributions in such a scenario would result (due to the operation of paragraph 5 of Schedule 29 to the Finance Act 2004 (c.12)) in the remainder of the member’s benefits being extinguished. The amendment to regulation 42(1) prevents this.

Regulation 6 removes paragraph (6) of Schedule 5 to the Administration Regulations. Paragraph (6) of Schedule 5 erroneously disappplies regulation 21 of the Administration Regulations (discontinuance of additional regular contributions) in relation to councillor members.

Regulations 8 and 9 amend the Benefits Regulations. Regulation 8 amends regulation 9 of the Benefits Regulations (final pay: general) to clarify that pay for pension purposes means that pay received in the 12 months leading up to the date of leaving employment, or if it would produce a higher figure, either of the two immediately preceding years.

Regulation 9 amends regulation 30(1) of the Benefits Regulations (choice of payment of pension) by removing the words “or otherwise ceases to be a member” to clarify the effect of the provision.