

---

STATUTORY INSTRUMENTS

---

**1998 No. 366**

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

**PART I**

**PRELIMINARY PROVISIONS**

**Citation and commencement**

1. These Regulations may be cited as the Local Government Pension Scheme (Scotland) Regulations 1998 and shall come into force on 1st April 1998.

**Interpretation**

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

(2) Unless that is so, references to members and membership generally refer to active members and active membership respectively and, in relation to any time before the commencement date, refer to pensionable employees and reckonable service under the 1987 Regulations.

**PART II**

**PRIMARY PROVISIONS**

**CHAPTER I**

**MEMBERSHIP**

*Eligibility for active membership*

**General eligibility for membership: employees of Scheme employers etc.**

3.—(1) A person may be an active member only if this regulation or regulation 4 or Chapter I of Part V enables him to be one and he is not prevented by regulation 5.

(2) A person may be a member if he is employed by a Scheme employer.

(3) A Scheme employer is a body which is listed in Schedule 2.

**Agreements to enable employees of non-Scheme employers to be members (“admission agreements”)**

4.—(1) An administering authority may make an admission agreement with any admission body.

(2) An admission agreement is an agreement that all or any specified class of the admission body's employees may be members.

(3) An admission agreement may provide that a period of employment by the admission body before the date of the agreement counts as membership of the Scheme (or does so for some purposes).

(4) An admission agreement must terminate if the admission body ceases to be such a body.

(5) An admission agreement may make such other provision about its termination as the parties consider appropriate.

(6) When an administering authority make an admission agreement, they must immediately inform the Secretary of State of the admission body's name and the date the agreement takes effect.

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

(8) These are admission bodies—

(a) a body which provides a public service in the United Kingdom otherwise than for the purposes of gain;

(b) a body to the funds of which any local authority contribute;

(c) a body to which any grant is made out of money provided by Parliament;

(d) a body representative—

(i) of local authorities, or

(ii) of local authorities and officers of local authorities, or

(iii) of officers of local authorities;

(e) a voluntary organisation engaged in the provision of services under—

(i) Part III of the National Health Service (Scotland) Act 1978(1);

(ii) Part III of the National Assistance Act 1948(2);

(iii) the Disabled Persons (Employment) Act 1958(3);

(iv) the Mental Health (Scotland) Act 1984(4); or

(v) section 14 of the Social Work (Scotland) Act 1968(5).

(9) However, a body falls within paragraph (8)(d)(iii) only if it is formed for the purpose of consultation as to the common interests of local authorities and the discussion of matters relating to local government.

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

### **Further restrictions on eligibility**

5.—(1) If a person's employment entitles him to belong to another statutory pension scheme, that employment does not entitle him to be a member, unless that other scheme was made under section 7 of the Superannuation Act 1972.

(2) A statutory pension scheme is an occupational pension scheme provided by or under an enactment (including a local Act).

---

(1) 1978 c. 29.

(2) 1948 c. 29.

(3) 1958 c. 33.

(4) 1984 c. 36.

(5) 1968 c. 49; section 14 was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 10 and the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 10(6).

- (3) A person may not become a member after his 65th birthday unless—
  - (a) his total membership does not exceed his permitted maximum; and
  - (b) he is a permitted late member.
- (4) The permitted maximum for a Class A member is 40 years.
- (5) The permitted maximum for a Class B member or a Class C member is the sum of—
  - (a) his total membership before he attained 60 or, if less, 40 years, and
  - (b) his total membership since he attained 60,or, if less, 45 years.
- (6) A permitted late member is a person to whom—
  - (a) a pension which must be the subject of a policy formulated under regulation 110 (statements of policy concerning abatement of retirement pensions in new employment);
  - (b) an ill-health grant under regulation 26(3) or an ill-health retirement grant under regulation E4 of the 1987 Regulations or regulation E21 of the 1974 Regulations; or
  - (c) a short service grant under the Benefits Regulations,has become payable or who is entitled to or has received relevant compensation.
- (7) Relevant compensation is compensation which—
  - (a) is payable under any enactment for loss of employment or loss or reduction of employment benefits attributable to an enactment; and
  - (b) is liable to be reduced or suspended by reason of the person to whom it is payable entering employment with a Scheme employer, in the same way as it would have been if he had remained eligible to belong to the occupational pension scheme to which he belonged or was eligible to belong immediately before suffering the loss.
- (8) If a person has been entitled to an ill-health pension calculated by reference to an enhanced membership period, that period is counted as part of his total membership for paragraphs (3) and (5).
- (9) Part-time employment as a member of a fire brigade maintained in pursuance of the Fire Services Act 1947(6) on terms under which the employee is or may be required to engage in fire-fighting does not entitle the employee to be a member of the Scheme.

### *Joining and leaving the Scheme*

#### **Joining the Scheme**

- 6.—(1) A person who wishes to become an active member must apply in writing to his employer or future employer.
- (2) An eligible person who applies before he begins his employment becomes a member when his employment begins unless he applies to join later.
- (3) An eligible employee who applies becomes a member on the first day of the first payment period following the application.
- (4) A payment period is a period of service to which the employee's wages or salary payment relate.
- (5) An employee is deemed to have applied to become a member, unless he notified his employer in writing that he did not wish to become a member—
  - (a) before his employment began; or

- (b) if he only became eligible to be a member later, before the date he became eligible.
- (6) Paragraph (5) does not apply to—
  - (a) casual employees; or
  - (b) former members who opted to leave the Scheme by a notification under regulation 7.
- (7) An application for membership may be withdrawn before membership begins.
- (8) A former active member may reapply for membership.
- (9) Notwithstanding paragraph (8), a person who has given more than one notification under regulation 7 may reapply again only if—
  - (a) his employer or future employer consents;
  - (b) he is beginning a new employment with a new employing authority and he reapplies before he has been employed for three months; or
  - (c) he is an individual who during any period has been eligible to be a member but has instead made contributions to a personal pension scheme and has suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986(7) (actions for damages in respect of contravention of rules etc. made under the Act).

### **Leaving the Scheme**

- 7.—(1) A person may leave the Scheme if he wishes and stops being a member if he stops being eligible for membership.
- (2) A person who wishes to leave the Scheme must notify his employer in writing.
- (3) A member who gives such a notification stops being a member from the date the notification specifies.
- (4) However, if a date earlier than the notification or no date is specified, he stops being a member at the end of the payment period during which the notification is given.
- (5) Where notification is given by a person before he has been a member for one month, he must be treated as not having been a member in that period.

## CHAPTER II

### COUNTING MEMBERSHIP FOR THE SCHEME

#### **Periods of membership: “total membership”**

- 8.—(1) These are the periods which count as periods of membership—
  - (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 11, 16 or 17;
  - (b) any period during which a member is away from work because of illness or injury;
  - (c) any period which a member is entitled to count as membership under—
    - (i) Chapter II or III of Part III; or
    - (ii) regulation 122(1) (periods credited on payment of transfer values);
  - (d) in the case of a member who belonged to the Scheme immediately before the commencement date, any period he is entitled to count under the Transitional Regulations.

(2) For most purposes a member's "total membership" is the total of the periods he is entitled to count under paragraph (1), disregarding any period which would otherwise count twice (but see regulations 9, 10 and 31 and the Transitional Regulations).

(3) A person may not count any period of membership if his contributions for that period have been returned to him and, if all his contributions to the appropriate fund are returned to him, he may not count any period of membership credited to him on the receipt of a transfer value.

(4) A person may not count any period of membership if his rights in respect of it have been transferred to a non-local government scheme, a personal pension scheme, a self-employed pension arrangement, a retirement annuity contract or an appropriate policy by payment of a transfer value.

(5) Where a person pays contributions under regulation 17(3) (trade disputes) for any period, that period counts as a period within paragraph (1)(a) even if his contract of employment did not subsist throughout that period.

(6) Paragraph (1)(a) includes any period for which a member is treated as having paid contributions under regulation 86(4) (concurrent employments).

### **Excluded membership**

9.—(1) Superannuable membership does not count towards the membership period required before a person is entitled to any benefit.

(2) "Superannuable membership" is—

(a) any period of added years;

(b) any additional period of membership which counts as such by virtue of Chapter II of Part III;

(3) The Table in Schedule 3 sets out other sorts of membership which do not count for some purposes.

(4) The first column of that Table describes the membership and the second column specifies the purposes for which such membership does not count.

(5) That Table has effect subject to the notes at the end.

### **Length of period of membership: calculation of benefit**

10.—(1) In calculating the amount of any benefit, fractions of years of membership count.

(2) The numerator of such fractions is the number of complete days of membership and 365 is the denominator.

(3) Membership in part-time service is counted as the appropriate fraction of the duration of membership.

(4) The numerator of that fraction is the number of contractual hours during the part-time service and its denominator is the number of contractual hours of that employment if it were on a whole-time basis.

(5) Paragraph (3) does not apply in determining a member's total membership for regulation 27(1) (ill-health enhancement) (and see regulation 27(5) and (6) as to the determination of the enhanced membership period in such cases).

## CHAPTER III CONTRIBUTIONS

### Members' contributions

**11.**—(1) Each member shall make contributions to the Scheme at the standard contribution rate on his pay in each employment in which he is an active member (but see regulation 14).

(2) The standard contribution rate for a member is six per cent., unless he is a member with lower rate rights.

(3) The standard contribution rate for a member with lower rate rights is five per cent.

(4) A person who is an active member in more than one employment must make contributions for each of those employments.

(5) The appropriate administering authority may decide the intervals at which the contributions are made.

(6) For this regulation any reduction in pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work shall be disregarded.

(7) Regulations 15 to 17 affect this regulation.

### Meaning of “pay”

**12.**—(1) An employee’s pay is the total of—

- (a) all the salary, wages, fees and other payments paid to him for his own use in respect of his employment;
- (b) any other payment or benefit specified in his contract of employment as being a pensionable emolument.

(2) However, an employee’s pay does not include—

- (a) payments for non-contractual overtime;
- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate his contract of employment;
- (e) any payment as an inducement not to terminate his employment before the payment is made;
- (f) any amount representing the money value of the provision of a motor vehicle (but see paragraphs (8) and (9)); or
- (g) any compensation paid under the Local Government (Compensation for Reduction of Remuneration or Reorganisation) (Scotland) Regulations 1995(8).

(3) For regulation 11, the pay of a part-time employee for any period is the pay he would have received if during that period he had worked the contractual hours.

(4) However, paragraph (3) does not apply to periods during which the employee was away from work by reason of illness or injury with reduced or no pay.

(5) If a Scheme employer agrees with the bodies or persons representative of any description of employees the method for determining the whole or a specified part of the pay of employees of that

description for the period during which the agreement applies, the pay of a member who is such an employee is the amount so determined.

(6) A Scheme employer must notify in writing every member affected by such an agreement.

(7) That notification must include a conspicuous statement as to the place where he may obtain information about details of the agreement.

(8) Where—

(a) a member's contribution under regulation C2 or C3 of the 1987 Regulations for a period including 31st December 1992 was based on remuneration which for the 1987 Regulations as then in force included an amount representing the money value to him of the provision of a motor vehicle; and

(b) immediately before the commencement date his remuneration for the 1987 Regulations included such an amount,

then his pay includes such an amount.

(9) However, paragraph (8) shall cease to apply if—

(a) he leaves employment with the employing authority who were employing him on 31st December 1992 (otherwise than as a result of a transfer to another Scheme employer which is beyond his control); or

(b) he is neither provided with a motor vehicle nor receives an amount representing the money value to him of the provision of such a vehicle.

(10) No sum may be taken into account in calculating pay unless income tax liability has been determined on it.

### **Members with lower rate rights**

**13.**—(1) A member has lower rate rights for regulation 11 if he falls within paragraphs (2) and (3).

(2) A member falls within this paragraph if—

(a) immediately before the commencement date he was required (or would have been required if he had then been a member) to contribute to the Scheme at the rate of five per cent., and

(b) since that date either—

(i) he has remained in continuous employment in the same capacity and a member, or

(ii) he has been continuously employed in local government employment.

(3) A member falls within this paragraph if he is—

(a) a continuously-employed manual worker who immediately before the commencement date was in a local government employment in which he was entitled to contribute to the Scheme at the rate of five per cent. by reason of being a manual worker (as defined in Schedule 1 to the 1987 Regulations); or

(b) a statutory transferee who was so entitled immediately before he left the Scheme on statutory transfer and has applied to his employing authority to continue to be so entitled before the expiry of the period of 30 days beginning with the date he rejoins the Scheme or such longer period as they may allow; or

(c) a continuously-employed local Act member.

(4) A continuously-employed manual worker is a person—

(a) who on or after the commencement date has been transferred from the employment he held immediately before that date to another local government employment which is described by his employer as a manual employment; or

- (b) who on or after that date has been transferred more than once and all of those employments since that date have been local government employments which are so described.
- (5) A statutory transferee is a person who—
  - (a) left the Scheme by reason of his employment being transferred by virtue of an enactment to a person who was not a Scheme employer; and
  - (b) has rejoined the Scheme on a further transfer by virtue of an enactment to a person who is a Scheme employer and for whom he is employed in the same capacity as that in which he was employed immediately before he left the Scheme.
- (6) A continuously-employed local Act member is a person who has remained since before the commencement date continuously in employment which has entitled him to contribute to the Scheme at the rate of five per cent. by reason of rights under a local Act scheme.
- (7) For this regulation whether a person's employment is continuous must be determined in accordance with Chapter I of Part XIV of the Employment Rights Act 1996<sup>(9)</sup>, but any period not exceeding one month and one day when he is not employed may be disregarded.

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

- 14.—(1) The employing authority of a person who is an active member in their employment and has a total membership in a local government employment of at least 40 years may determine that he should not be liable to make contributions to the Scheme on his pay in their employment or should only be liable to make them at a rate less than the standard contribution rate.
- (2) The member's liability is reduced or, as the case may be, extinguished at the expiry of the period of one month beginning with the date on which the employing authority so determined.
- (3) However, for these Regulations the member shall continue to be treated as paying the contributions under regulation 11 for which he would otherwise be liable.
- (4) For paragraph (1) membership counts as membership in local government employment unless—
- (a) it is a credited period counted under regulation 122 (periods credited on inward transfer); or
  - (b) the member was entitled to count it under any corresponding earlier provision and he is entitled to count it under regulation 8(1)(d).

#### **Inland Revenue limits on contributions**

- 15.—(1) A Class A member may not pay contributions on any pay exceeding the Revenue permitted maximum.
- (2) The total contributions to the Scheme and any other approved occupational pension scheme or approved personal pension scheme by a person in any tax year in respect of any employment in which he is a member must not exceed 15 per cent. of his total remuneration for that year in that employment.
- (3) An occupational pension scheme or personal pension scheme is approved if it has been approved by the Commissioners of Inland Revenue under Part XIV of the Taxes Act.
- (4) In this regulation "total remuneration" has the same meaning as in Schedule 4.

#### **Obligatory contributions during absences**

- 16.—(1) If a member—

---

(9) 1996 c. 18.



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

he must make contributions at the standard contribution rate on the pay he would have received during that period but for his absence.

(2) If a person who is a member or has applied to be a member goes on maternity leave, she must make contributions at the standard contribution rate, as respects any part of her period of maternity absence for which she is a member and entitled to receive pay (including any statutory maternity pay payable to her under the Social Security Contributions and Benefits Act 1992(10)), on that pay.

(3) That pay includes any such statutory pay but not any amount by which her actual pay is reduced on account of her possible entitlement to such statutory pay.

(4) If a person who is a member or has applied to be a member goes on reserve forces service leave, he must pay contributions under regulation 11 and any payments under Chapter III of Part III which he was paying immediately before his relevant reserve forces service began, if (and only if) during that service his reserve forces pay equals or exceeds the pay he would have received if he had continued to be employed in his former employment.

(5) Those contributions continue to be payable to the appropriate fund at the same rates on his reserve forces pay.

(6) If he is not obliged to pay contributions under paragraph (4), for the purposes of these Regulations he is treated as if he had paid them and also any payments under Chapter III of Part III which he would have been liable to pay if he had continued to be employed in his former employment.

(7) If a person who is a member or has applied to be a member goes on reserve forces service leave—

- (a) he may continue to pay any contributions under Chapter IV of Part III (AVCs and SCAVCs) which he was paying immediately before his leave began;
- (b) he may opt to discontinue payment under that Chapter; and
- (c) unless he has so opted, the appropriate administering authority must continue throughout the period of his relevant reserve forces service leave to pay any such contributions which were to be used to provide benefits for him on his death.

(8) If a person who is a member or has applied to be a member goes on reserve forces service leave—

- (a) his relevant reserve forces service counts as a period of membership in his former employment; and
- (b) if during that service he dies, attains his normal retirement age or becomes incapable for health reasons of working efficiently in local government employment, he shall be treated as if he were in that employment at that time.

### **Optional contributions during absences**

17.—(1) If a member—

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

he may make contributions under regulation 16 at the standard contribution rate for the whole period of his absence or, if it exceeds 36 months, for 36 months, on the pay he would have received but for his absence.

(2) If—

- (a) a person who is a member or has applied to be a member goes on maternity leave; and
- (b) for the whole or part of the period of her maternity absence (“the unpaid period”) she is not entitled to receive pay (including any statutory maternity pay payable to her under the Social Security Contributions and Benefits Act 1992<sup>(11)</sup>) but is a member,

she may make contributions under regulation 16 at the standard contribution rate as respects the unpaid period, as if her pay in the employment were equal to the pay she was entitled to receive immediately before the unpaid period began (including any such statutory pay, but not any amount by which her actual pay is reduced on account of her possible entitlement to such statutory pay).

(3) 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 that period (or, where two or more periods of absence have occurred in consequence of one such dispute, the first such period),

he may make a contribution under regulation 16 for the relevant contribution period at the rate of 16 per cent. on his lost pay for that period.

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

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

(disregarding any guarantee payments under Part III of the Employment Rights Act 1996<sup>(12)</sup>).

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

- (a) it is coextensive with one of the intervals at which he was required under regulation 11 to make standard contributions; and
- (b) it includes all or part of his trade dispute absence.

(6) To make contributions under this regulation a person must apply to the employing authority in writing before the expiry of the period of 30 days beginning with the day on which he returns to work or such longer period as the authority may allow.

(7) However, if he ceases to be employed by that authority without returning to work, he may apply under paragraph (6) only before the expiry of the period of 30 days beginning with the day he so ceases or such longer period as they may allow.

(8) An application under paragraph (6) or (7) may be made by the person’s executors if he has died without making such an application.

(9) The termination of a person’s contract of employment in consequence of a trade dispute does not prevent this regulation applying to him if he again becomes an employee of the same Scheme employer and a member not later than the day after the dispute ends.

---

<sup>(11)</sup> 1992 c. 4.

<sup>(12)</sup> 1996 c. 18.

## CHAPTER IV

### BENEFITS

#### *Preliminary*

#### **General qualification for benefits**

- 18.**—(1) Membership of the Scheme entitles the member to benefits under this Chapter only if—
- (a) his total membership is at least two years; or
  - (b) a transfer value is credited to him.
- (2) Paragraph (1) does not apply—
- (a) to a benefit under regulation 24 (normal retirement) in a case where the member's normal retirement date is his 65th birthday or under regulation 27(3) (ill-health grants); or
  - (b) to benefits in respect of a member under regulation 37 (death grants), regulation 39 (surviving spouse's short-term pension), regulation 40 (surviving spouse's long-term pension) regulation 44 (children's short-term pensions) or regulation 45 (children's long-term pensions).

#### **Calculations**

**19.**—(1) The amount of any benefit payable as a result of a person's membership is generally calculated by multiplying his final pay by the appropriate multiplier.

- (2) Unless another multiplier is indicated, the appropriate multiplier for a pension is—

$$\frac{\text{the member's total membership}}{80}$$

- (3) Unless another multiplier is indicated, the appropriate multiplier for a retirement grant is—

$$\frac{3 \times \text{the member's total membership}}{80}$$

(4) However, benefits payable on or after the death of a pensioner member are calculated by multiplying the amount of his former retirement pension by the multiplier specified for the benefit in question.

- (5) Unless otherwise indicated, references to the amounts of pensions are to their annual rate.

(6) The amount of a deceased person's former retirement pension is the amount of the pension he would have received immediately before his death, but for—

- (a) regulation 28 (re-employed pensioners);
- (b) regulation 30 (elections for early payment);
- (c) regulation 32 (surrenders);
- (d) regulation 49 (commutation: exceptional ill-health);
- (e) regulation 53 (effect of increases under Chapter II of Part III for older members);
- (f) regulation 56 (effect of increases under Chapter III of Part III for older members); or
- (g) regulation 110 (application of abatement policy in individual cases).

(7) Periods are measured in years and fractions of a year (calculated as specified in regulation 10).

(8) A pensioner member includes a person who would have been entitled to a pension but for regulation 110 (application of abatement policy in individual cases).

(9) Paragraph (8) does not stop a person to whom it applies from also counting as an active member.

### **Final pay**

**20.**—(1) A member's final pay for an employment is his pay for as much of the final pay period as he is entitled to count as active membership in local government employment (but see paragraphs (3) to (10), regulations 21 and 22(2) and Schedule 4).

(2) A member's final pay period is the year ending with the day on which he stops being an active member (but see paragraph (9) and regulations 21 and 22).

(3) In the case of part-time employment, the final pay is the pay which would have been paid for a single comparable whole-time employment.

(4) However, in calculating death grant or the rate of surviving spouse's or children's short-term pension payable on the death of an active member, actual pay in part-time employment is to be used.

(5) Any reduction or suspension of a member's pay during the final period because of his absence from work owing to illness or injury must be disregarded for this Chapter.

(6) If a member's final pay period includes reserve forces service leave, his final pay is—

- (a) in a case where he has paid contributions by virtue of regulation 16(4), the amount it would have been if his reserve forces pay were pay received in his former local government employment; or
- (b) otherwise, the amount it would have been if he had continued to be employed in his former employment during the period of that leave.

(7) If a member is absent from work for any other reason during his final pay period, he is to be treated for this Chapter as having received the pay he would otherwise have received only if he has made the appropriate contributions under Chapter III for the period he is absent.

(8) If in any case where regulation 12(5) (collective pay agreements) applies to a member's pay during any part of the final pay period—

- (a) his average weekly earnings from his local government employment in that period (other than payments for overtime and bonuses)—
  - (i) exceed by more than 50 per cent. the lower earnings limit at the end of that period, and
  - (ii) do not exceed the upper earnings limit at the end of that period; and
- (b) his final pay would be greater if determined using those earnings,

it is to be determined using them.

(9) If a member is only entitled to count part of the year specified in paragraph (2) as a period of active membership in relation to the employment which he ceases to hold, his final pay is his pay during that part multiplied by 365 and divided by the number of days in that part.

(10) Final pay does not include any pension in payment.

### **Other final pay periods**

**21.**—(1) Where the whole or part of a member's pay consists of fees, his final pay period for them is not the period specified in regulation 20(2) but—

- (a) the period of three years ending with the last day on which he was an active member; or
- (b) any other period he may with the consent of his employing authority elect, being a period of not less than three nor more than five years—

- (i) ending with a day which is that last day or of which that last day is the anniversary, and
- (ii) falling within the period of 13 years ending with that last day.

(2) However, if he was only entitled to receive fees during part of the period mentioned in paragraph (1)(a), that part is substituted for the period referred to in that paragraph.

(3) If a member has been absent from work during any part of the year specified in regulation 20(2), his final pay period is the last 365 days he is entitled to count as a period of active membership.

(4) A member to whom paragraph (5) applies may elect that instead of his final pay period being determined under regulation 20(2) or paragraph (1), (2) or (3) above, it should be—

- (a) as respects so much of his pay as does not consist of fees, a year ending with a day—
  - (i) falling within the period of three years ending with the last day on which he was an active member, and
  - (ii) of which that last day is the anniversary; and
- (b) as respects so much of his pay as consists of fees, that period of three years.

(5) This paragraph applies to a member whose pay in the period which he would elect as his final pay period if he made an election under paragraph (4) is higher than his pay in a final pay period determined under regulation 20(2) or paragraph (1), (2) or (3).

(6) Where paragraph (1) or (2) applies or a member elects for the period specified in paragraph (4) (b), as respects so much of his pay as consists of fees his final pay is the annual average of his fees during his final pay period.

(7) 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 day on which he is notified of his entitlement to a benefit.

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

### **Permanent reductions in pay: certificates of protection of pension benefits**

**22.—**(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 he ceases to be an active member, he may elect that his final pay period should be—

- (a) a year ending with a day—
  - (i) falling within the period of five years ending with the last day on which he 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 he 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), his final pay is the annual average of his pay during that period.

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

- (a) his 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 his retirement pension will be adversely affected, he 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 his rate of pay—

(a) is temporary; or

(b) consists of the termination of, or a reduction in, a 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 he 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 he is notified of his 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 his behalf (whether or not the period within which he could have elected has expired).

### **Revenue limits**

**23.** Schedule 4 contains restrictions on the amounts of benefits to which a member is entitled under the Scheme.

### *Retirement benefits*

#### **Normal retirement**

**24.**—(1) If a member who has attained his normal retirement age retires from a local government employment, he is entitled to a pension and retirement grant.

(2) The pension and grant are payable immediately.

(3) The normal retirement date (“NRD”) of a member who was not a member immediately before the commencement date is his 65th birthday.

(4) The NRD of a member who was a member immediately before the commencement date is—

(a) if on the day before his 60th birthday he has total membership of at least 25 years, that birthday;

(b) if the date when he first has such total membership is on or after his 60th birthday but before his 65th birthday, the day after that date; and

(c) otherwise, his 65th birthday.

(5) A member's “normal retirement age” is his age on his NRD.

(6) If a member's NRD or normal retirement age needs to be determined before he attains that age, it must be assumed that his local government employment and membership of the Scheme will be continuous.

### **Redundancy etc.**

**25.**—(1) If—

- (a) a member who is aged 50 or more retires from a local government employment; and
- (b) his employing authority certify the reason for his retirement was his redundancy,

he is entitled to a pension and retirement grant.

(2) The pension and grant are payable immediately.

(3) However, a person who is notified under regulation 11 of the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995<sup>(13)</sup> about compensation due because regulation 7 of those Regulations applies to his retirement may waive his right to immediate payment by notice in writing to his employing authority.

(4) In paragraph (1) “redundancy” includes retirement in the interests of efficiency, or because the member held a joint appointment which has been ended because the other holder has left it.

### **Ill-health**

**26.**—(1) Where a member leaves a local government employment by reason of being permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body, he is entitled to an ill-health pension and grant (but see paragraph (3)).

(2) The pension and grant are payable immediately.

(3) A member—

- (a) whose total membership is at least one year, but less than two years; and
- (b) to whom no transfer value is credited,

is entitled to an ill-health grant (but not a pension), unless paragraph (4) applies to him.

(4) This paragraph applies to a member if—

- (a) he is entitled to any payment out of the appropriate fund (other than an injury allowance under regulation 7 of the Benefits Regulations or return of contributions);
- (b) he has received any payment under Part VI of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998<sup>(14)</sup>; or
- (c) he would receive at least as much as the grant if his contributions were returned to him.

### **Amounts of ill-health pension and grant**

**27.**—(1) Where the member's total membership is at least five years the multiplier for an ill-health pension or grant is by reference to the member's enhanced membership period instead of his total membership.

(2) A member's enhanced membership period is—

- (a) if his total membership is less than 10 years, twice his total membership;
  - (b) if his total membership is at least 10 years, but not more than 13 122/365 years, 20 years;
- and

---

<sup>(13)</sup> S.I. 1995/340, amended by S.I. 1997/720.

<sup>(14)</sup> S.I. 1998/192.

(c) otherwise, his total membership plus  $6 \frac{243}{365}$  years.

(3) However, the enhanced membership period must not exceed 40 years or the total membership the member would have had if he had continued as an active member until he was 65, whichever is the shorter.

(4) If the member became entitled to ill-health benefits under the Scheme before he was in the employment from which he has retired, his enhanced membership period must be calculated by including in his total membership his total membership in the previous employment.

(5) The maximum period which may be added to a member's total membership to calculate his enhanced membership period in respect of all his local government employment is 10 years.

(6) Where membership includes membership in part-time employment, the enhanced membership period must be calculated by first working out what it would be if the employment were all whole-time, and then reducing the resulting period by the appropriate fraction (but see paragraph (9)).

(7) The appropriate fraction is the fraction of which the numerator is the member's total membership and the denominator is the period which would be his total membership if his employment had all been whole-time.

(8) In the case of a member in part-time employment with non-cyclical fluctuating contractual hours, that fraction must be determined by making separate calculations for each period over which averaging of the member's hours occurs in calculating his contractual hours.

(9) If the member's total membership includes a period of at least  $13 \frac{121}{365}$  years in whole-time employment, paragraph (6) does not apply and his enhanced membership period must be calculated by reference to that period of whole-time employment.

(10) If a member is entitled under regulation 26(3) to an ill-health grant (but not a pension) the multiplier for the grant is—

$$\frac{\text{the member's total membership}}{80}$$

### **Re-employed pensioners**

**28.**—(1) Where a member is entitled to two retirement pensions because of being a member in two employments which were not concurrent, he may elect for a single new pension.

(2) If he so elects, he becomes entitled to a single retirement pension and retirement grant, each calculated by reference to the augmented period (but see paragraph (7)).

(3) The augmented period is the member's total membership in the later employment, increased by the period which would have been aggregated if he had made an election under regulation 31(1) as respects his earlier employment when he became an active member in his later employment.

(4) However, if the retirement pension from the earlier employment was calculated using a longer period of membership than the period which is the augmented period under paragraph (3), the longer period is the augmented period for paragraph (2).

(5) No election may be made if the pension for the earlier employment—

- (a) is paid under regulation 30 and subject to a reduction; or
- (b) is an EPB pension.

(6) The member must set off any retirement grant he received because of his membership in the earlier employment (“the first grant”) against the retirement grant under this regulation and, if it was greater, repay the difference between the grants to the new authority.



(7) For paragraph (6), the first grant includes the amount by which it would have been increased under the Pensions (Increase) Act 1971(15) if it had become payable at the same time as the retirement grant under this regulation.

(8) Any additional period which did not count in the calculation of the first grant because of regulation 53(3) does not count in calculating the retirement grant under this regulation either.

(9) Any surrender of the pension from the earlier employment operates to the same extent on the single pension, but the surrendered pension is payable by the new authority.

(10) Where the later retirement is one to which regulation 26 (ill-health) applies and the member does not become entitled to a single pension—

- (a) if his earlier pension is also payable under that regulation and he gave notice under paragraph 4 of Schedule 10 to the 1987 Regulations when he left the earlier employment, regulation 27(1) does not apply (and so his total membership without enhancement is used for the multiplier for the later pension); but
- (b) if his earlier pension is not payable under that regulation, the membership enhancement period is  $6\frac{243}{365}$  years more than his total membership.

#### **Further provisions about elections under regulation 28**

**29.**—(1) An election under regulation 28 must be made by giving notice in writing to the new authority.

(2) The new authority is the appropriate administering authority for the pension from the later employment.

(3) The election must be made before the expiry of the period of three months beginning with the date on which the member becomes entitled to the pension for the later employment and has effect from that date.

(4) If a member does not repay any amount due under regulation 28(6) before the expiry of the period of three months beginning with the date on which he elects, his election is void (and so he is not entitled to the single pension).

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

**30.**—(1) If a member leaves a local government employment (or is treated for these Regulations as if he had done so) before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he is aged 50 or more he may elect to receive payment of them immediately.

(2) However, an election made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6)).

(3) If the member so elects, he is entitled to a pension and retirement grant payable immediately.

(4) If the sum—

- (a) of the member's age in whole years on the date on which his local government employment ends or the date on which he elects, if later; and
- (b) of his total membership in whole years; and
- (c) in a case where he elects after his local government employment ends, of the period beginning with the end of that employment and ending with the date on which he elects,

is less than 85 years, his retirement pension and grant must be reduced by the amounts shown as appropriate in guidance issued from time to time by the Government Actuary (but see regulation 35(5) (guaranteed minimum pensions)).

(5) A member's employing authority may determine on compassionate grounds that his retirement pension and grant should not be reduced under paragraph (4).

(6) If a member who has left a local government employment before he is entitled to the immediate payment of a retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body—

- (a) he may elect under paragraph (1) whatever his age; and
- (b) paragraphs (2) and (4) do not apply.

(7) If the member does not elect for immediate payment under this regulation, he is entitled to receive a pension and grant payable from his NRD without reduction.

(8) An election under paragraph (1) must be made by notice in writing to the member's employing authority or former employing authority.

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

**31.**—(1) Where a deferred member becomes an active member again before becoming entitled to the immediate payment of retirement benefits in respect of his former membership, he may elect to have his former membership aggregated with his membership on or after the date he becomes an active member again.

(2) However, an election may be made by a Class B member only as respects former Class B membership or Class C membership and an election may be made by a Class C member only as respects former Class C membership.

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

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

(4) Where an election under paragraph (1) is made by a member who has ceased to be an active member more than once, the election may be made as respects his total membership at each of the times he so ceased or only as respects such of those periods of membership as are specified in the election.

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

- (a) in applying regulations 18(1), 19(2) and (3), 26(3), 27(1) and (2) and 30(4) as respects any later membership, his total membership excludes unaggregated periods; and
- (b) as respects each unaggregated period of his former membership—
  - (i) paragraph (3) does not apply,
  - (ii) he 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) he shall be entitled to the same rights as if he were not also an active member (but subject to regulation 33 and, in the case of a pensioner member, to regulation 28);
 and references in these provisions to his 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) An election under paragraph (1) must be made by notice in writing to the member's appropriate administering authority in the employment in which he becomes an active member again whilst he is an active member in that employment.

(8) If the appropriate fund for membership in the new employment is different from that for any former employment as respects which the member is making the election, the notice under paragraph (7) must also be given to his 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 total membership immediately before he ceased his former active membership (but excluding any unaggregated period).

(10) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, for paragraph (1) of this regulation he shall be treated as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

### **Surrenders of pension**

**32.**—(1) A member may apply to the appropriate administering authority to surrender part of the retirement pension which is or may become payable to him, so that, if he is survived by his spouse or a dependant of his ("the beneficiary"), the equivalent value of that part is paid instead to the beneficiary under this regulation.

(2) The application must be made in the period of one month ending with or one month beginning with the date on which the member retires.

(3) The authority must allow the application if they are satisfied the member is in good health.

(4) The surrender must not result in a pension being paid to the beneficiary of less than such amount as is specified in guidance issued for this paragraph by the Government Actuary.

(5) The aggregate amount surrendered must not—

(a) result in the reduction of the retirement pension to less than the pension which would become payable to the beneficiary; or

(b) exceed one third of the retirement pension.

(6) On the death of the member, the beneficiary becomes entitled to a pension at a rate equivalent to the value of the surrender in the beneficiary's favour at the time when the surrender was made.

(7) The equivalent rate is such rate as is indicated in guidance issued by the Government Actuary.

(8) If the surrender is allowed, it has effect from the date the member retires from his employment.

(9) However, it does not take effect if the beneficiary or member dies before that date, and it ceases to have effect if the beneficiary dies before the member.

### **No double entitlement**

**33.**—(1) Where (apart from this regulation) any member would be entitled to a pension or retirement grant under two or more regulations by reason of the same period of membership—

(a) he may elect under which provision he is to be paid those benefits; and

(b) if he does not so elect, the employing authority may notify him in writing of the provision under which he is to be paid.

(2) An election by a member must be by notice in writing, given to the employing authority before the expiry of the period of three months beginning with the day on which he becomes entitled to elect.

(3) Paragraph (1) does not affect the member's rights under the Pension Schemes Act 1993<sup>(16)</sup>.

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

**34.**—(1) Retirement benefits under this Chapter may not be paid to a person before he has retired from the employment in which he was a member.

(2) They must begin to be paid not later than the member's 75th birthday even if he has not retired (and see also regulation 35(3)).

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

**35.**—(1) Where a member's local government employment is contracted-out employment and he has a guaranteed minimum in relation to service before 6th April 1997, from the date he attains state pensionable age he is entitled to a pension at a weekly rate equal to not less than that guaranteed minimum.

(2) However, if the member attains state pensionable age while in local government employment, he is not so entitled until he leaves that employment, unless paragraph (3) applies.

(3) If the member—

- (a) continues in the same employment for a further period of five years after attaining state pensionable age; and
- (b) does not then leave,

he is entitled from the end of that period to so much of his retirement pension as equals that guaranteed minimum (unless he consents to a postponement of the entitlement).

(4) For the purposes of paragraph (1), a person has a guaranteed minimum if he has such a minimum under section 14 of the Pension Schemes Act 1993 in relation to benefits under these Regulations.

(5) A person's retirement pension is not to be reduced under regulation 30(4) to less than the aggregate of—

- (a) any minimum rate of equivalent pension benefits applicable under the Insurance Acts; and
- (b) one eightieth of his final pay (expressed as an annual rate) multiplied by the length in years of the whole period of his membership in contracted-out employment during the period beginning with the relevant date and ending with 31st March 1996.

(6) In paragraphs (5) and (7) "the relevant date" means—

- (a) in the case of a man, 17th May 1990; and
- (b) in the case of a woman, 6th April 1978.

(7) Where a person's local government employment is or was contracted-out employment, a surrender under regulation 32 (together with any previous surrenders) must not result in the annual rate of the retirement pension being less than one eightieth of his final pay, multiplied by the length in years of the whole period of his membership in contracted-out employment beginning with the relevant date and ending with 31st March 1996.

(8) Where a person making a surrender under regulation 32 has a guaranteed minimum, the surrender (together with any previous surrenders) must not result in the weekly rate of the retirement pension being less than the guaranteed minimum.

---

(16) 1993 c. 48.

(9) Where a person making a surrender under regulation 32–

- (a) is in local government employment;
- (b) has attained normal retirement age; and
- (c) has a total membership of at least two years or has a transfer value credited to him,

references in paragraphs (7) and (8) to the retirement pension are references to the retirement pension which would become payable if he ceased to hold his employment on the day the surrender takes effect.

(10) This regulation overrides any provision in these Regulations to the extent to which it conflicts with it, except–

- (a) regulation 48 (commutation: small pensions);
- (b) regulation 110 (application of abatement policy in individual cases);
- (c) regulation 111 (forfeiture); and
- (d) regulation 112 (interim payments direction).

### **Revaluation of guaranteed minimum**

**36.**—(1) Where the guaranteed minimum of a person who has ceased to be an active member is appropriately secured, his earnings factors for the purposes of section 14(2) of the Pension Schemes Act 1993 must be determined–

- (a) by reference to the last order under section 21 of the Social Security Pensions Act 1975<sup>(17)</sup> or section 148 of the Social Security Administration Act 1992<sup>(18)</sup> (revaluation orders) to come into force before the end of the tax year in which he ceased to be an active member; and
- (b) without reference to the last such order to come into force before the end of the final relevant year.

(2) For such a person the weekly equivalent mentioned in section 14(2) of the Pensions Schemes Act 1993 is to be increased–

- (a) by at least the prescribed percentage for each relevant year after the end of the tax year in which he ceased to be an active member; and
- (b) in accordance with such additional requirements as may be prescribed for the purposes of section 16(3) of that Act<sup>(19)</sup>.

(3) In this regulation–

- “appropriately secured” has the meaning given in section 19 of the Pension Schemes Act 1993;
- “prescribed percentage” has the meaning given in regulation 62 of the Occupational Pensions Schemes (Contracting-out) Regulations 1996<sup>(20)</sup>;
- “relevant year” and “final relevant year” have the meanings given respectively in sections 14(8) and 16(5) of the Pension Schemes Act 1993<sup>(21)</sup>.

---

<sup>(17)</sup> 1975 c. 60; section 21 was repealed by the Social Security (Consequential Provisions) Act 1992 (c. 6), section 3(1) and Schedule 1.

<sup>(18)</sup> 1992 c. 5.

<sup>(19)</sup> Section 16(3) was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 28.

<sup>(20)</sup> S.I. 1996/1172.

<sup>(21)</sup> Sections 14(8) and 16(5) were amended by the Pensions Act 1995, Schedule 5, paragraph 27 and 28.

## *Death grants*

### **Death grants**

**37.**—(1) If a member dies, the administering authority may make payments to or for the benefit of the member's nominee or executors or any person appearing to the authority to have been his relative or dependant at any time.

(2) A nomination must be made by notice in writing to the administering authority in such form as the administering authority may from time to time require and may be revoked in the same manner.

(3) A nomination is also revoked by any subsequent nomination which complies with the requirements referred to in paragraph (2).

(4) If not previously revoked, a nomination ceases to have effect on the member's subsequent marriage.

(5) The aggregate amount paid under paragraph (1) must not exceed the member's death grant.

(6) The amount of an active member's death grant is the greater of—

(a)  $2 \times$  the member's final pay; or

(b)  ~~$3 \times$  his final pay~~  $\times$  his total membership.  
80

(7) The multiplier for a deferred member's death grant is the same as for his retirement grant.

(8) The multiplier for a pensioner member's death grant is 5, but the amount so calculated is reduced by the amounts of any retirement pension paid to him.

(9) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of the period of two years beginning with his death, they must pay an amount equal to the shortfall to the member's executors.

(10) For these Regulations, any payments made under paragraph (1) must be treated as payments made by way of death grant.

### **Reduction of death grants: re-employed pensioners**

**38.**—(1) If—

(a) after the deceased became entitled to a pension under the Scheme ("the previous pension") he entered further local government employment;

(b) on leaving the further employment he became entitled to a pension ("the additional pension") (but not to a single pension by making an election under regulation 28); and

(c) his entitlement to the previous or additional pension was by virtue of an election under regulation 30,

the death grant payable because of his membership in the further employment must be reduced (or extinguished) to the extent necessary to prevent his total pension benefits exceeding (or further exceeding) his relevant final pay.

(2) A person's total pension benefits are the total of—

(a) every death grant and all pension payments made as respects his previous pension (including increases under the Pensions (Increase) Act 1971(22) and the Pensions Increase Act 1974)(23); and

(b) all pension payments as respects of his additional pension (including such increases).

---

(22) 1971 c. 56.

(23) 1974 c. 9.

- (3) A person's relevant final pay is the greater of—
  - (a) the final pay used for calculating his previous pension (adjusted for inflation); and
  - (b) the final pay used for calculating his additional pension.
- (4) The pay for an employment must be adjusted for inflation by calculating the amount to which it would have increased if it were an official pension becoming payable from the end of that employment.

*Surviving spouses' pensions*

**Surviving spouse's short-term pension**

- 39.**—(1) If an active or pensioner member dies leaving a surviving spouse, the spouse is entitled to a short-term pension.
- (2) It is payable for three months after the member's death.
  - (3) However, if there are eligible children in the spouse's care, it is payable for a further three months.
  - (4) Where the deceased was an active member, the short-term pension is greater of—
    - (a) the deceased's final pay; or
    - (b) 
$$\frac{(3 \times \text{his final pay}) \times \text{his total membership}}{80}$$
  - (5) Where the deceased was a pensioner member, the short-term pension is equal to his retirement pension immediately before the death (but see regulation 41).
  - (6) In this regulation "pensioner member" includes a person whose retirement pension has been commuted under regulation 49 (exceptional ill-health).
  - (7) If there is more than one surviving spouse, they become jointly entitled under paragraph (1).

**Surviving spouse's long-term pension**

- 40.**—(1) If a member dies leaving a surviving spouse, the spouse is entitled to a spouse's long-term pension.
- (2) If the deceased was an active or pensioner member, the long-term pension is payable from the end of the period for which the short-term pension is payable.
  - (3) The long-term pension payable on a deferred member's death is payable from the death.
  - (4) If the deceased was an active member with a total membership of at least two years, the long-term pension is equal to half the ill-health pension to which the deceased would have been entitled under regulation 26 if he had become entitled to a pension under that regulation on the date he died.
  - (5) If the deceased was an active member with a total membership of less than two years or a deferred member, the multiplier for the long-term pension is—
$$\frac{\text{the deceased's total membership}}{160}$$
- (but see regulation 41).
- (6) If the deceased was a pensioner member, the long-term pension is equal to half his retirement pension immediately before the death (but see regulation 41).
  - (7) If there is more than one surviving spouse, they become jointly entitled under paragraph (1).

### **Reduction of some surviving spouses' pensions**

**41.**—(1) Where a male pensioner member or deferred member marries and dies, the pension to which his widow is entitled under regulation 39 or 40 is calculated as if his retirement pension were only so much of his actual pension as is attributable to the period of his membership in contracted-out employment after 5th April 1978.

(2) Except in the case of a short-term pension payable to the widower of an active member, the pension to which a widower is entitled under regulation 39 or 40 is calculated as if the member's retirement pension were only so much of her actual pension as is attributable to her membership after 5th April 1988.

(3) However, relevant additional membership also counts as membership after that date.

(4) Relevant additional membership is membership—

- (a) forming the enhanced element of a member's total membership by virtue of a retirement to which regulation 27 applied after 5th April 1988;
- (b) added by virtue of a resolution under Chapter II of Part III or regulation 136 of these Regulations or under the Transitional Regulations after that date;
- (c) counted by reason of a payment made under Chapter III of Part III or paragraph 7 of Schedule 4 after that date (or treated by the Transitional Regulations as so made);
- (d) treated as membership after that date by virtue of the Transitional Regulations; or
- (e) attributable to a transfer value accepted by the Scheme after that date.

### **Surviving spouse's guaranteed minimum pension**

**42.**—(1) If paragraph (2) applies, the pension to which a person is entitled under regulation 39 or 40 must be not less than the surviving spouse's guaranteed minimum.

(2) This paragraph applies if—

- (a) the employment in which the deceased was a member was contracted-out employment; and
- (b) he had a guaranteed minimum in relation to benefits under these Regulations.

(3) Paragraph (1) overrides any contrary provision in these Regulations except—

- (a) regulation 48 (commutation: small pensions);
- (b) regulation 111 (forfeiture); and
- (c) regulation 112 (interim payments directions).

### *Children's pensions*

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

**43.**—(1) The eligible child of a deceased member is—

- (a) a child of the deceased's marriage or his adopted child; or
- (b) a child who was wholly or mainly dependent on the deceased at the time of his death.

(2) A person counts as a child only if—

- (a) he is aged under 17;
- (b) since he became 17 he has been engaged continuously in full-time education or in training for a trade, profession or vocation; or



(c) he is physically or mentally incapacitated and became so whilst a child within sub-paragraph (a) or (b).

(3) If an appropriate administering authority wish, they may treat education or training as continuous despite a break.

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

**44.**—(1) If an active or pensioner member dies leaving one or more eligible children, they are entitled to a children's short-term pension.

(2) If a short-term pension is payable to a surviving spouse under regulation 39, the children's short-term pension is payable only for three months after the death.

(3) Otherwise, it is payable for six months after the death.

(4) Where the deceased was an active member, the pension is the greater of—

(a) the deceased's final pay; or

(b) ~~(3 x his final pay)~~ **x his total membership.**  
**80**

(5) Where the deceased was a pensioner member, the pension is equal to his retirement pension immediately before the death.

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

(7) Where—

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

(b) a children's long-term pension would be greater,

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The appropriate fractions are—

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

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

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

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

#### **Discretion as to payment of children's pensions**

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

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

#### **Dependants of re-employed pensioners**

47.—(1) If—

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

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

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

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

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

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

(6) Where—

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

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

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

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

(8) Amount A is half the sum of—

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

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

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

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

### *Commutation*

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

**48.**—(1) If the annual rate of the retirement pension which a member who has attained state pensionable age is entitled to be paid is not more than £260 or such higher amount as may be prescribed from time to time by regulations made under section 21(1) of the Pension Schemes Act 1993(24), the appropriate administering authority may pay him a lump sum representing the capital value of the pension.

(2) The appropriate administering authority may also pay a lump sum representing the capital value of a long-term pension which is payable to any surviving spouse or to or in respect of an eligible child or children, if the annual rate does not exceed £260, or such higher amount as may be so prescribed.

(3) If a member is entitled to more than one retirement pension under the Scheme or more than one long-term pension is payable under the Scheme following a deceased member's death, a lump sum is payable only if the aggregate amount payable to that member or following that death is less than £260 or such higher amount as may be so prescribed.

---

(24) 1993 c. 48.

(4) Any increase payable under the Pensions (Increase) Act 1971<sup>(25)</sup> in respect of a pension must be included in its annual rate.

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

(6) Where a payment is made in respect of a retirement pension, a payment representing the capital value of any long-term pension, which would be payable to the member's spouse if that spouse survived the member, must also be made.

(7) The payment of a lump sum in respect of a pension discharges the appropriate administering authority from their liability for it and, where the payment is made to a member, for any short-term or long-term pensions which may become payable on his death.

(8) The appropriate administering authority must deduct from any payment under this regulation any tax to which they may become chargeable under section 599 of the Taxes Act<sup>(26)</sup>.

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

**49.**—(1) If, when a retirement pension first becomes payable to a member, the appropriate administering authority are satisfied that his life expectancy is less than one year, they may pay him a lump sum equal to five times the amount by which the annual rate of the retirement pension exceeds his guaranteed minimum.

(2) Such a payment discharges the authority's liability for that pension (except the guaranteed minimum) and for any lump sum death grant calculated by reference to that pension under the Scheme.

(3) The authority must deduct from any such payment any tax to which they may become chargeable under section 599 of the Taxes Act.

## PART III

### OPTIONAL ADDITIONAL BENEFITS

#### CHAPTER I

#### PRELIMINARY

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

**50.**—(1) This Part makes provision for benefits to be paid to or in respect of members which are additional to those set out in Part II.

(2) No arrangements may be made under this Part as a result of which—

- (a) the contributions payable by members;
- (b) the years of membership which a member may count;
- (c) the benefits payable to or in respect of members,

exceed the amounts specified in Schedule 4.

---

<sup>(25)</sup> 1971 c. 56.

<sup>(26)</sup> Section 599 was amended by the Finance Act 1989 (c. 26), Schedule 6, paragraphs 11, 18.

## CHAPTER II

### INCREASE OF MEMBERSHIP BY EMPLOYING AUTHORITY

#### **Power of employing authority to increase total membership of members leaving employment at or after 50**

**51.**—(1) An employing authority may resolve to increase the total membership of a member who leaves his employment on or after his 50th birthday.

(2) The additional period of membership must not exceed—

- (a) the member's total membership on the date he leaves his employment ("the relevant date");
- (b) the period by which that period falls short of 40 years;
- (c) the period by which that period would have been increased if he had continued as an active member until he was 65; or
- (d)  $6 \frac{243}{365}$  years,

whichever is the shortest.

(3) A resolution under paragraph (1) may be passed only during the period—

- (a) beginning one month before the relevant date; and
- (b) ending 6 months after that date.

(4) If such a resolution is passed before the relevant date it is conditional on the satisfaction on that date of the conditions for its making.

(5) The death of the member after the relevant date does not affect his former employing authority's power under this regulation.

(6) The relevant additional period may be counted as a period of membership only if—

- (a) 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 78 to meet the cost of the increase in membership; or
- (b) the employing authority make the payment required by regulation 79(1) by reason of the resolution within that period.

(7) The relevant period is the period of one month beginning—

- (a) with the date the resolution was passed; or
- (b) if by virtue of paragraph (4) the resolution was conditional, with the date on which the member leaves his employment.

(8) If neither paragraph (6)(a) nor (6)(b) applies, the resolution shall cease to have effect.

(9) If a person has been credited with a period of service under regulation 8 of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 in respect of a cessation of employment, no resolution may be passed under this regulation by reason of that cessation.

(10) If a person becomes entitled on leaving an employment to an ill-health pension under regulation 26 calculated by reference to an enhanced membership period, no resolution may be passed under this regulation by reason of his leaving that employment.

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

**52.**—(1) An employing authority may resolve to increase a member's total membership.

(2) Such a resolution may be passed only before the expiry of the period of six months beginning with the day on which he becomes a member.

- (3) The member must be aged less than 59 when he becomes a member.
- (4) The resolution must specify the additional period of membership.
- (5) That period must not exceed the maximum addition under Schedule 4.
- (6) Where the employing authority have passed a resolution under paragraph (1) the additional period may be counted as part of the member's total membership.
- (7) However, if when the member leaves his employment with the employing authority no person becomes immediately entitled to a pension in respect of his membership, the additional period may not be so counted.

### **Effect of increases under this Chapter for older members**

- 53.**—(1) This regulation applies where a member—
- (a) is entitled under this Chapter to count an additional period as a period of membership; and
  - (b) was aged at least 45 on the first day of the earliest period of membership he is entitled to count.
- (2) Where this regulation applies, the retirement pension—
- (a) to which the member would otherwise be entitled under regulation 24; or
  - (b) to which he would otherwise be entitled under regulation 30 (before applying any reduction under paragraph (4) of that regulation),
- is increased by adding to it an amount which equals—
- ~~(the member's final pay x length of additional period (in years))~~  
**240**
- (3) The additional period does not count in the calculation of the standard retirement grant.

## CHAPTER III

### MEMBERS' OPTIONS TO INCREASE PENSIONS

#### *Purchase of added years*

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

- 54.**—(1) An active member may elect to make additional contributions to the Scheme to increase his total membership by an additional period.
- (2) That period must not exceed the maximum addition under Schedule 4.
  - (3) The election must be made by giving notice in writing to the appropriate administering authority earlier than the member's 64th birthday.
  - (4) If—
    - (a) the member's appropriate administering authority pass a resolution requiring him to satisfy them that he 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) they are not so satisfied,
 the election is void.
  - (5) The amounts of the additional contributions must be such percentage of the members's pay for the time being as is shown as appropriate in guidance issued by the Government Actuary.

(6) A member's pay for the time being is the pay received by him for the interval at the end of which the additional contribution falls to be paid.

(7) Where a member is away from work (otherwise than because of illness or injury) with reduced or no pay, for paragraph (6) he is treated as having received the pay he would have received if he had not been away (unless his contract of employment has ceased).

(8) For paragraph (6) any reduction in pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period he is away from work (other than a period of maternity absence) shall be disregarded.

(9) If a member continues paying the additional contributions until his last birthday before his NRD (or if his NRD is his birthday, that date), the whole of the additional period may be counted as part of his total membership.

(10) Otherwise, the part of that period which may be so counted must be calculated as specified in regulation 82 (discontinuance of additional contributions).

(11) The additional contributions are payable from the member's next birthday after his election.

### **Part-time employees**

**55.**—(1) If a person in a part-time employment elects under regulation 54, the periods mentioned in that regulation must be reduced in the proportion that his contractual hours bear to the number of contractual hours of a single comparable whole-time employment.

(2) But the amounts of his additional contributions must be calculated as a percentage of his actual pay (subject to regulation 54(7) and (8)).

(3) Where any person has made such an election, if—

- (a) his employment ceases to be part-time and becomes whole-time employment;
- (b) his employment ceases to be whole-time and becomes part-time employment; or
- (c) his contractual hours in the part-time employment alter,

his additional contributions continue to be payable at the same percentage of his pay, but the additional period counted by reason of contributions paid after the change must be calculated as if the change had occurred immediately before the election.

(4) Paragraphs (1) to (3) do not apply to old elections.

(5) However, the member may elect for paragraph (2) to apply to an old election and, if he does so, the additional period counted by reason of contributions paid after that election must be calculated as if paragraphs (1) to (3) had always applied as respects his old election.

(6) A member's election under paragraph (5) must be made by giving notice in writing to the appropriate administering authority not later than one year before his NRD.

(7) Old elections are elections made before 21st December 1987.

### **Effect of increases under this Chapter for older members**

**56.** Regulation 53 applies as respects additional periods counted under the previous provisions of this Chapter as it applies as respects additional periods counted under Chapter II.

### *Conversion between lump sums and pensions*

### **Election for pension in lieu of retirement grant**

**57.**—(1) Where a member has attained the age of 50 and has become entitled to the immediate payment of a pension under Part II, he may make an election under this regulation for the whole or

part of the retirement grant or, in the case where the entitlement to pension is under regulation 26, of the ill-health grant to be used instead by the Scheme to provide pension for him.

(2) The election must be made by notice in writing to the appropriate administering authority given not more than three months before and not later than the date on which the member becomes so entitled.

(3) The election must specify the amount of the grant which the member wishes to be used for the provision of pension (expressed in round hundreds of pounds).

(4) Where a member makes such an election, he becomes entitled to such additional pension as is shown as appropriate in guidance issued by the Government Actuary.

(5) The additional pension is payable immediately.

(6) Where a member makes such an election, for these Regulations the amount of his pension includes the amount of any additional pension payable under this regulation.

(7) No person who has elected under regulation 58 may also elect under this regulation.

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

**58.**—(1) Where—

(a) a Class C member has become entitled to the immediate payment of a pension under Part II; and

(b) the retirement grant to which he is entitled (apart from any election made under this regulation) is less than his permitted maximum,

he may make an election under this regulation for that grant to be increased to his permitted maximum.

(2) The election must be made by notice in writing to the appropriate administering authority given not more than three months before and not later than the date on which the member becomes so entitled.

(3) Where a member elects under this regulation—

(a) the retirement grant to which he is entitled is increased in accordance with the election;

(b) the retirement pension to which he is entitled and any other benefits payable to or in respect of him are to be calculated by reference to such reduced period of membership as appears to the appropriate administering authority to be appropriate by virtue of that increase.

(4) That reduced period must be calculated by the appropriate administering authority on the advice of an actuary appointed by them.

(5) A member's permitted maximum for this regulation is the maximum lump sum to which he is entitled in accordance with Schedule 4 and (so far as relevant) any restrictions imposed under—

(a) section 12C of the Pension Schemes Act 1993<sup>(27)</sup> (transfer, commutation etc.);

(b) section 19 of that Act (discharge of liability);

(c) section 21 of that Act (commutation, surrender and forfeiture);

(d) section 77 of that Act<sup>(28)</sup> (assignment, surrender and commutation of benefit).

(6) No person who has elected under regulation 57 may also elect under this regulation.

---

<sup>(27)</sup> 1993 c. 48; section 12C was inserted by the Pensions Act 1995 (c. 26), section 136.

<sup>(28)</sup> Section 77 is repealed prospectively by the Pensions Act 1995, Schedules 3 and 7.



## CHAPTER IV ADDITIONAL VOLUNTARY CONTRIBUTIONS

### *Members only AVC schemes*

#### **Elections to pay AVCs**

**59.**—(1) An active member may elect to pay contributions under this regulation (“AVCs”) in addition to any other contributions he may pay under this Part.

(2) The election must specify the percentage of his pay he wishes to pay or the amount he wishes to pay on his usual pay days.

(3) It must also specify whether he wishes any of his AVCs to be used to provide benefits payable on his death (“death benefits”).

(4) If he does so wish, he must specify the proportion to be so used.

(5) The appropriate administering authority may require the amount of the AVCs to be at least the specified minimum.

(6) They may not do so after AVCs are first paid under the election.

(7) The specified minimum is the amount specified in regulation 2(8) of the Pension Schemes (Voluntary Contributions Requirements and Voluntary and Compulsory Membership) Regulations 1987(29).

(8) A member may elect to vary the amount of his AVCs or the proportion of them to be used to provide death benefits.

(9) A member may elect to stop paying AVCs.

(10) An election under this regulation must be made by notice in writing to the member’s employing authority.

#### **Payment of AVCs**

**60.**—(1) AVCs must normally be payable by an active member on his usual pay day.

(2) No contributions may be paid to cover any period during which the person contributing is not an active member.

(3) A person may not pay AVCs after he leaves his employment with the employer who was his employing authority when he elected under regulation 59(1) to pay them.

(4) However, he may do so if his last usual pay day with that employer falls after that time (or if he makes a fresh election in relation to another employment).

#### **Functions of employing and administering authorities**

**61.**—(1) An employing authority must send any notice of election under regulation 59 to the appropriate administering authority as soon as possible.

(2) The appropriate administering authority must make the arrangements necessary so as to enable a member to begin paying AVCs before the expiry of the period of six months beginning with the date he elects to pay them.

(3) The appropriate administering authority must make the arrangements necessary to enable a member who has elected to vary his AVCs or to stop paying them to do so before the expiry of the period of three months beginning with the date he so elects.

### **Death benefits**

**62.**—(1) If a member elects for any of his AVCs to be used to provide death benefits, the appropriate administering authority must make arrangements for those benefits to be provided under a pension policy with an AVC insurance company.

(2) The policy must provide for the appropriate administering authority to pay the company the same amounts as the AVCs to be so used within one month after the member's usual pay day.

(3) The policy must reflect the restrictions on AVCs and the provisions which apply under these Regulations.

(4) In entering into the pension policy the administering authority must give effect to the member's wishes about the benefits it provides, so far as is practicable.

(5) However, the benefits must be money purchase benefits the value of which is reasonable considering the contributions paid.

### **Retirement benefits**

**63.**—(1) The administering authority must invest any AVCs which are not to be used to provide death benefits with an approved AVC body.

(2) Where a member who has paid AVCs during his employment—

- (a) becomes entitled to immediate payment of benefits under the Scheme, other than under regulation 26;
- (b) does not make an election under regulation 64; and
- (c) regulation 65(11) does not apply,

the appropriate administering authority must use the accumulated value of the contributions invested under paragraph (1) for the provision of additional pension benefits under a pension policy as soon as reasonably practicable.

(3) However, if the member dies before the policy is entered into, the accumulated value is payable to his executors.

(4) In entering into the pension policy the administering authority must give effect to the member's wishes about the benefits it provides, so far as is practicable.

(5) The benefits must be money purchase benefits and their value reasonable considering the accumulated value.

(6) The AVCs may be used only to provide benefits in the form of a lump sum if—

- (a) all the pension benefits payable to or in respect of the member under the Scheme are being commuted under regulation 48 or 49; and
- (b) the annual rate referred to in that regulation is not exceeded by aggregating with them the additional pension benefits provided by the pension policy entered into under paragraph (2).

### **Changes of employment in which membership is continued**

**64.**—(1) If a member who is paying AVCs leaves his employment with the employer who was his employing authority when he elected under regulation 59(1) to pay them and enters a new employment in which he is also a member, he may elect that that election should continue to have effect.

(2) However, he may only do so if he enters the new employment before the expiry of the period of one month and one day beginning with the date on which he left the former employment.

(3) The election must be made by notice given in writing to the member's new employing authority before the expiry of the period of one month beginning with the date on which the new employment begins.

(4) The new employing authority must send the notice of election to the appropriate administering authority in relation to the new employment.

(5) The member may continue paying AVCs under his existing election with effect from his next pay day in his new employment after his election to continue.

(6) However, he may not pay any AVCs to cover any period falling between the employments.

(7) If the same authority are the member's appropriate administering authority in both employments, they must continue to apply any AVCs to be used for death benefits towards the pension policy mentioned in regulation 62 and continue to invest all other AVCs paid by him as specified in regulation 63(1).

(8) If those authorities are different, the former authority must transfer to the new authority a sum equal to the accumulated value of the member's additional contributions invested under regulation 63(1).

(9) They must also assign to the new authority their rights under any pension policy under regulation 62 in respect of him which are assignable.

(10) The new authority must apply and invest the sum received and payments of additional contributions as mentioned in paragraph (7).

(11) Regulation 63(2), this regulation and regulation 65 apply to changes in the new employment as if the election under regulation 59(1) had been given in that employment (and so on).

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

**65.**—(1) This regulation applies where a person—

- (a) leaves his employment with the employer who was his employing authority when he made an election under regulation 59(1) or 64(1) without becoming entitled to immediate payment of pension;
- (b) stops being an active member without leaving that employment;
- (c) becomes entitled to an ill-health pension under regulation 26; or
- (d) elects under regulation 59(9) to stop paying AVCs but continues to be an active member and attains the age of 50.

(2) Where paragraph (1)(a) or (c) applies to a person he must elect to have the accumulated value of the invested additional contributions specified in regulation 63(2) used in one or more of the permissible ways and he may so elect where paragraph (1)(b) or (d) applies to him.

(3) Where paragraph (1)(a) applies, the permissible ways are—

- (a) to subscribe to an occupational pension scheme (other than the Scheme);
- (b) to subscribe to a personal pension scheme (including an additional voluntary contributions scheme, other than a FSAVC scheme);
- (c) to subscribe to a self-employed pension arrangement;
- (d) to purchase an appropriate policy from one or more AVC insurance companies.

(4) Where paragraph (1)(b) applies, the only permissible way is that mentioned in paragraph (3) (b).

(5) Where paragraph (1)(c) or (d) applies, the only permissible way is to acquire transfer credits in the Scheme.

(6) Those credits are calculated on the same basis as if a transfer value were being accepted for the member under regulation 121.

(7) Where paragraph (1)(d) applies and the member becomes entitled to the payment of retirement benefits by virtue of an election under regulation 30 (early payments), those transfer credits shall be reduced to such percentage of the credits to which he would otherwise be entitled as is shown as appropriate in guidance issued by the Government Actuary.

(8) Transfer credits acquired under paragraph (5) must not entitle the member to benefits in the form of a lump sum payable at retirement (and accordingly the period of membership with which he is credited for other purposes shall be adjusted appropriately in accordance with such guidance as may be issued by the Government Actuary).

(9) Where paragraph (1)(c) or (d) applies, the election under paragraph (2) may only be made—

- (a) while the member remains an active member; or
- (b) not later than 30 days after he stops being an active member or such later date as the employing authority may agree.

(10) However, the employing authority may not agree under paragraph (9)(b) to the election being made later than—

- (a) one year before the member's NRD; or
- (b) the expiry of the period of six months beginning with the date on which he stops being an active member,

whichever is later.

(11) Where a person who has stopped being employed by an employing authority or being a member receives—

- (a) an ill-health grant under regulation 26;
- (b) a repayment of contributions under regulation 86; or
- (c) a payment under regulation 87(2),

he must immediately be paid the accumulated value of the invested additional contributions mentioned in regulation 63(2).

#### *Shared cost schemes (SCAVCs)*

#### **Establishment of shared cost AVC schemes (SCAVCs)**

**66.**—(1) An employing authority may resolve to establish and maintain arrangements under this Chapter for the purpose of enabling contributions (“SCAVCs”) to be paid by and for active members under this regulation, in addition to the others which may be paid under this Part.

(2) The resolution must specify whether all active members in employment under the Scheme with the employing authority are eligible to take part in the arrangements and, if not, the conditions for eligibility.

(3) It must also specify whether SCAVCs may be used to provide benefits payable on the death of active members (“death benefits”).

(4) If they may, it must specify whether the whole or a proportion is to be so used, and, if a proportion, specify it.

(5) It must also specify the amount of the contributions which the authority will pay under the arrangements for members who are themselves paying contributions under them.

### **Applications to pay SCAVCs**

**67.**—(1) If an active member whose employing authority has established arrangements for SCAVCs under regulation 66 wishes to pay SCAVCs he must apply to them in writing.

(2) The employing authority must notify the member in writing before the expiry of the period of three months beginning with their receipt of his application whether they have accepted or rejected it.

(3) A notification of acceptance must specify the percentage of the member's pay which the authority will pay in contributions under the arrangements.

(4) It must also specify whether any and, if so, what proportion of the contributions is to be used to provide death benefits and the nature of any such benefits.

(5) A member may elect to stop paying SCAVCs.

(6) The election must be made by notice in writing to his employing authority.

### **Functions of employing and administering authorities**

**68.**—(1) Where an employing authority accept an application under regulation 67 they must send a copy of the notification of acceptance to the appropriate administering authority.

(2) The appropriate administering authority must make the arrangements necessary to enable a member whose application to pay SCAVCs has been accepted to begin paying them before the expiry of the period of six months beginning with the date on which he applies to pay them.

(3) The appropriate administering authority must make the arrangements necessary to enable a member who has elected to stop paying SCAVCs to do so before the expiry of the period of three months beginning with the date he so elects.

### **Application and investment of SCAVCs**

**69.**—(1) Where the arrangements established by an employing authority provide for any of the SCAVCs to be used to provide death benefits, the appropriate administering authority must make such arrangements for the provision of those benefits as are specified in regulation 62(1).

(2) The administering authority must invest any SCAVCs which are not to be used to provide death benefits with an approved AVC body.

(3) Regulations 62(2) to (5) and 63(2) to (6) apply as respects SCAVCs as they apply as respects AVCs.

### **Changes of employment in which membership is continued**

**70.**—(1) If a member who is paying SCAVCs leaves his employment and enters a new employment in which he is also a member he may elect to have the accumulated value of the invested additional contributions specified in regulation 63(2) (as it applies by virtue of regulation 69(3)) used—

(a) to make a contribution to the arrangements that the new employing authority have made under this Chapter for AVCs; or

(b) if—

(i) his new employing authority have established arrangements under this Chapter for the payment of SCAVCs, and

(ii) he has made an application to contribute under those arrangements which has been accepted,

to make a contribution to the new employer's SCAVCs arrangements.

(2) Such an election must be made by notice in writing to the member's new employing authority and may be made only if the member enters the new employment before the expiry of the period of one month and one day beginning with the date on which he left the former employment.

(3) The new employing authority must send a copy of any election under this regulation to the appropriate administering authority.

(4) Where an election is made under paragraph (1)(a), it must specify—

(a) whether the member wishes the election to be treated as an election under regulation 59(1) in respect of the member's new employment; and

(b) if he does, the matters which require to be specified in such an election.

(5) Where an election is made under paragraph (1) and different authorities are the member's appropriate administering authority in the two employments, the former appropriate administering authority must transfer to the new authority a sum equal to the accumulated value of the member's invested additional contributions.

(6) Where the election is under paragraph (1)(a), the new appropriate administering authority must apply and invest the sum received as mentioned in regulation 63, together with any additional contributions falling to be so invested under that regulation by virtue of contributions made in respect of the new employment by virtue of any election which is treated as made under paragraph (4).

(7) Where the election is made under paragraph (1)(b)—

(a) if the new authority consent, the former authority must assign to them their rights under any pension policy under regulation 69(1) in respect of the member which are assignable; and

(b) the new appropriate administering authority must apply and invest the sum received in the same manner as any SCAVCs made in respect of the new employment (other than those used to provide death benefits).

## **Termination**

**71.—**(1) Where a member who is making SCAVCs—

(a) leaves his employment and does not enter new employment in which he is a member; or

(b) stops being an active member without leaving that employment,

regulation 65 applies as respects the elections he must or may make for the use of the accumulated value of the invested additional contributions specified in regulation 63(2) (as it applies by virtue of regulation 69(3)) as it would apply to a person in his circumstances as respects the accumulated value mentioned in regulation 65.

(2) Where neither paragraph (1)(a) nor (b) applies and an employing authority or a member stops paying SCAVCs (otherwise than by reason of the member having left his employment and entered new employment in which he is a member), the employing authority must give notice to the appropriate administering authority.

**PART IV**  
**ADMINISTRATION**  
**CHAPTER I**  
**PENSION FUNDS AND EMPLOYERS' PAYMENTS**

*Pension funds*

**The pension funds**

**72.** 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.

**Appropriate funds**

**73.—(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 his description in accordance with Schedule 5;
- (b) in the case of—
  - (i) a deferred or a pensioner member who was an active member on the commencement date or has been an active member since that date, or
  - (ii) a member in respect of whom another person has rights under the 1987 Regulations and these Regulations,the fund so specified for a member of his description when he ceased to be an active member; and
- (c) in the case of any other deferred or a pensioner member, the fund specified for him by virtue of regulation 19 of the Transitional Regulations.

(2) Where these 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 are made under Chapter IV of Part III (AVCs and SCAVCs).

**Admission agreement funds**

**74.—(1)** An administering authority who have made an admission agreement may establish a further pension fund (an “admission agreement fund”) in addition to the fund maintained under regulation 73 (“the main fund”).

(2) Immediately after an authority establishes an admission agreement fund they must give the Secretary of State notice in writing that they have done so.

(3) The notice must specify the admission bodies whose employees are eligible for benefits from the admission agreement fund (“the transferred bodies”).

(4) Where an admission agreement fund is established, 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 76 of both the main fund and the admission fund are first obtained after the admission agreement fund is established, the administering authority must obtain a transfer statement from the actuary appointed by them.

(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, the value of those assets.

(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.

(8) Where an admission agreement fund is established, the liabilities of the main fund as respects membership in employment with the transferred bodies become liabilities of the admission agreement fund.

### **Accounts and audit**

75. After any audit of any pension fund of theirs an administering authority shall immediately send copies—

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

to each body whose employees are active members.

### **Actuarial valuations and certificates**

76.—(1) Each administering authority must obtain—

- (a) an actuarial valuation of the assets and liabilities of each of their pension funds as at 31st March in 1999 and in every third year afterwards;
- (b) a report by an actuary; and
- (c) a rates and adjustments certificate.

(2) Each of these 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 Secretary of State may agree.

(3) 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.

(4) 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.

(5) The actuary must have regard—

- (a) to the existing and prospective liabilities of the fund arising from circumstances common to all those bodies; and
- (b) to the desirability of maintaining as nearly constant a rate as possible.

(6) 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.



(7) A rates and adjustments certificate must contain a statement as to the assumptions on which the certificate is given as respects—

- (a) the number of members who will become entitled to payment of pensions under provision of the Scheme; and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(8) A report under paragraph (1)(b) must contain a statement as to the demographic assumptions used in making the valuation, showing how they relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(9) The authority must provide the actuary preparing a valuation or a rates and adjustment certificate with the consolidated revenue account of the fund and such other information as he requests.

(10) The authority must send copies of any valuation, report or certificate under this regulation or revision under regulation 77 to—

- (a) the Secretary of State;
- (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.

(11) They must also send the Secretary of State—

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

### **Special circumstances where revised actuarial valuations and certificates must be obtained**

77.—(1) When obtaining a transfer statement under regulation 74(5) 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 their main fund.

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

- (a) an actuarial valuation as at the date it ceases of the liabilities of the admission body which is ceasing to be a transferred body; and
- (b) a revision of any rates and adjustments certificate for any fund which is affected, showing the revised contributions due from that admission body and any other admission body in respect of which revised contributions are due.

(3) This paragraph applies where—

- (a) an administering authority agree with an employing authority under regulation 51(6)(a) that the employing authority will pay increased contributions under regulation 78; 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 76(7).

(4) Where paragraph (3) applies, the administering authority must obtain a revision of the rates and adjustments certificate affected, showing the resulting changes as respects that employing authority.

### *Employers' liability to make payments*

#### **Employer's contributions**

**78.**—(1) An employing authority must contribute to the appropriate fund in each year covered by a rates and adjustments certificate under regulation 76 or 77 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 80(1); 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 Part II by employees who are active members (other than contributions under regulation 17(3)), 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.

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

**79.**—(1) Where an authority pass a resolution under regulation 51, they must pay the appropriate sum to the appropriate fund before the expiry of relevant period (as defined in paragraph (7) of that regulation) unless before the end of that period they have agreed as mentioned in paragraph (6)(a) of that regulation.

(2) Where an authority pass a resolution under regulation 136 in a case where paragraph (4)(a) of that regulation does not apply, they must pay the appropriate sum to the appropriate fund before the expiry of the period of one month beginning with the date on which the resolution is passed.

(3) The appropriate sum for a member is such sum as is shown as appropriate in guidance issued by the Government Actuary.

(4) Any extra charge on the appropriate fund resulting from—

- (a) a determination under regulation 14 or a resolution under regulation 51, 52 or 136 of these Regulations; or
- (b) a member's becoming entitled to an ill-health pension calculated under regulation 27 by reference to an enhanced membership period,

must be repaid to the fund by the employing authority concerned (but, in the case of resolutions under regulations 51 and 136, only so far as not paid under paragraph (1) or, as the case may be, paragraph (2)).

#### **Payments by employing authorities to appropriate administering authorities**

**80.**—(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 (but in the case of the amounts mentioned in sub-paragraph (a) not later than the time required under section 49(8) of the Pensions Act 1995)—

- (a) all amounts from time to time deducted from the pay of their employees under these Regulations;

- (b) any amount received by them under regulation 17, (by deduction or otherwise) during the interval;
  - (c) any extra charge payable under regulation 79 of which they have been notified by the administering authority during the interval; and
  - (d) a contribution towards the cost of the administration of the fund.
- (2) Paragraph (1)(d) does not apply where the cost is paid out of the fund under regulation P5(2) or P6(9) of the 1987 Regulations.
- (3) If the annual amount payable under paragraph (1)(d) cannot be settled by agreement, it must be determined by the Secretary of State.
- (4) Every payment under paragraph (1)(a) is to be accompanied by a statement showing—
- (a) the name and pay of each of the employing authority's employees who is an active member;
  - (b) which employees are paying 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 voluntary contributions.
- (5) An administering authority may direct the information mentioned in paragraph (4) to be given to them instead in such form and at such intervals (not exceeding 12 months) as they specify in the direction.
- (6) Paragraphs (1) and (4) do not apply to an employing authority which is an administering authority.
- (7) Voluntary contributions are contributions other than those under Part II.

### *Interest*

#### **Interest**

- 81.**—(1) An administering authority may require an authority from which payment of any amount due under regulation 78, 79, 80, 90, 126 or 127 is overdue by more than one month to pay interest on that amount.
- (2) Interest under paragraph (1) or under regulation 93(1) must be calculated at one per cent. above the base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.
- (3) Interest under regulation 86(1) or 88(5) must be calculated at nine per cent. per annum compounded with yearly rests on 31st March.

## CHAPTER II

### MEMBERS' CONTRIBUTIONS

#### **Discontinuance of additional contributions**

- 82.**—(1) A member paying additional contributions under regulation 54 may elect to stop payment and must do so if he ceases to be an active member.
- (2) Such an election must be made by notice in writing to the administering authority and the employing authority.
- (3) If a member stops paying such contributions before his NRD on leaving his employment because of such permanent incapacity as is mentioned in regulation 26(1) or on his death, he is to be treated as having completed payment of those contributions.

(4) If a member stops paying such contributions before his NRD on leaving his employment by reason of redundancy at least 12 months after he elected to pay them, he may elect to make a lump sum payment to the appropriate fund.

(5) Such an election must be made by notice in writing to the administering authority given not later than the expiry of the period of three months beginning on the day after he leaves his employment (or such longer period as they allow).

(6) The amount of that payment must be calculated by an actuary appointed by the appropriate administering authority as representing the capital value of the unpaid contributions.

(7) If the member duly makes that payment before the expiry of the period of one month beginning with the date on which he is notified of its amount, he must be treated as having completed his additional contributions under regulation 54.

(8) If a member stops paying such contributions before his NRD and neither paragraph (3) nor (4) applies, such proportion of the original additional period covered by the election may be counted as part of his total membership as the length of the period during which he paid such contributions bears to the length of the full period during which they were to have been paid.

(9) If a member—

- (a) stops paying such contributions before his NRD on leaving his employment;
- (b) has not become entitled to the payment of any benefit under the Scheme for that employment and has not made an election under regulation 28;
- (c) is not treated under this regulation as having completed paying his contributions; and
- (d) within 12 months after leaving that employment again enters local government employment, without having received any payment under regulation 86 or 87,

he may pay his employing authority in his new employment an amount equal to the additional contributions that would have been payable if he had not stopped contributing.

(10) If he pays that amount within three months after re-entering local government employment the election under regulation 54 continues in effect and the break in payments must be disregarded.

(11) This regulation does not apply if the member who stops paying contributions receives a return of contributions which includes additional contributions under regulation 54.

(12) In paragraph (4) “redundancy” includes retirement in the interests of efficiency or because the member held a joint appointment which has been ended because the other holder has left it.

### **Separate treatment of AVCs and SCAVCs from other contributions**

**83.**—(1) Regulations 86 and 87 (return of contributions) do not apply to AVCs or SCAVCs payable under (or interest on late payments which relate to AVCs or SCAVCs under) Chapter IV of Part III or under any agreement made for the payment of AVCs before the commencement date.

(2) The regulations mentioned in paragraph (3) do not apply in relation to benefits under such a policy or agreement.

(3) Those regulations are—

- (a) regulation 96 (first instance decisions);
- (b) regulation 111 (forfeiture);
- (c) regulation 112 (interim payments directions); and
- (d) regulation 113 (recovery or retention in cases of misconduct).

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

**84.**—(1) The appropriate administering authority for any member who makes AVCs or SCAVCs must comply with the requirements of regulation 5 of the AVC Regulations.

(2) If the Scheme is the leading scheme in relation to a member, they must also comply with the requirements of regulation 6 of those Regulations, so far as they concern main schemes.

(3) Where surplus funds fall to be repaid under that regulation because of over-provision relating to death benefits, the administering authority must repay the member (or, if he has died, his executors) out of the accumulated value of the payments made by the administering authority with respect to the pension policy under regulation 62 or 69(1).

(4) Where any other benefit is abated, the repayment must be made out of the accumulated value of the additional contributions mentioned in regulation 63(2).

(5) In this regulation—

“AVC Regulations” are the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(30);

“leading scheme” and “main schemes” have the meanings given in regulation 2 of those Regulations; and

“surplus funds” has the meaning given in regulation 6 of those Regulations.

### **Cost of calculations for transfer of AVCs or SCAVCs into the Scheme where no transfer is requested**

**85.** Where—

(a) at a member’s request an administering authority give him information concerning the amount payable if he elects under regulation 65(2) (including that regulation as applied by regulation 71(1)) for the accumulated value of his invested additional contributions to be used to acquire transfer credits in the Scheme; but

(b) he does not make such an election before the expiry of the period of three months beginning with the date on which they give him the information,

they may deduct the cost of calculating the transfer value from the accumulated value of the additional contributions mentioned in regulation 63(2).

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

**86.**—(1) If a member with less than 2 years' total membership—

(a) ceases to be employed by a Scheme employer or to be an active member without becoming entitled to a retirement pension; or

(b) ceases to be an active member by reason of a notification under regulation 7(2),

he is entitled to be repaid his contributions from the appropriate fund with interest.

(2) However, a person is not entitled to interest on his contributions if he ceased to be a member on leaving his employment by reason of his resignation or of his dismissal because of inefficiency, an offence of a fraudulent character or misconduct.

(3) Repayment of contributions with interest is due before the expiry of the period of one year beginning with the date on which active membership ceases unless the member elects within that period to waive his entitlement to the repayment of contributions.

(4) A person who continues as an active member in another employment he held concurrently with the employment in which he has ceased to be an active member may elect for an amount equal to the repayment to be treated as contributions to the Scheme as respects his membership in that concurrent employment, entitling him to such period of membership as is appropriate in accordance with guidance issued by the Government Actuary.

(5) A person who elects under paragraph (4) ceases to be entitled to that repayment (but without prejudice to any entitlement arising later in respect of the concurrent employment).

(6) The administering authority must deduct from any repayment under this regulation any tax to which they may become chargeable under section 598 of the Taxes Act (charge to tax on repayment of employee's contributions).

(7) The contributions which must be repaid under paragraph (1) are any contributions or payments paid by the member to any pension fund under Part II or Chapter III of Part III or by way of additional contributory payments or added period payments, or paid under any of the relevant old provisions (unless already returned and not repaid), which are attributable to a period of membership which might have counted under these Regulations in relation to the employment in which he has ceased to be a member, but not to any earlier period of membership in respect of which a benefit has been paid.

(8) The relevant old provisions are regulations C2, C3, C3A, C4, C6A, C7, C17, C8 and C8A of the 1987 Regulations.

(9) Added period payments are payments made for the purposes of regulation C5 or C6 of the 1987 Regulations, regulation D10 of the 1974 Regulations, or section 2(1) of the Act of 1953 or any similar provision contained in a local Act scheme.

(10) "Additional contributory payment" has the meaning given in Schedule 1 to the 1987 Regulations.

### **Exclusion of rights to return of contributions**

**87.**—(1) A person is not entitled to a repayment under regulation 86(1) if—

- (a) he becomes a member again within one month and one day (otherwise than in employment he held concurrently with the employment in which he was previously a member);
- (b) he left his employment in consequence of—
  - (i) an offence of a fraudulent character; or
  - (ii) grave misconduct,
 in connection with this employment; or
- (c) regulation 117(2) applies.

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

(3) A person is not entitled to a repayment under regulation 86(1) if—

- (a) he is for the time being entitled to be paid, or has been paid, a benefit under regulation 26(3) (ill-health grants) or an ill-health retirement grant under regulation E4 of the 1987 Regulations;
- (b) a transfer value has been credited to the appropriate fund for him.

(4) A person who is entitled to a repayment under regulation 86(1)(a) ceases to be entitled to it if he returns to local government employment before receiving it.

### **Deduction and recovery of member's contributions**

**88.**—(1) An employing authority may deduct from a person's pay any contributions payable by him under these Regulations.

(2) Sums payable under regulation 16(4) or (7)(c) (reserve forces) may be deducted by the member's former employer from any payment made to him under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(**31**), to the extent that they are payable in respect of the same period.

(3) The appropriate administering authority may recover any such 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.

(4) However, 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 an employing authority deduct any amount in error from a person's pay or any other sum due to him in respect of contributions, they must pay interest on that amount for the period beginning one month after the date of deduction and ending on the date of repayment.

## **CHAPTER III**

### **PAYMENT OF BENEFITS ETC.**

#### **Pension increases and cash equivalents under the Pension Schemes Act 1993**

**89.** Any increase in a pension required by reason of Chapter III of Part IV of the Pension Schemes Act 1993(**32**) (protection of increases in guaranteed minimum pensions: anti-franking) must be paid from the appropriate fund.

#### **Pension increases under the Pensions (Increase) Acts**

**90.**—(1) Where a pension to which the Pensions (Increase) Act 1971(**33**) ("the 1971 Act") applies is payable out of an appropriate fund, any increase under that Act or the Pensions (Increase) Act 1974(**34**) ("the 1974 Act") must be paid from that fund.

(2) Schedule 3 to the 1971 Act has effect only in relation to any such increase where—

- (a) the last employing authority is not a body required by regulation 78 to contribute to that fund; or
- (b) the last employing authority is such a body and the increase was payable before 1st April 1990.

(3) In a case where the last employing authority ceases after 31st March 1990 to be such a body, Schedule 3 to the 1971 Act has effect only so far as the cost of the increase has not, in the opinion of an actuary appointed by the administering authority of the fund, already been provided for by contributions under regulation 78.

(4) The amounts due under Schedule 3 to the 1971 Act must be paid on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine.

---

(31) 1951 c. 65.

(32) 1993 c. 48.

(33) 1971 c. 56.

(34) 1974 c. 9.

(5) The administering authority shall credit to the appropriate fund any amounts paid to them under Schedule 3 to the 1971 Act and any interest paid on them.

(6) The last employing authority has the same meaning as in paragraph 1(2) of Schedule 3 to the 1971 Act, except that if the pension became payable by reason of service with a relevant body, it means that body.

(7) Relevant bodies are—

- (a) an admission body which has made an admission agreement; or
- (b) a body employing persons deemed to be in employment by regulation 128.

### **Contributions equivalent premiums**

**91.**—(1) Where a Scheme employer pays a contributions equivalent premium under section 55 of the Pension Schemes Act 1993<sup>(35)</sup> in respect of a member, that employer may recover, or if an administering authority retain, from the appropriate fund a sum not exceeding the premium.

(2) However, if the Scheme employer may recover or retain any sum under section 61 of that Act in respect of the premium, then 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<sup>(36)</sup> (re-entry into employment which is contracted-out by reference to the same scheme), 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**

**92.**—(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 his employment ends.

(2) The first period for which any retirement pension under regulation 30 is payable begins—

- (a) in a case where he elects under paragraph (1) of that regulation, with the day on which he elects; and
- (b) otherwise, with his NRD.

(3) Any short-term pension payable on the death of a member is payable in respect of a period beginning with the day after the date on which he dies.

(4) The first period for which any long-term pension is payable on the death of a member in a case where no short-term pension is payable begins with the day after the date on which he dies.

### **Interest on late payment of certain benefits**

**93.**—(1) Where all or part of a pension or lump sum payment due under these Regulations or the 1987 Regulations is not paid on the due date, the appropriate administering authority must pay interest on the unpaid amount to the person to whom it is payable—

- (a) in the case of a pension from one year after the due date; and
- (b) in any other case from one month after the due date.

(2) In the case of a pension the due date is one month after the amount becomes payable.

(3) In the case of a retirement grant, the due date is the date on which it becomes payable.

---

<sup>(35)</sup> 1993 c. 48; section 55 was amended by section 141 of the Pensions Act 1995 (c. 26).

<sup>(36)</sup> S.I. 1996/1172, amended by S.I. 1996/1977 and 1997/786 and 819.



(4) In the case of a death grant, other than a payment made under regulation 37(1), the due date is the date on which—

- (a) confirmation, probate or letters of administration is or are produced to the administering authority; or
- (b) the authority become satisfied that the grant may be paid as provided in regulation 94.

(5) In the case of a payment made under regulation 37(1), the due date is the date one month after the expiry of the two year period referred to in paragraph (9) of that regulation.

(6) In the case of an ill-health grant, the due date is the day after the member ceased to hold his employment.

(7) In the case of a payment of a lump sum under regulation 48 or 49, the due date is the day after the member would otherwise become entitled to payment of a pension.

### **Payments due in respect of deceased persons**

**94.**—(1) If when a person dies the total amount due to his executors under the Scheme (including anything due to him at his death) (“the amount due”) does not exceed the small payments amount, the appropriate administering authority may pay the whole or part of the amount due from their pension fund—

- (a) to his executors; or
- (b) to the person, or to or among any one or more of any persons, appearing to the authority to be beneficially entitled to the estate,

without the production of confirmation, probate or letters of administration of his estate.

(2) The small payments amount is the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965<sup>(37)</sup> and applying in relation to his death.

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

### **Non-assignability**

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

(2) No such benefit is assignable or chargeable with his 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 the permanent trustee, except in accordance with an order made under section 32(2) of the Bankruptcy (Scotland) Act 1985<sup>(38)</sup>.

---

<sup>(37)</sup> 1965 c. 32.

<sup>(38)</sup> 1985 c. 66.

## CHAPTER IV DETERMINATIONS, INFORMATION AND RECORDS

### *Initial determinations of questions*

#### **First instance decisions**

**96.**—(1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) Any question whether a person is entitled to a benefit under the Scheme must be decided by the Scheme employer who last employed him.

(3) That decision must be made as soon as is reasonably practicable after the employment ends.

(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) In relation to any employment in which a person is a member or prospective member, the appropriate administering authority must decide—

- (a) any questions concerning his period of membership or his previous service or employment;
- (b) what rate of contribution he is liable to pay to the appropriate fund;
- (c) any questions about counting added years or additional periods as membership; and
- (d) whether he is a Class A member, a Class B member or a Class C member.

(7) Those decisions must be made as soon as is reasonably practicable after the person becomes a member in the employment.

(8) Other questions in relation to any member or prospective member must be decided by his Scheme employer as soon as is reasonably practicable after he becomes a member or a material change affects his employment.

(9) Before making a decision as to whether a member may be entitled under regulation 26 or 30 on the ground of ill-health, the Scheme employer must obtain a certificate from an independent registered medical practitioner as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body.

(10) If the Scheme employer is not the member's appropriate administering authority, before referring any question to any particular registered medical practitioner under paragraph (9) the Scheme employer must obtain that authority's approval.

(11) In paragraphs (2) and (4) "benefit" includes a return of contributions.

(12) In paragraph (4) benefit includes a benefit specified in regulation F6(11) or (15) of the 1987 Regulations.

(13) For this Chapter, references to the Scheme employer or the appropriate administering authority of a prospective member are references to the body that would be his employer or appropriate administering authority if he were to become an active member in the employment by virtue of which he would be eligible to join the Scheme.

### **Notification of decisions under regulation 96**

**97.**—(1) Every person whose rights or liabilities are affected by a decision under regulation 96 must be notified of it in writing by the body who 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 as to 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 99 and 101;
- (b) specify the time limits within which those rights may be exercised; and
- (c) specify the name and address of the appointed person and the appropriate administering authority to whom applications under regulation 99 may be made.

### *Resolution of disputes*

### **Appointment of persons to resolve disputes**

**98.**—(1) Each administering authority must appoint a panel of persons they consider to be suitably qualified for the purpose of resolving disagreements in respect of which an application is made under regulation 99 in cases where they are the appropriate administering authority.

(2) For this Chapter an administering authority are the appropriate administering authority as respects such a disagreement if—

- (a) where the person making the application is a member or prospective member, they are or were his last appropriate administering authority for the other purposes of these Regulations; and
- (b) where the person making the application is the widow, widower or surviving dependant of a deceased member, they were his appropriate administering authority.

(3) For this Chapter the persons appointed under paragraph (1) are “appointed persons”.

(4) An application under regulation 99 may be decided by one or more appointed persons (and references to “the appropriate appointed person”, in relation to any application, are to the appointed person or persons to whom the application in question is referred).

(5) An application must not be referred to a person who has previously been involved in the subject matter of the disagreement.

(6) An appointed person shall hold and vacate office under the terms of his appointment.

(7) He may resign by notice in writing to the administering authority.

(8) Each administering authority shall determine—

- (a) the procedure to be followed by the persons appointed by them when exercising their functions as appointed persons, and
- (b) the manner in which those functions are to be exercised.

### **Right to apply for an appointed person to decide a disagreement**

**99.**—(1) Where there is a disagreement about a matter in relation to the Scheme between a member or an alternative applicant and a Scheme employer, the member or, as the case may be, the alternative applicant (“the complainant”) may—

- (a) apply directly to the appropriate appointed person to decide the disagreement; or
- (b) apply to the appropriate administering authority for them to refer the disagreement to an appointed person for decision.

(2) These persons are alternative applicants—

- (a) a widow, widower or surviving dependant of a deceased member or any other person to whom benefits in respect of him may be paid;
- (b) a prospective member;
- (c) a person who ceased to be a member or to fall within sub-paragraph (a) or (b) during the period of six months ending with the date of the application; and
- (d) in the case of a disagreement relating to the question whether a person claiming to be a member or to fall within sub-paragraph (a), (b) or (c) does so, the claimant.

(3) The application for a decision must set out particulars of the disagreement, including a statement as to its nature with sufficient details to show why the applicant is aggrieved.

(4) An application by—

- (a) a member or prospective member;
- (b) a person who ceased to be such a person during the period of six months ending with the date of the application; or
- (c) a person claiming to be a person within paragraph (a) or (b),

must set out his full name, address, date of birth, his national insurance number (if any) and the name of his employing authority.

(5) An application by any other person must set out—

- (a) his full name, address and date of birth;
- (b) his relationship to the member; and
- (c) the member’s full name, address, date of birth and national insurance number and the name of his employing authority.

(6) The application must be signed by or on behalf of the applicant.

(7) The application must be accompanied by a copy of any written notification issued under regulation 97.

(8) The application must be made before the end of the period of six months beginning with the relevant date or such further period as the appropriate appointed person considers reasonable (but see regulation 104(6)).

(9) Where the disagreement relates to a decision under regulation 96, the relevant date is the date on which notification of it is given under regulation 97.

(10) Otherwise, the relevant date is 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.

### **Decision by appointed person and notice of it**

**100.**—(1) Where an application has been duly made under regulation 99, the appropriate appointed person shall decide on the disagreement.

(2) A decision on the matters raised by the application must be issued by the appropriate appointed person—

- (a) to the applicant;
- (b) to the Scheme employer; and
- (c) if the Scheme employer 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 on which the application was received.

(3) However, if no such notice is issued before the expiry of that period, an interim reply must immediately be sent to those persons, setting out the reasons for the delay and an expected date for issuing the decision.

(4) A notice under paragraph (2) must include—

- (a) a statement of the decision;
- (b) a reference to any legislation or provisions of the Scheme relied upon;
- (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; and
- (d) a reference to the rights of the applicant and the Scheme employer's right to refer the disagreement for reconsideration by the Secretary of State under regulation 101, specifying the time within which they may do so.

### **Reference of disagreement to the Secretary of State**

**101.**—(1) Where an application about a disagreement has been made under regulation 99, an application may be made to the Secretary of State to reconsider the disagreement by the person who applied under regulation 99 or the Scheme employer in question.

(2) The application must set out particulars of the grounds on which it is made, including a statement that the applicant under this regulation wishes the disagreement to be reconsidered by the Secretary of State.

(3) An application made by the person who applied under regulation 99 must set out the matters required by paragraph (4) or, as the case may be, paragraph (5) of that regulation to be included in his application.

(4) The application must be accompanied by a copy of any written notification issued under regulation 97.

(5) Where notice of a decision on the application under regulation 99 has been issued, the application under this regulation must state why the applicant is dissatisfied with that decision and be accompanied by a copy of that notice.

(6) The application must be signed by or on behalf of the person making it.

(7) An application for reconsideration may only be made before the expiry of the period of six months beginning with the relevant date.

(8) Where notice of a decision on the matters raised by the application under regulation 99 has been issued, the relevant date is the date of that notice.

(9) Where—

- (a) an interim reply has been sent under regulation 100(3); but
- (b) no notice of decision has been issued before the expiry of the period of one month beginning with the date specified in the reply as the expected date for issuing the decision,

the relevant date is the date on which that period expires.

(10) Where no notice of decision has been issued or interim reply has been sent before the expiry of the period of three months beginning with the date the application under regulation 99 was made, the relevant date is the date on which that period expires.

### **Decision of the Secretary of State and notice of it**

**102.**—(1) Where an application has been duly made under regulation 101, the Secretary of State shall reconsider and decide on the disagreement.

(2) The Secretary of State must issue his decision on the matters raised by the application to the parties to the disagreement by notice in writing before the expiry of the period of two months beginning with the date on which the application was received (but see paragraph (3)).

(3) If no such notice is issued before the expiry of that period, an interim reply must be sent immediately to those parties, setting out the reasons for the delay and an expected date for issuing the decision.

(4) A notice under paragraph (2) must include—

- (a) a statement of the decision;
- (b) in a case where there has been a decision made under regulation 100, an explanation as to whether and, if so, to what extent that decision is confirmed or replaced;
- (c) a reference to any legislation or provisions of the Scheme relied upon;
- (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 OPAS (the Occupational Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with difficulties which they have failed to resolve with the Secretary of State and of 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(39) and of the address at which he may be contacted.

### **Rights of representation**

**103.**—(1) An application under regulation 99 or 101 may be made or continued on behalf of the applicant by a representative nominated by him.

(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 his behalf by his 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, the application may be made or continued on his behalf by a member of his family or some other person suitable to represent him.

(4) Where a representative is nominated before an application is made, the application must specify his full name and address and whether that 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, he must be sent a copy of a notification under 100(2) or 102(2) or an interim reply under 100(3) or 102(3).

### **Appeals by administering authorities**

**104.**—(1) Where—

- (a) a Scheme employer has decided or failed to decide any question falling to be decided by that employer under regulation 96 (otherwise than in the exercise of a discretion); and
- (b) the Scheme employer is not an administering authority,

the administering authority maintaining the pension fund to which the Scheme employer pays contributions may appeal to the Secretary of State to decide that question.

(2) Such an appeal must be made by notice in writing given before the end of the period of six months beginning with the relevant date or such further period as the Secretary of State considers reasonable.

(3) Where the appeal relates to a decision notified under regulation 97(1), the relevant date is the date of the notification of that decision.

(4) Where the appeal relates to a failure to decide any question, the relevant date is the date of that failure.

(5) For paragraph (4) an employer 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 by notice in writing.

(6) Where an appeal has been made under paragraph (1), the period within which an application may be made under regulation 99 may not be extended under regulation 99(8).

(7) The Secretary of State must issue his decision on the appeal by notice in writing to the appellants and to any other persons appearing to him to be affected by it.

- (8) Where an appeal is made by an authority under this regulation and any other person—
  - (a) has made an application under regulation 99 or regulation 101 which has not been determined in respect of any of the matters which are the subject of the appeal; or
  - (b) makes such an application contemporaneously with the appeal or after it and before the appeal is determined,

the appeal shall be sisted pending notification of a decision under regulation 100 or, as the case may be, regulation 101 or until the application is withdrawn.

#### *Information and records etc.*

### **Statements of policy concerning exercise of discretionary functions**

**105.**—(1) Each administering authority and Scheme employer must formulate and keep under review their policy concerning the exercise of their functions under regulation 30 (early leavers) and under Part III.

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

- (3) Before the expiry of the period of three months beginning with the commencement date—
  - (a) each Scheme employer must send each relevant administering authority; and
  - (b) each administering authority must send each relevant Scheme employer,

a written statement as to the policy which is being applied by that employer or, as the case may be, authority in the exercise of their functions on or after that date.

(4) Where, as a result of a review under paragraph (1), a Scheme employer or administering authority determine to amend their policy, they must send a copy of the statement of the amended policy to each relevant administering authority or, as the case may be, relevant Scheme employer before the expiry of the period of one month beginning with the date on which they so determine.

(5) A relevant administering authority, in relation to a Scheme employer, are any authority who are an appropriate administering authority for that employer's employees, and a relevant Scheme employer, in relation to an administering authority, is any Scheme employer for whose employees they are the appropriate administering authority.

(6) In formulating their policy under paragraph (1), an administering authority or Scheme employer must have regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service.

### **Information to be supplied by employees**

**106.**—(1) Before the expiry of the period of three months beginning with the date a person becomes a member, the Scheme employer must ask him 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 him under these Regulations or the old Regulations.

(3) They must also ask for those documents before the expiry of the period of three months beginning with the occurrence of any change as respects his 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 his rights under the Scheme.

(5) The Scheme employer need not request any documents if satisfied that they or the appropriate administering authority (if different) already have all material information.

(6) The old Regulations are the 1987 Regulations, the 1974 Regulations, the Local Government Superannuation (Administration) (Scotland) Regulations 1954<sup>(40)</sup> the Local Government Superannuation (Administration) (Scotland) Regulations 1938<sup>(41)</sup> and the Local Government Superannuation (Administration) (No.2) (Scotland) Regulations 1938<sup>(42)</sup>.

### **Exchange of information by authorities**

**107.**—(1) A Scheme employer who is not an administering authority must inform the appropriate administering authority of all decisions made by the employer under this Chapter concerning members and give that authority such other information as they require for discharging their functions under the Scheme.

(2) If—

- (a) an administering authority make any decision under this Chapter about a person for whom they are not the Scheme employer; and
- (b) information about the decision is required by his Scheme employer for discharging that employer's functions under the Scheme,

that authority must give that employer that information.

### **Provision of information and calculation of restitution payment: mis-sold personal pensions**

**108.**—(1) Where—

---

<sup>(40)</sup> S.I. 1954/1243.

<sup>(41)</sup> S.I. 1938/245.

<sup>(42)</sup> S.I. 1938/1384.



- (a) in relation to an individual mentioned in regulation 6(9)(c) information is requested by a prescribed person in the prescribed circumstances for the purpose of calculating what payment would need to be made to the Scheme in respect of the individual to restore the position to what it would have been if the individual had been an active member of the Scheme throughout the period referred to in that regulation (“the restitution payment”); or
- (b) an individual mentioned in sub-paragraph (a) applies to become a member of the Scheme or applies to have a restitution payment accepted having become a member of the Scheme after that period,

the administering authority who maintain the fund which would be the appropriate fund for that individual must calculate the restitution payment in accordance with regulation 124.

(2) In this regulation “prescribed person” and “prescribed circumstances” have the same meaning respectively as in regulations 3 and 4 of the Local Government, Teachers' and National Health Service (Scotland) Pension Schemes (Provision of Information and Administrative Expenses etc.) Regulations 1996(43).

## CHAPTER V SPECIAL ADJUSTMENTS

### *Abatement during new employment*

#### **Statements of policy concerning abatement of retirement pensions in new employment**

**109.**—(1) Each administering authority must formulate and keep under review their 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 them 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 he 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 they are the appropriate administering authority.

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

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

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

- (a) the level of potential financial gain at which they wish 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 his entitlement both to a pension and to pay under the new employment.

### **Application of abatement policy in individual cases**

**110.**—(1) Where a member who is entitled to the payment of a retirement pension proposes to enter a new employment with a Scheme employer, he must inform the employer about that entitlement.

(2) If such a member enters such a new employment he must immediately notify in writing the body from whom he 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 he is entitled—

- (a) must apply the policy published by them under regulation 109 to the member; and
- (b) may reduce the annual rate of that pension or, as the case may be, may cease to pay it, during the period while he holds the new employment, in accordance with that policy.

(5) However, no reduction under paragraph (4) of the pension of a person who was a member immediately before the commencement date may exceed the reduction which would have applied under the 1987 Regulations if those Regulations had applied when the member entered his new employment.

### *Misconduct*

### **Forfeiture of pension rights after conviction of employment-related offences**

**111.**—(1) If a member is convicted of a relevant offence, the Secretary of State 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 him under these Regulations or the 1987 Regulations as respects his previous membership shall be 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 he 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, they may give a direction under paragraph (2) only if they are unable to recover their loss under regulation 113 or 115 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 three months from the date of the conviction.

(7) Where a former employing authority apply for a forfeiture certificate, they must at the same time send the convicted person and the appropriate administering authority a copy of the application.

### **Interim payments directions**

**112.**—(1) If—

- (a) a person leaves an employment in which he was a member because of an offence in connection with that employment; and
- (b) a forfeiture certificate has been issued under regulation 111(1) in respect of that offence,

his former employing authority may give an interim payments direction to the appropriate administering authority.

- (2) However, they may not give such a direction if they have—
- (a) notified him of a decision under regulation 96 on any question as to entitlement to benefit; or
  - (b) given any direction under regulation 111(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 96 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 96).

### **Recovery or retention where former member has misconduct obligation**

**113.—**(1) This regulation applies where a person—

- (a) has left an employment, in which he was or had at some time been a member, in consequence of a criminal, negligent or fraudulent act or omission on his part in connection with that employment;
- (b) has incurred some monetary obligation, arising out of that act or omission, to the body who were his employing authority in that employment; and
- (c) is entitled to benefits under Part II.

(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 his 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 regulation 65(5) (including that regulation as it applies by virtue of regulation 71).

(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 his 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 arbiter.

### **Protection of guaranteed minimum pension rights**

**114.**—(1) The power—

- (a) to give directions under regulation 111(2); or
- (b) or to recover or retain amounts under regulation 113(2)

may not be exercised so as to deprive a person of his guaranteed minimum pension or any widow's or widower's guaranteed minimum pension.

(2) However, such a power may be so exercised if the person left his employment—

- (a) because of the offence of treason; or
- (b) because of one or more offences under the Official Secrets Acts 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 aggregate to at least 10 years.

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

**115.**—(1) This regulation applies where—

- (a) a person has left an employment in which he was a member because of—
  - (i) an offence involving fraud, or
  - (ii) grave misconduct,

in connection with that employment;

- (b) his former employing authority in that employment have suffered direct financial loss by reason of the offence or misconduct; and

(c) either—

- (i) the former employee became entitled to benefits under Part II or the 1987 Regulations and a direction has been given under regulation 111(2), or
- (ii) he did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 86 (whether or not he has waived his right).

(2) If the former employing authority are an administering authority, they may transfer an appropriate amount from their 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) However, 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 or a dependant, under regulation 87(2) above or regulation C12(5) of the 1987 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 are required to make any transfer payment under Chapter IV of Part IV of the Pension Schemes Act 1993 or under regulation 119 or to make a payment under regulation 126 for a former employee, the former employing authority must repay it, if requested to do so.

## CHAPTER VI

### TRANSFERS

#### *Transfers out*

#### **Application of Chapter IV of Part IV of the Pension Schemes Act 1993**

**116.**—(1) For sections 12C (requirements as to transfer, commutation etc. for contracting-out), 19 (discharge of liability) and 20 (transfer of accrued rights) and Chapter IV or Part IV (transfer values) of the Pension Schemes Act 1993<sup>(44)</sup> and any regulations made under any of those sections or that Chapter, 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<sup>(45)</sup> (pre-1986 leavers), Chapter IV of Part IV of the Pension Schemes Act 1993 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service.

(3) The references in regulation 4 of those Regulations to regulation 3 of those Regulations include a reference to paragraph 4(1) and (2) of Schedule 16 to the 1987 Regulations and any corresponding earlier provisions.

(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) Sub-paragraph (a) of regulation 10(2) 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.

(6) Regulation 18 of those Regulations (termination of pensionable service in certain circumstances to be disregarded) only applies if—

- (a) in the case of a termination before the commencement date, no election was made under regulation E2(9)(c) of the 1987 Regulations (or any corresponding earlier provision) in respect of the service which terminated; and
- (b) in any case, no election has been made under regulation 31(1) to have the service which terminated aggregated with later service.

(7) For this regulation and regulation 117, the fund authority, in relation to a member, is the body maintaining the pension fund to which he was contributing immediately before his pensionable service terminated.

(8) However, if that fund has been closed, the fund authority is the body which would be liable to pay him his pension for that employment if he had been entitled to receive payment of such a pension when his pensionable service terminated.

#### **Rights to payment out of fund authority's pension fund**

**117.**—(1) The amount of any transfer payment due in respect of a member under Chapter IV of Part IV of the Pension Schemes Act 1993 is payable by the fund authority from their pension fund.

(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.

---

<sup>(44)</sup> 1993 c. 48.

<sup>(45)</sup> S.I. 1996/1847, amended by S.I. 1996/3126 and 1997/786 and 1613.

(3) Paragraph (2) overrides anything to the contrary in the former Regulations, any local Act scheme, the 1974 Regulations, the 1987 Regulations or any other provision of these Regulations or the Transitional Regulations.

### **Contracting-out requirements affecting transfers out**

**118.**—(1) 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 Pension Schemes Act 1993<sup>(46)</sup>; or
- (b) an amount sufficient to meet the liability in respect of his contracted-out rights.

(2) However, the amount mentioned in paragraph (1)(b) may not be deducted where—

- (a) the transfer payment is made to an occupational pension scheme which is contracted-out or an appropriate personal pension scheme; and
- (b) that scheme’s trustees or managers undertake to accept liability for his contracted-out rights.

(3) Where the amount mentioned in paragraph (1)(a) is deducted, if the appropriate administering authority think fit, that amount may be used in preserving the liability mentioned in paragraph (2) (b) in the appropriate fund.

(4) Otherwise, it must be used in paying the premium.

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

- (a) his and his surviving spouse’s rights to guaranteed minimum pensions; and
- (b) his section 9(2B) rights (as defined in regulation 1(2) of the Occupational Pension Schemes Contracting-out) Regulations 1996<sup>(47)</sup>).

### *Bulk transfer arrangements*

### **Bulk transfers (transfers of undertakings) etc.**

**119.**—(1) This paragraph applies where—

- (a) two or more members' active membership ends on their joining an approved 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 agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter IV of Part IV of the Pension Schemes Act 1993 and waive any rights they might have under that Chapter by virtue of the cessation of their active membership.

(2) The appropriate administering authority must not give their agreement under paragraph (1)(b) unless they are satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which he would have obtained if a transfer value had been paid to the same scheme under Chapter IV of Part IV of the Pension Schemes Act 1993, as it applies by

---

<sup>(46)</sup> 1993 c. 48.

<sup>(47)</sup> S.I. 1996/1172; the definition of “section 9(2B) rights” was substituted by S.I. 1997/786, Schedule 1, paragraph 4(2).

virtue of regulation 116, (assuming in any case where the member would not be entitled to such a payment that he was).

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

(4) Where paragraph (1) applies, 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 them 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.

(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 the former Regulations, any local Act scheme or any provision of the 1974 Regulations, the 1987 Regulations or these Regulations.

#### **Calculation of amount of transfer payment under regulation 119**

**120.**—(1) The amount of the transfer payment to be paid under regulation 119 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 their 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 he 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) He must specify in his valuation the actuarial assumptions he 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) However, if there is more than one employing authority involved, each shall bear such part of the costs as the actuary determines to be appropriate.

#### *Transfers in*

#### **Inward transfers of pension rights**

**121.**—(1) If a person who becomes an active member has relevant pension rights, he may request his 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) an occupational pension scheme (other than the Scheme);

(b) a personal pension scheme;

(c) a retirement annuity contract approved by the Commissioners of Inland Revenue under section 620 or 621 of the Taxes Act;

(d) a self-employed pension arrangement; or

- (e) an additional voluntary contributions scheme (other than a FSAVC scheme or a scheme constituted by virtue of Chapter IV of Part III).
- (3) Accrued rights include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993(48).
- (4) For this regulation and the following regulations of this Chapter the fund authority, in relation to a transferring person, are the body maintaining the pension fund of the scheme to which he is contributing.
- (5) The relevant transferor is the trustees or managers of the scheme, contract or arrangement under which the transferring person's relevant pension rights arise.
- (6) However, the relevant transferor for the rights specified in paragraph (3) is the trustees or managers of the scheme, contract or arrangement, 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.
- (8) That notice must be given before the expiry of the period of 12 months beginning with the date on which he became an active member (or such longer period as his 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 their pension fund.

### **Right to count credited period**

- 122.**—(1) Where a transfer value has been accepted under regulation 121, the member may count the credited period as a period of membership for these Regulations (but see Schedule 3).
- (2) If the transfer value—
    - (a) is paid by the trustees or managers of a club scheme;
    - (b) represents all the rights relating to the member in that scheme;
    - (c) has been calculated—
      - (i) in a case where Chapter IV of Part IV of the Pension Schemes Act 1993 applies, in accordance with that Chapter, and
      - (ii) otherwise, in a manner consistent with that prescribed under that 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 the transfer value is not paid by the trustees or managers of a club scheme, the credited period must be calculated in a manner consistent with that Chapter.
  - (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 on which he became a member (or, if more than twelve months later, the date on which the transfer value is received) and his NRD.
  - (5) If the member is a man, the credited period must be treated as a period after 5th April 1978.
  - (6) If the member is a woman, the credited period must be treated as a period after 5th April 1988.
  - (7) The fund authority must give the member a written notice stating the period of membership he may count under paragraph (1).
  - (8) The notice must contain a statement of the kind required by regulation 97(4).



### **Rights as to service not matched by credited period**

**123.**—(1) Where the member’s transferred-in service exceeds the credited period, he may count the excess as a period which counts towards his total membership for the purposes of the provisions mentioned in paragraph (2).

(2) Those provisions are—

- (a) regulation 18(1) (general qualification for benefits);
- (b) paragraphs (a) and (b) of the definition of “normal retirement date” in regulation 24(4);
- (c) regulation 40(4) and (5) (amount of active member’s surviving spouse’s long-term pension);
- (d) regulation 86(1) (return of contributions).

(3) A period which may be counted under paragraph (1) counts as its actual length.

(4) The fund authority must give the member a written notice stating the period of membership he may count under paragraph (1).

(5) The notice must contain a statement of the kind required by regulation 97(4).

(6) The transferred-in service of a transferring member is the service in respect of which he has accrued rights to benefits under his previous occupational pension scheme or appropriate policy (whether or not the transfer value covers all those rights).

(7) The period of that service is the period certified by the trustees or managers of that scheme or issuers of that policy.

### **Credited periods for transferring members with mis-sold pension rights**

**124.**—(1) Regulation 122(3) does not apply where—

- (a) the transferring person is a person mentioned in regulation 6(9)(c); and
- (b) the transfer value satisfied the conditions specified in paragraph (2).

(2) Those conditions are that—

- (a) it is paid by the trustees or managers of the personal pension scheme mentioned in section 172(1)(a)(ii) of the Pensions Act 1995<sup>(49)</sup>;
- (b) it represents all the rights relating to the member in that scheme;
- (c) it is paid on an application made to the appropriate administering authority before the expiry of the period of 12 months beginning with the date on which the transferring person becomes an active member (or such longer period as they may allow); and
- (d) in the opinion of the appropriate administering authority it is not less than the restitution amount.

(3) Where paragraph (1) applies, the credited period is the period of membership the transferring person could have counted if he had been an active member throughout the personal pension period.

(4) The restitution amount is the aggregate of—

- (a) the capitalised value (as at the date on which the request for the calculation of the restitution amount is made) of the rights which would have accrued to the transferring person under the Scheme if he had remained an active member of the Scheme throughout the personal pension period (including rights under the Pensions (Increase) Act 1971<sup>(50)</sup> and the Pensions (Increase) Act 1974<sup>(51)</sup>);

---

<sup>(49)</sup> 1995 c. 26.

<sup>(50)</sup> 1971 c. 56.

<sup>(51)</sup> 1974 c. 9.

- (b) the transfer value (if any) paid out of the Scheme to the personal pension scheme; and
  - (c) interest on any such transfer value at such rate as is approved for the time being by the Government Actuary, calculated on a daily basis over the period from the date on which that transfer value was paid out of the Scheme to the date as at which the transfer value is taken to be paid to the Scheme.
- (5) The appropriate administering authority must determine the value mentioned in paragraph (4)
- (a) in such manner as is for the time being indicated in guidance issued by the Government Actuary.
  - (6) The personal pension period is the period referred to in regulation 6(9)(c).

#### *Community scheme transferees*

#### **Community scheme transferees**

**125.**—(1) Community scheme transferees and their surviving spouses, dependants and children are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

(2) A Community Scheme transferee is a person who became employed by a Community institution after having been employed in local government employment.

#### *Payments between funds and authorities*

#### **Changes of fund**

**126.**—(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 his appropriate fund;
- (c) in a case where regulation 31(1) applies to him, he has made an election under that 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 his later appropriate administering authority as is indicated in guidance issued by the Government Actuary for this regulation (but see paragraph (3)).

(3) Where—

- (a) paragraph (2) applies as respects two or more members by virtue of a single event; and
- (b) the authority by which the payment under that paragraph must be made agree with the authority to which it must be made that it is appropriate for the amount of the payment to be determined by actuaries appointed by those authorities for the purpose,

that amount must be so determined.

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

(5) Where the member's appropriate administering authority has not changed, they must arrange for a payment such as is indicated in guidance issued by the Government Actuary for this regulation to be made from the member's former appropriate fund to his new appropriate fund.

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

### **Liability for combined benefits**

**127.**—(1) Where—

- (a) a benefit under regulation 28 or 47 of these Regulations or regulation E6(1)(c), (2)(e) or (3)(b), E16 or E18 of the 1987 Regulations is payable out of a pension fund (“the new fund”); and
- (b) by means of that benefit being payable another benefit ceases to be payable out of another fund,

such payments must be made to the authority maintaining the new fund by the authority maintaining the other fund as are indicated in guidance issued by the Secretary of State for this regulation.

- (2) Such payments must be credited to the new fund.

## PART V

### SPECIAL CASES

#### CHAPTER I

#### ELIGIBILITY

### **Transport employees**

**128.**—(1) For these Regulations every employee of a subsidiary of a passenger transport executive is deemed to be in employment with that executive.

(2) In this regulation “subsidiary” has the meaning given in section 137(1) of the Transport Act 1985(52).

### **Further cases of eligibility: non-employees**

**129.**—(1) A person may be an active member if he 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.

(3) If a registration officer is an active member, he 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(53) and by whom he 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 he must be treated as being in the employment of the passenger transport executive.

(5) A person who has been appointed a rent officer under section 43 of the Rent (Scotland) Act 1984(54) must be treated as being in employment of the local authority with whom the Secretary of State has made arrangements under that section to provide for the superannuation of the officer.

---

(52) 1985 c. 67.

(53) 1965 c. 49; section 5 was amended by the Local Government (Scotland) Act 1973 (c. 65), section 116(2)(a) and the Local Government etc. (Scotland) Act 1994 (c. 39), section 51.

(54) 1984 c. 58.

(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 130(1) applies to the persons holding the positions specified in paragraph (6) as they apply to the employees specified in that regulation.

### **Separate employments etc.**

**130.**—(1) Where a person holds separate employments under one Scheme employer, these Regulations apply as if each of them were with a different employer.

(2) This paragraph applies where a whole-time employee of a Scheme employer or a part-time employee with at least 30 contractual hours is also employed—

- (a) as a returning officer at local government elections; or
- (b) as an acting returning officer (including employment in the duties of a returning officer at an Assembly election which are required by regulations made under paragraph 2 of Schedule 1 to the European Assembly Elections Act 1978<sup>(55)</sup> to be discharged by an acting returning officer).

(3) Where paragraph (2) applies and the employee was in the whole-time employment or, as the case may be, the part-time employment immediately before 1st April 1974 and had duties in it which included one or both of the additional duties, each additional duty must be treated as a separate variable-time employment with a different Scheme employer from the Scheme employer with whom he is in the whole-time employment.

(4) Where paragraph (2) does and paragraph (3) does not apply, his employment for that duty (or those duties) must be treated as a (single) separate variable-time employment with a different Scheme employer.

(5) 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<sup>(56)</sup> who receives his 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 an officer in the employment of that Scheme employer.

## **CHAPTER II**

### **MODIFICATIONS FOR CERTAIN EMPLOYEES ETC.**

#### **Former contributors**

**131.** Schedule 6 (former contributors) shall have effect.

#### **Employees of Scottish Homes and former employees of Scottish Special Housing Association**

**132.**—(1) Subject to paragraphs (2), (3) and (4), the Scheme applies to Scottish Homes and its employees as though Scottish Homes were a Scheme employer and an administering authority, and it applies also to Scottish Homes and persons who were employed by the Scottish Special Housing Association but have not become employees of Scottish Homes as though Scottish Homes were an administering authority in respect of those persons.

---

<sup>(55)</sup> 1978 c. 10; paragraph 2 of Schedule 1 was extended by the Representation of the People Act 1985 (c. 50), section 3(1), amended by the European Communities (Amendment) Act 1986 (c. 58), section 3(1)(b)(3) and modified for Scotland by S.I. 1986/1111.

<sup>(56)</sup> 1971 c. 77.

(2) Where a person who was an eligible employee of the Scottish Special Housing Association has become an employee of Scottish Homes in consequence of an offer under paragraph 11 of Schedule 1 to the Housing (Scotland) Act 1988<sup>(57)</sup>, the Scheme applies as if his employments with the Scottish Special Housing Association and Scottish Homes were one continuous employment.

(3) Regulation 90 shall not apply in respect of benefits payable under these Regulations out of the pension fund maintained by Scottish Homes.

### **Transfers under the Local Government etc. (Scotland) Act 1994 etc: early leavers**

**133.**—(1) Where—

- (a) a person leaves an employment in relation to which he is an active member because he is transferred to another employment in the circumstances set out in paragraph (2); and
- (b) apart from this paragraph, he would not be treated for regulation 30 (early leavers) as leaving a local government employment,

he must be so treated for that regulation.

(2) Those circumstances are—

- (a) that he leaves that employment as a result of a transfer to another employment which is—
  - (i) an employment with the same employing authority at lower pay, or
  - (ii) an employment with a different employing authority; and
- (b) that transfer is made by virtue of or in consequence of—
  - (i) an order made under section 8 of the Local Government etc. (Scotland) Act 1994 or that section as extended by sections 97 and 137 of that Act; or
  - (ii) the transfer to the Scottish Environment Protection Agency under section 22(1)(b) (ii) of the Environment Act 1995<sup>(58)</sup> of the property, rights and liabilities of a local authority in Scotland (as defined in section 56 of that Act).

### **Local government reorganisation**

**134.**—(1) The Scheme applies, in relation to a transferred employee, as if his new employment and his former employment had been one continuous employment (but see paragraph (3)).

(2) Transferred employees who are active members immediately before their transfer continue to be active members in their new employment.

(3) Where—

- (a) immediately before the transfer of a transferred employee it was the usual practice of the body employing him to exercise any discretionary power exercisable by them by virtue of any enactment relating to pensions so as to pay or increase the payment of allowances or pensions for employees of his description; and
- (b) that power or any corresponding one becomes exercisable in relation to him,

the new employing body shall exercise the power in a way which is not less beneficial than the general character of that practice.

(4) A transferred employee is—

- (a) a person transferred on or after 16th May 1975 by or under an order or regulations made under the Local Government (Scotland) Act 1973 which, in accordance with the provisions of section 216 of that Act, contain a provision as to the transfer of that person;

---

<sup>(57)</sup> 1988 c. 43.

<sup>(58)</sup> 1995 c. 25.

- (b) any person appointed by a local authority or a river purification board to hold any office or employment before or as from 16th May 1975 who, but for the appointment, would have been transferred on that day under said section 216;
  - (c) any person who on 16th May 1975 remained in the employment of the same body as immediately before that day but who, in consequence of the Local Government (Scotland) Act 1973<sup>(59)</sup>, or anything done under that Act, or of the 1974 Regulations, became on that day entitled to participate in a superannuation fund maintained under those Regulations by a different body from the body which maintained the superannuation fund he was entitled to participate in immediately before that day;
  - (d) any person transferred on 1st April 1996 by or under an order made under section 8 of the Local Government etc. (Scotland) Act 1994 or that section as extended by section 97 or 137 of that Act;
  - (e) any person transferred on 1st April 1996 under a scheme under section 22(3) of the Environment Protection Act 1995;
  - (f) any person who, immediately before 1st April 1996, holds office or employment with a local authority constituted under section 2 of the Local Government (Scotland) Act 1973 and is not transferred on that date by or under an order made under section 8 of the Local Government etc. (Scotland) Act 1994, or that section as extended by section 97 or 137 of that Act, or under a scheme under section 22(3) of the Environment Protection Act 1995, but is appointed by a local authority constituted under section 2 of the Local Government etc. (Scotland) Act 1994, a water and sewerage authority established under section 62(1) of that Act, the Scottish Children's Reporter Administration established under section 128 of that Act, the Strathclyde Passenger Transport Authority established under section 40(1) of that Act or the Scottish Environment Protection Agency established under section 20 of the Environment Protection Act 1995 to hold any office or employment with that body, as from 1st April 1996; or
  - (g) any person who at 1st April 1996 remained in the employment of the same body as immediately before that date but who in consequence of the Local Government etc. (Scotland) Act 1994, or anything done thereunder, or of the 1987 Regulations, became on that date entitled to participate in the benefits of a superannuation fund maintained under those Regulations by a body different from the body which maintained the superannuation fund in the benefits of which he was immediately before 1st April 1996 entitled to participate.
- (5) For this regulation, where paragraph (4)(b) or (f) applies, the taking up of the office or employment to which the appointment is made is a transfer for this regulation.

**Persons transferred under an order under section 34 of the Local Government (Scotland) Act 1975 or in consequence of section 1 of the Education (Mentally Handicapped Children) (Scotland) Act 1974**

**135.**—(1) This regulation applies to any person who was transferred to the employment of a scheduled body under the 1987 Regulations, which body or its successor is a Scheme employer (“the new employment”) by or under an order made under section 34 of the Local Government (Scotland) Act 1975<sup>(60)</sup> or in consequence of section 1 of the Education (Mentally Handicapped Children) (Scotland) Act 1974<sup>(61)</sup> and was immediately before that transfer in an employment (“the old employment”) in which he was an officer within the meaning of the Health Service Regulations.

---

<sup>(59)</sup> 1973 c. 65.

<sup>(60)</sup> 1975 c. 30.

<sup>(61)</sup> 1974 c. 27.

(2) Subject to sub-paragraph (4), such a person is entitled to count as a period of membership any service which for the purposes of the Health Service Regulations he was entitled to count in relation to the old employment as, or as a period of, contributing service.

(3) For paragraph (2)–

(a) any period of part-time service is treated as though it were whole-time service for a proportionately reduced period; and

(b) except for the purposes of–

(i) determining whether a person is entitled to, or to payment of, a benefit; or

(ii) ascertaining, where notice was given under Schedule 2 to the Benefits Regulations or regulation D6 or D7 of the 1974 Regulations, the maximum length of any additional period to which regulation 54 applies,

any service which was reckonable service under the Health Service Regulations for all purposes (other than for the purpose of determining whether any benefit was payable) as a period of contributing service at half its length is counted at half its length.

(4) Where, immediately before he was transferred, such a person as is mentioned in paragraph (1) was a person in respect of whom the Secretary of State–

(a) paid contributions under regulation 46 of the Health Service Regulations (persons subject to non-statutory superannuation schemes and arrangements); or

(b) carried out any such scheme or arrangements as are referred to in that regulation,

then, that person shall not be subject to any provisions of these Regulations except those contained in this paragraph, and the body to which that person was transferred or its successor body, shall–

(a) if immediately before 16th May 1974 the Secretary of State was paying under regulation 46 of the Health Service Regulations in respect of that person the contributions authorised or required by the relevant scheme to be paid by the employer, pay those contributions; and

(b) deduct from the person's pay the amount of any contribution required by the scheme or under the arrangements to be paid by the employee.

(5) In relation to a person who gave notice under regulation N12(3)(e) of the 1974 Regulations that he did not wish to avail himself of the benefits provided under those Regulations and to whom regulation H5(8) of the 1987 Regulations applied immediately before the commencement date, these Regulations–

(a) have effect as if they conferred on him rights corresponding to those which he would have enjoyed if he had remained subject to the provisions of the Health Service Regulations; and

(b) continue so to have effect so long as he is employed without a disqualifying break of service by a Scheme employer on duties reasonably comparable to those on which he was engaged immediately before he was transferred.

(6) Where paragraph (5) applies, the modifications mentioned in paragraphs (7) and (8) apply.

(7) Regulations 109 and 110 (abatements of retirement pensions during new employment) apply instead of regulation 40 of the Health Service Regulations and–

(a) as if “retirement pension” included a pension payable by virtue of paragraph (5); and

(b) in any case where the final pay of a former employment must be ascertained as if entitlement to such a pension were not an entitlement under the Scheme.

(8) Regulations 111 (forfeiture) and 112 (interim payments directions) have effect instead of regulation 54 of the Health Service Regulations.

(9) In this regulation “the Health Service Regulations” are the National Health Service Superannuation (Scotland) Regulations 1961 to 1974<sup>(62)</sup> as in force immediately before 16th May 1974.

*Conversion of Discretionary Payments Regulations periods into membership*

**Conversion of periods credited under Discretionary Payments Regulations etc. into membership**

**136.**—(1) Where, apart from paragraph (9) of regulation 51, an employing authority could pass a resolution under that regulation to increase a person’s total membership, they may resolve that his total membership be increased by the whole or part of the period credited to him as mentioned in that paragraph.

(2) Where—

- (a) any person has been credited by an employer (“the transferor employer”) under any scheme, the terms of which correspond to Part III of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998, with a period of service in respect of a former employment;
- (b) the transferor employer’s liability in respect of payments falling due to that person as respects that credited period has been transferred to the employing authority;
- (c) apart from paragraph (9) of regulation 51, if—
  - (i) the person’s employment with the transferor employer had been employment with the employing authority; and
  - (ii) any actions taken by the transferor employer under the scheme mentioned in paragraph (a) had been taken by that authority,

that authority could pass a resolution under regulation 51 to increase his total membership, they may resolve that his total membership be increased by the whole or part of the period credited to him.

(3) The additional period must not exceed the period which would be the maximum additional period under regulation 51, if—

- (a) a resolution under that regulation could be passed in relation to him; and
- (b) the period of 10 years were substituted for the period of 6 243/365 years in paragraph (2) (d) of that regulation.

(4) The additional period may be counted as a period of membership only if—

- (a) the employing authority and the administering authority agree that the employing authority will pay increased contributions under regulation 78 to meet the cost of the increase in membership; or
- (b) the relevant employing authority make the payment required by regulation 79(2) within the period specified in that regulation,

but it may be so counted as from the date from which the resolution has effect.

(5) If the relevant employing authority fail duly to pay those increased contributions or make that payment, the resolution shall cease to have effect.

(6) Where the resolution has effect the period credited as mentioned in regulation 51(9) is reduced or extinguished accordingly (but without prejudice to any payments which have fallen due or have been made before that date).

---

(62) S.I. 1961/1398, 1966/1522, 1972/1356 and 1604, 1973/304, 746 and 1713 and 1974/441 and 1357.



(7) No resolution may be passed under this regulation, the result of which would be to place any individual in a worse position than he would otherwise be.

(8) If the person was credited as mentioned in regulation 51(9) on or after the commencement date, this regulation applies only if—

- (a) the employing authority is an authority who have reasonable grounds to believe that they will cease to exist as a result of a provision made by or under an enactment; or
- (b) the employing authority have ceased to exist as a result of any such provision;

and where paragraph (b) applies “employing authority” includes the person to whom the former employing authority’s functions as respects the former employee in question have been transferred in connection with their abolition.

### **Rights under section 12 of the Superannuation Act 1972**

**137.**—(1) If, apart from this regulation, any provision of these Regulations, which re-enacts with any modification any provision of the Scheme which ceases to have effect by virtue of the Transitional Regulations in relation to any person to whom a relevant benefit is or may become payable, would place him in a worse position in relation to that benefit than that he would have been in if that modification had not been made and he makes an election under this paragraph, these Regulations shall have effect, in relation to him and to that benefit, as if these Regulations had re-enacted that provision of the Scheme without modification (but see paragraph (4)).

(2) An election under paragraph (1) must be made by notice in writing given to the appropriate administering authority within the period of six months beginning with the commencement date.

(3) In this regulation—

“relevant benefit” means a benefit payable to, or in respect of, a person who before the commencement date—

- (a) ceased to hold an employment in which he was an active member (whether or not he has subsequently become an active member again); or
- (b) died while in such employment; and

“benefit” includes a return of contributions and any pension payable to a widow, widower or any dependant by virtue of a surrender.

(4) If an election under paragraph (1) is made in relation to a benefit in respect of a person who is an active member, or subsequently becomes an active member again—

(a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued by virtue—

- (i) of periods of membership before the cessation referred to in paragraph (3)(a) (or, if there has been more than one such cessation, the last of them before the commencement date); or
- (ii) of contributions paid in respect of such periods of membership; and

(b) in determining entitlement to, or the amount of, the benefit to that extent, he shall be treated as if he had never become an active member again at any time after the cessation referred to in paragraph (2)(a) (but without prejudice to the application of this paragraph);

and these Regulations shall have effect accordingly.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

St Andrew's House,  
Edinburgh  
20th February 1998

*Brian Wilson*  
Minister of State Scottish Office