
STATUTORY INSTRUMENTS

1998 No. 366

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

PART II

PRIMARY PROVISIONS

CHAPTER IV

BENEFITS

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(1) 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(2); 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 $\frac{122}{365}$ years, 20 years; and
- (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)).

(1) S.I.1995/340, amended by S.I. 1997/720.

(2) S.I. 1998/192.

(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 13 121/365 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(3) 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(4).

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)).

(4) 1993 c. 48.

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.

(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⁽⁵⁾ or section 148 of the Social Security Administration Act 1992⁽⁶⁾ (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⁽⁷⁾.

(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⁽⁸⁾;

“relevant year” and “final relevant year” have the meanings given respectively in sections 14(8) and 16(5) of the Pension Schemes Act 1993⁽⁹⁾.

(5) 1975 c. 60; section 21 was repealed by the Social Security (Consequential Provisions) Act 1992 (c. 6), section 3(1) and Schedule 1.

(6) 1992 c. 5.

(7) Section 16(3) was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 28.

(8) S.I. 1996/1172.

(9) Sections 14(8) and 16(5) were amended by the Pensions Act 1995, Schedule 5, paragraph 27 and 28.