
STATUTORY INSTRUMENTS

1998 No. 366

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

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.

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—

$$\frac{(\text{the member's final pay} \times \text{length of additional period (in years)})}{240}$$

(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⁽¹⁾ (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⁽²⁾ (assignment, surrender and commutation of benefit).
- (6) No person who has elected under regulation 57 may also elect under this regulation.

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.

(1) 1993 c. 48; section 12C was inserted by the Pensions Act 1995 (c. 26), section 136.

(2) Section 77 is repealed prospectively by the Pensions Act 1995, Schedules 3 and 7.

(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(3).

(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.

(3) S.I.1987/1108, amended by S.I. 1994/1062.

- (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.