

---

STATUTORY INSTRUMENTS

---

**1998 No. 366**

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

**PART IV**

**ADMINISTRATION**

**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(1);

“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(2), 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.