
STATUTORY INSTRUMENTS

1998 No. 366

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

PART V

SPECIAL CASES

CHAPTER II

MODIFICATIONS FOR CERTAIN EMPLOYEES ETC.

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).

(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.