
STATUTORY INSTRUMENTS

1998 No. 366

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

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(1).

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(2) 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(3) 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.

(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.

(1) 1985 c. 67.

(2) 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.

(3) 1984 c. 58.

(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(4) 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(5) 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.

(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

(4) 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.

(5) 1971 c. 77.

to the Housing (Scotland) Act 1988⁽⁶⁾, 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) of the Environment Act 1995⁽⁷⁾ 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;

⁽⁶⁾ 1988 c. 43.

⁽⁷⁾ 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⁽⁸⁾, 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⁽⁹⁾ or in consequence of section 1 of the Education (Mentally Handicapped Children) (Scotland) Act 1974⁽¹⁰⁾ 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.

⁽⁸⁾ 1973 c. 65.

⁽⁹⁾ 1975 c. 30.

⁽¹⁰⁾ 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⁽¹¹⁾ 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).

⁽¹¹⁾ 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.