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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make various amendments to the Local Government Pension Scheme (Scotland) Regulations 1998 (“the principal Regulations”), which regulate the Local Government Pension Scheme in Scotland (“the Scheme”), and the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998 (“the Transitional Regulations”). Certain of the provisions take effect on various dates before the Regulations come into force (as set out in regulation 1). Section 12 of the Superannuation Act 1972 provides that regulations made under section 7 of that Act may have retrospective effect.

Regulation 5 amends the provision in the Transitional Provisions relating to civil servants who were transferred to the Scottish Environment Protection Agency. The amendment provides that they may elect on leaving local government employment on or after age 50 to receive immediate payment of their retirement benefits.

Regulation 7 introduces a definition of and references to an “active deferred member” in relation to re-employed members. An “active deferred member” is a person who has accrued pension rights in relation to an earlier local government employment and who is also an active member in relation to a current local government employment.

Regulation 9 amends the principal Regulations by substituting a new regulation 4 which provides for administering authorities to make admission agreements to enable employees of non-Scheme employers to be members of the Scheme. The new regulation 4 of the principal Regulations widens the categories of bodies which are admission bodies. It also adds procedural requirements in connection with admission agreements with certain categories of admission bodies and provides that questions arising in connection with admission agreements shall be determined by the Scottish Ministers.

The principal change is to allow employees of transferee admission bodies to be members. Transferee admission bodies are bodies who provide services or assets to a local authority.

The substituted regulation 4 also includes a body representative of Scheme employers as an admission body.

Regulation 10(a) provides that re-employed teachers who are not eligible to join the Teachers' Pension Scheme in Scotland are also not eligible to join the Scheme.

Regulations 10(c), 11, 17, 19 and 23(b) make special provision in connection with the payment of retirement benefits and death grants for persons who retire after age 65. Regulation 11 provides that any period of service after age 65 may not be counted as a period of membership, although it will be treated as such for the purposes of calculating surviving spouses' and children's pensions. The other regulations make consequential amendments. Copies of the guidance referred to in regulation 19(4A) of the principal Regulations as inserted by regulation 17 can be obtained free of charge from the Scottish Public Pensions Agency, Room 5.11, St. Margaret's House, 151 London Road, Edinburgh EH8 7TG.

Regulation 10(d) makes a consequential amendment to regulation 5 of the principal Regulations, to provide when employees of transferee admission bodies are treated as leaving local government employment for the purposes of the Scheme.

Regulation 12 amends the definition of “pay”. The amendment extends the list of emoluments which do not count for pensions purposes to include any amount paid in lieu of the money value of the provision of a car.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Regulation 13 clarifies the provisions dealing with members' lower rate contributions to provide that there must be continuity of employment for the right to contribute at the lower rate of 5% to carry forward from before the commencement date of the principal Regulations.

Regulations 14 and 15 clarify the position regarding contributions where a member is on leave of absence (otherwise than because of illness or injury) by providing that in all cases the member must contribute for the first 30 days of absence.

Regulation 18 clarifies the definition of final pay. It provides that, in calculating a death grant or the rate of surviving spouse's or children's short term pension payable on the death of an active member, in the case of a part-time employee it is the actual pay in the final pay period which is used.

Regulations 20 and 40 make provision in connection with ill-health retirements. Regulation 20 introduces a requirement that a person must be incapable of carrying out not only the duties of the job he holds but also those of any comparable employment with his employing authority. It also introduces a definition of comparable employment and makes clear that the term "permanently incapable" means until, at the earliest, age 65. Regulation 40 introduces a requirement that the independent registered medical practitioner who certifies about a member's permanent incapacity must be qualified in occupational health medicine, and provides a definition of that term.

Regulation 21 makes a minor adjustment to regulation 27 of the principal Regulations for consistency with other provisions of that regulation.

Regulation 22 amends regulation 31 of the principal Regulations, which covers re-employed and rejoining deferred members, to provide that for members who have accrued Scheme membership with certain admission bodies, specified periods of such membership may not be aggregated in calculating lump sum benefits.

Regulation 23(a) amends the provision dealing with death grants to make clear that the administering authority has absolute discretion in deciding to whom the death grant should be paid.

Regulation 25 clarifies the fact that, in calculating a widower's pension in relation to past retirement marriages, the relevant additional membership applies only where the widower was married to the member at some time during her local government employment after 31st March 1972.

Regulation 28 amends the provision in connection with the increase of membership of members leaving employment after age 50 to provide that no increase may be made where the person is paid lump sum compensation under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (as amended).

Regulations 30 and 31 extend the time limits for elections for pension in lieu of lump sum and for lump sum in lieu of pension.

Regulation 32 substitutes the term "total remuneration" for "pay". It also makes a change to allow the transfer into a member's additional voluntary contribution scheme of the accumulated value from other additional voluntary contribution schemes.

Regulation 34 makes changes in connection with the revision of actuarial valuations and certificates when an admission body ceases to be a Scheme employer.

Regulation 35 inserts two further options relating to meeting the costs of early payment of benefits in cases of early retirement on grounds of efficiency or redundancy.

Regulation 36 amends the principal Regulations to the effect that the rate of interest for all overdue payments is 1% above base rate on a day to day basis with three monthly rests.

Regulations 37, 38 and 39 make changes concerning when and from which date interest is payable in connection with the repayment to members of contributions and the payment of benefits.

Regulation 41 requires employers and administering authorities to publish any policy statements concerning their exercise of discretionary functions under the principal Regulations.

Regulation 43 makes amendments to provisions in the principal Regulations relating to transferring members with mis-sold pension rights. The purpose of the amendments is to clarify the method of calculation to be used in determining the sum necessary to reinstate the person in the Scheme as if the mis-selling had not occurred. They also add a provision to allow a transfer value from a personal pension provider to be apportioned between membership before and after 6 April 1988 (the date widowers pensions were introduced). A further provision allows the administering authority to accept a transfer value which is less than the restoration amount, the credited period being of such proportion of the personal pension period as the administering authority may determine.

Regulation 46 introduces a new schedule as Schedule 2A to the principal Regulations which sets out conditions to be included in an admission agreement with a transferee admission body.

Regulation 47 makes a consequential amendment to Schedule 4 to the principal Regulations which sets out Inland Revenue restrictions on benefits under the Scheme.

Regulation 48 provides that the amendments made by these Regulations do not affect admission agreements entered into before 13 January 2000.

Regulation 49 allows persons who would be placed in a worse position by amendments made in these Regulations to elect for the amendments not to apply in their case.

The remaining provisions of the Regulations make minor corrections and clarifications.