

2007 No. 71

PENSIONS

**The Local Government Pensions Etc. (Councillors and
VisitScotland) (Scotland) Amendment Regulations 2007**

Made - - - - - *12th February 2007*

Laid before Parliament *15th February 2007*

Coming into force in accordance with regulation 1(3)

The Scottish Ministers, in exercise of the powers conferred by sections 7 and 24 of the Superannuation Act 1972^(a) and of all other powers enabling them in that behalf, after consultation with such associations of local authorities as appeared to them to be concerned and such representatives of other persons likely to be affected by the proposed regulations as appeared to them to be appropriate, and not having considered consultation with any individual local authority to be desirable, all in accordance with section 7(5) of that Act, hereby make the following Regulations:

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government Pensions Etc. (Councillors and VisitScotland) (Scotland) Amendment Regulations 2007.

(2) These Regulations extend to Scotland only.

(3) These Regulations shall come into force for the purposes of regulations 10 and 11 on 1st April 2007 and for all other purposes on 2nd May 2007.

Amendment of the Local Government Pension Scheme (Scotland) Regulations 1998

2. The Local Government Pension Scheme (Scotland) Regulations 1998^(b) are amended in accordance with regulations 3 to 8, 10 and 11 of these Regulations.

(a) 1972 c.11. The functions of the Secretary of State exercised in the making of these Regulations were transferred to the Scottish Ministers as regards Scotland by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I. 1999/1750).

(b) S.I. 1998/366; the relevant amending instruments are S.S.I. 2000/199, 2001/23, 2002/311, 2005/293, 315 and 554, 2006/123, 468 and 514.

PART 2

Councillors' pensions

Re-employed and rejoining deferred members

3. In regulation 31 (re-employed and rejoining deferred members)–

(a) at the beginning of paragraph (1) insert “Subject to paragraph (1A)”; and

(b) after paragraph (1) insert–

“(1A) In the case of a deferred member who has been a councillor member, an election under paragraph (1) may only aggregate councillor membership with former councillor membership and, as the case may be, membership which is not councillor membership with former membership which is not councillor membership.”.

Eligibility: members of local authorities

4. In regulation 129 (further cases of eligibility: non-employees)–

(a) in paragraph (2), after sub-paragraph (b) add the following–

“; or

(c) a councillor.”; and

(b) after paragraph (7) add the following–

“(8) If a councillor member is an active member, he must be treated as being in the whole-time employment of the local authority of which he is a member and references to employment by or under such an employer and all similar expressions shall be construed accordingly.”.

Modifications for councillor members

5. After regulation 133 (transfers under the Local Government etc. (Scotland) Act 1994 etc: early leavers), insert the following–

“Members of local authorities – general

133A. These Regulations apply to councillor members in respect of their councillor membership with the modifications set out in Schedule 7.”.

6. After Schedule 6 (former contributors) insert as Schedule 7 the schedule set out in the Schedule to these Regulations.

Interpretation

7. In Schedule 1 (interpretation)–

(a) after the definition of “cancelling notice” insert–

““career average pay”, in relation to a councillor member, has the meaning given in regulation 12(3) (as that provision applies in relation to councillor members in respect of their councillor membership by virtue of Schedule 7);”;

(b) after the definition of “contributory employee” insert–

““councillor” means a member of a local authority elected in accordance with Part 1 of the Local Government etc. (Scotland) Act 1994(a) and includes such a councillor when exercising functions as convenor or vice-convenor of a joint board;

“councillor member” means a person who is a member of the Scheme by reason of being a councillor;

(a) 1994 c.39.

“councillor membership” means any period of membership which counts in respect of service as a member of a local authority and not other local government employment;”;

(c) after the definition of “the Insurance Acts” insert–

““joint board” means a body corporate, constituted for the purposes of a combination of local authorities under the Local Government (Scotland) Act 1973(a) or by or under any other enactment, consisting exclusively of persons appointed by those local authorities;”;

(d) for the definition of “local authority” substitute–

““local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;”.

Excluded Membership

8. In Schedule 3 (excluded membership)–

(a) at the end of the Table add–

“ 7. Membership which is not councillor membership.	Calculating total membership for a councillor member in respect of being entitled to or calculating any benefit in relation to his councillor membership.	(6) and (7)
8. Councillor membership.	Calculating total membership for a person in respect of being entitled to or calculating any benefit in relation to his membership which is not councillor membership.	(7)

”;

(b) at the end of the Notes to the Table add–

“6. Paragraph 7 shall be disregarded for the purposes of paragraph 1 of Schedule 7 (joining the Scheme).

7. Paragraphs 7 and 8 shall be disregarded for the purposes of paragraph 3.”.

Exclusion of councillors from the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

9. After regulation 3 (general exclusion – teachers) of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998(b) insert–

“General exclusions – councillors

3A.—(1) References in these Regulations to employment with an employing authority or employment with a LGPS employer do not include service or holding office as a councillor.

(2) Part II does not apply to a person ceasing to serve or hold office as a councillor.

(3) In Part V “relevant employment” does not include service or holding office as a councillor.

(4) In regulations 46(1), 47(1) and 48(1) the references to employment do not include service or holding office as a councillor.

(a) 1973 c.65.

(b) S.I. 1998/192; to which there are amendments not relevant to these Regulations.

(5) In this regulation, “councillor” means a member of a local authority elected in accordance with Part 1 of the Local Government etc. (Scotland) Act 1994^(a) and includes such a councillor when exercising functions as convenor or vice-convenor of a joint board.”.

PART 3

Scheme employers: VisitScotland

Scheme Employers: VisitScotland

10. For paragraph 10 of Schedule 2 (Scheme employers) substitute—

“10. VisitScotland, established under section 1(1) of the Development of Tourism Act 1969^(b).”.

11. As new entries at the end of the Table in Part II of Schedule 5 (appropriate funds), insert—

“	15A. Employee of VisitScotland, other than an employee who is a former employee of the Scottish Network 1 Tourist Board ^(c) or the Scottish Network 2 Tourist Board ^(d) who transferred to VisitScotland by virtue of paragraph 1 of Schedule 1 to the Tourist Boards (Scotland) Act 2006 and who was a member of the Scheme at the date of that transfer, for whom the appropriate fund is set out at entries 15B to 15L below.	Fund maintained by City of Edinburgh Council.
	15B. Former employee of the Scottish Network 1 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Dumfries network area.	Fund maintained by Dumfries and Galloway Council.
	15C. Former employee of the Scottish Network 1 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Edinburgh network area.	Fund maintained by City of Edinburgh Council.
	15D. Former employee of the Scottish Network 1 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Glasgow or Prestwick network area.	Fund maintained by City of Glasgow Council.
	15E. Former employee of the Scottish Network 1 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Selkirk network area.	Fund maintained by Scottish Borders Council.
	15F. Former employee of the Scottish Network 2 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Aberdeen network area.	Fund maintained by Aberdeen City Council.
	15G. Former employee of the Scottish Network 2 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Dundee or Perth network area.	Fund maintained by Dundee City Council.
	15H. Former employee of the Scottish Network 2	Fund maintained by

(a) 1994 c.39.

(b) 1969 c.51; the name of the body established under section 1(1) of that Act was changed from the Scottish Tourist Board to VisitScotland by section 1(1) of the Tourist Boards (Scotland) Act 2006 (asp 15).

(c) The Scottish Network 1 Tourist Board was created by S.S.I. 2004/396 (as amended by S.S.I. 2004/464), and dissolved by section 3(2) of the Tourist Boards (Scotland) Act 2006.

(d) The Scottish Network 2 Tourist Board was created by S.S.I. 2004/397 (as amended by S.S.I. 2004/465), and dissolved by section 3(2) of the Tourist Boards (Scotland) Act 2006.

Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Kirkwall network area.	Orkney Islands Council.
15I. Former employee of the Scottish Network 2 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Lerwick network area.	Fund maintained by Shetland Islands Council.
15J. Former employee of the Scottish Network 2 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Markinch network area.	Fund maintained by Fife Council.
15K. Former employee of the Scottish Network 2 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Stornoway or Strathpeffer network area.	Fund maintained by Highland Council.
15L. Former employee of the Scottish Network 2 Tourist Board who worked at the date of the transfer to VisitScotland in the VisitScotland Stirling network area.	Fund maintained by Falkirk Council.

”.

TOM McCABE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
12th February 2007

SCHEDULE

Regulation 6

NEW SCHEDULE 7 TO THE LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND) REGULATIONS 1998

“SCHEDULE 7

Regulation 133A

COUNCILLOR MEMBERS

MEMBERSHIP

ELIGIBILITY

Joining the Scheme

1. In regulation 6(6) (joining the Scheme), omit “or” at the end of sub-paragraph (a) and after sub-paragraph (b) add—

“ ; or

(c) councillors.”.

CONTRIBUTIONS

Pay

2. For regulation 12 (meaning of “pay”) substitute—

“**Meaning of “pay”**”

12.—(1) A councillor member’s pay in any year is the total of all payments of remuneration to him by the local authority under the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007(a), including any payments made in respect of a councillor’s functions as convenor or vice-convenor of a joint board.

(2) All references to “pay” in these Regulations in respect of a councillor member and his councillor membership shall be construed in accordance with paragraph (1).

(3) “Career average pay” in these Regulations shall mean an amount equal to the total of a councillor member’s pay for each year or part year of his active membership divided by the number of those years or part years.

(4) When calculating a councillor member’s career average pay, the pay for any year other than the final year shall be increased in proportion to the increase in the Retail Price Index from the last day of that year up to the last day of the month in which the councillor member’s active membership ends.

(5) “Year” means the 12 months ending with 31st March save that in respect of the year ending with 31st March 2008, it means the period from the coming into force of these Regulations until 31st March 2008.

(6) “Final year” means the year during which, or at the end of which, the councillor member’s active membership ends.

(7) “Retail Price Index” means the index of retail prices for the United Kingdom published by the Office of National Statistics.

(8) No sum may be taken into account in calculating pay unless income tax liability has been determined on it.”.

(a) S.S.I. 2007/70.

BENEFITS

Preliminary

3. For regulation 19 (calculations) substitute—

“Calculations

19.—(1) The amount of any benefit payable as a result of a councillor’s membership is calculated by multiplying his career average pay by the appropriate multiplier.

(2) The appropriate multiplier for a pension is—

$$\frac{\textit{total councillor membership}}{80}$$

(3) The appropriate multiplier for a retirement grant is—

$$\frac{3 \times \textit{total councillor membership}}{80}$$

(4) A councillor member may elect in writing to the appropriate administering authority before any benefits become payable to increase the retirement grant payable under paragraph (3) by commuting his pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered.

(5) But the total amount of the member’s retirement grant, including any sum received—

- (a) in accordance with an election under paragraph (4);
- (b) as benefits provided in the form of a lump sum in accordance with regulation 63;
or
- (c) as additional lump sum benefits in accordance with regulation 65,

shall not exceed 25% of the capital value of his accrued rights.

(6) For the purposes of this regulation, a member’s accrued rights include rights accrued in respect of any payments made by him in accordance with Chapter IV of Part III (Additional Voluntary Contributions).

(7) The capital value of a member’s accrued rights shall be calculated as shown in guidance issued by the Government Actuary.

(8) However, benefits payable—

- (a) to a pension debit member are adjusted as provided in regulation 19A; and
- (b) on or after the death of a pensioner member are calculated by multiplying the amount of his former retirement pension by the multiplier specified in the regulation that confers the benefit in question.

(9) Where a benefit crystallisation event has not occurred before the day after a member’s 65th birthday in respect of any benefit under the Scheme, that benefit shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary.

(10) Unless otherwise indicated, references to the amounts of pensions are to their annual rate.

(11) The amount of a deceased person’s former retirement pension is the amount of the pension he would have received immediately before his death, but for—

- (a) regulation 30 (other early leavers: deferred retirement benefits and elections for early payment);
- (b) regulation 49 (commutation: exceptional ill-health); or
- (c) regulation 110 (application of abatement policy in individual cases).

(12) Periods are measured in years and fractions of a year (calculated as specified in regulation 10).

(13) A pensioner member includes a person who would have been entitled to a pension but for regulation 110 (application of abatement policy in individual cases).

(14) Paragraph (13) does not stop a person to whom it applies from also counting as an active member.”.

4. Omit regulations 20 (final pay), 21 (other final pay periods) and 22 (permanent reductions in pay: certificates of protection of pension benefits).

Retirement benefits

5. In regulation 24A (retirement after 65) in paragraph (1) omit the words “with the consent of his employing authority”.

6. Omit regulation 25 (redundancy etc.).

7. In regulation 26 (ill-health), for paragraph (1) substitute–

“(1) Where a councillor member ceases to be a member of his local authority by reason of being permanently incapable of discharging efficiently the duties of that office because of ill-health or infirmity of mind or body, he is entitled to an ill-health pension and grant (but see paragraph (3)).”.

8. In regulation 27 (amounts of ill-health pension and grant)–

(a) omit paragraphs (4) and (5); and

(b) for paragraph (10) substitute–

“(10) If a councillor member is entitled under regulation 26(3) to an ill-health grant (but not a pension), the amount of the grant is calculated by multiplying the member’s career average pay by–

$$\frac{\text{total councillor membership}}{12} .$$

9. Omit paragraph (1)(b) of regulation 28 (re-employed pensioners).

10.—(1) Regulation 31(1) (re-employed and rejoining deferred members) shall only apply to a councillor member in respect of any councillor membership where both the former membership and the membership as an active member referred to in that paragraph are councillor membership in the same appropriate fund.

(2) Omit regulation 31(8).

11. Omit regulation 31A (concurrent employments).

12. In regulation 34 (requirements as to time of payment) omit paragraphs (1A) to (1E).

Death grants

13. In regulation 37 (death grants), for paragraphs (6) to (8A) substitute–

“(6) The death grant of a councillor member shall be twice his career average pay.

(7) The death grant for a councillor member who is a deferred member at the date of his death is 3 times the annual pension that would have been payable to him if he had retired at the date of his death.

(8) The death grant for a councillor member who is a pensioner member at the date of his death is an amount equal to 5 times his former retirement pension less the amount of any pension paid to him.”.

Surviving spouses' or civil partners' pensions

14. In regulation 39 (surviving spouse's or civil partner's short-term pension)–

- (a) in paragraph (4), for “final pay” substitute “career average pay”; and
- (b) in paragraph (5), omit “(but see regulation 41)”.

15. In regulation 40 (surviving spouse's or civil partner's long-term pension)–

- (a) in paragraph (5), for “the multiplier for” to the end of that paragraph, substitute–
“the long-term pension is–

$$\frac{\textit{the deceased's total membership x career average pay}}{160} \text{ ,};$$

- (b) in paragraphs (5A) and (6), omit “(but see regulation 41)”;
- (c) in paragraph (6), for “19(3A)” substitute “19(4)”.

16. Omit regulation 41 (reduction of some surviving spouses' or civil partners' pensions).

Children's pensions

17. In regulation 44(4) (children's short-term pensions), for “final pay” substitute “career average pay”.

18. In regulation 45(7) (children's long-term pensions), for “19(3A)” substitute “19(4)”.

OPTIONAL ADDITIONAL BENEFITS

Increases of membership and pensions

19. Omit regulation 51 (power of employing authority to increase total membership).

20. For regulation 54 (payments to increase total membership), substitute–

“Payments to increase pension

54.—(1) An active councillor member may elect to make additional contributions to the Scheme to increase the pension that would otherwise be payable to him in accordance with regulation 19.

(2) The sum by which the pension may be increased (as at the date that the pension becomes payable) must not exceed £5,000.

(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 as shown as appropriate in guidance issued by the Government Actuary.

(6) If a member continues paying the additional contributions until his last birthday before his NRD (or if this NRD is his birthday, that date), his pension is increased by the sum specified in the election.

(7) If a member ceases to pay the additional contributions before the date specified in paragraph (6), his pension is increased by the sum calculated in accordance with guidance issued by the Government Actuary.

(8) The additional contributions are payable from the member's next birthday after his election.”.

21. After regulation 55 (part-time employees) insert–

“Payment in respect of pre-eligibility councillor service by certain councillor members

55A.—(1) This regulation applies to a councillor member who–

- (a) is elected at the ordinary election held on 3rd May 2007; and
- (b) had previously been a councillor for one or more periods of time between 1st January 1995 and 3rd May 2007.

(2) The period of time mentioned in paragraph (1)(b) or, where the councillor member had been a councillor for more than one such period, the aggregate of those periods of time is referred to in this regulation as “pre-eligibility councillor service”.

(3) A councillor member to whom this regulation applies may, by notice in writing given to the appropriate administering authority, elect to make payment to the appropriate fund in order to become entitled to count his pre-eligibility councillor service as membership.

(4) An election under this regulation must be made within 12 months of the date of the ordinary election referred to in paragraph (1)(a).

(5) A notice under paragraph (3) shall specify–

- (a) whether payment is to be made in respect of the whole of the councillor member's pre-eligibility councillor service or, if not, the length and dates of the part of that service it is desired to count as membership;
- (b) whether payment is to be made by lump sum or by instalments; and
- (c) where payment is to be made by instalments, over what period of years the instalments are to be paid; such period not exceeding 5 years or the period between the date of the election and the date on which the councillor member attains the age of 65 years, whichever is the shorter.

(6) The payment required as a result of an election under this regulation shall be calculated by the administering authority in accordance with guidance issued by the Government Actuary.

(7) Where a notice given under paragraph (3) specifies that payment is to be made by instalments, they shall be of equal amounts and be paid at such intervals as the administering authority determines, not being intervals of more than one month.

(8) 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.

(9) If, before the completion of payment of the instalments specified in a notice given under paragraph (3), the councillor member dies or leaves the employment by reason of being permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body, the payments will be deemed to have been completed.

(10) If, before the completion of payments of the instalments specified in a notice given under paragraph (3), the councillor member leaves the employment other than as specified in paragraph (9), he may elect to pay the balance of the instalments within 3 months of ceasing employment.

(11) If a councillor member to whom paragraph (10) applies does not make an election in accordance with paragraph (10), he will become entitled to count as membership the proportion of his pre-eligibility councillor service as is specified in guidance issued by the Government Actuary.

(12) Payment of instalments specified in a notice given under paragraph (3) may be discontinued if the councillor member satisfies the administering authority that its continuance would cause financial hardship and, in such circumstances, the councillor will become entitled to count as membership the proportion of his pre-eligibility councillor service as it specified in guidance issued by the Government Actuary.”

Additional Voluntary Contributions

22. In regulation 63(6) (retirement benefits), for “19(3B)” substitute “19(5)”.

23. In regulation 65(1) (elections as to use of accumulated value of AVCs)–

(a) in paragraph (1)(c)(i) delete “or 25 (redundancy etc.)”; and

(b) in paragraph (6) for “19(3B)” substitute “19(5)”.

Shared Cost Schemes

24. Omit regulations 66 to 71 (shared cost AVC schemes (SCAVCs)).

ADMINISTRATION

Members’ contributions

25. Omit regulation 82 (discontinuance of additional contributions).

26. Omit paragraphs (4) and (5) of regulation 86 (rights to return of contributions).

Transfers

27. Omit regulations 119, 120 and 126 (bulk transfer arrangements and payments between funds and authorities).”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Pension Scheme (Scotland) Regulations 1998 (“the principal Regulations”) and the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (“the discretionary payments Regulations”).

Part 2 of and the Schedule to these Regulations make provisions to allow local authority councillors to become members of the Local Government Pension Scheme. Councillors’ pensions are to be calculated by reference to career average pay, based on remuneration paid to them by the relevant local authority under the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007. The Schedule to the Regulations modifies various provisions of the principal Regulations so that they operate in relation to a pension calculated by reference to career average pay rather than final pay.

Provision is made to allow councillors elected in May 2007 who have held office as councillors during any period between 1st January 1995 and 3rd May 2007 to elect to make additional payments. Councillors who elect to do so will be able to count that earlier period of office as membership under the principal Regulations.

Amendments are made to exclude councillors from eligibility for additional discretionary payments under the discretionary payments Regulations.

The amendments relating to councillors’ pensions have been made following consultation with the Scottish Local Authorities Remuneration Committee, amongst others.

Part 3 of these Regulations amends the principal Regulations to add VisitScotland as a Scheme employer. Schedule 5 to the principal Regulations sets out the appropriate fund for each member of the Scheme. Employees of VisitScotland will generally be in the fund administered by the City of Edinburgh Council. Regulation 11 makes provision so that employees of Network Tourist Boards who transfer to VisitScotland remain with the fund which previously administered their pension.

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