
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 448

PUBLIC SERVICE PENSIONS

**The Local Government Pension Scheme
(Scotland) Amendment (No. 2) Regulations 2015**

Made - - - - 17th December 2015
*Laid before the Scottish
Parliament* - - - - 21st December 2015
Coming into force - - 2nd February 2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 7 and 12 of, and Schedule 3 to, the Superannuation Act 1972⁽¹⁾ and section 1 of the Public Service Pensions Act 2013⁽²⁾ and all other powers enabling them to do so.

In accordance with section 7(5) of the Superannuation Act 1972, the Scottish Ministers consulted with such associations of local authorities as appeared to them to be concerned, such local authorities with whom consultation appeared to them to be desirable, and such representatives of other persons likely to be affected by these Regulations as appeared to them to be appropriate.

In accordance with section 21 of the Public Service Pensions Act 2013, the Scottish Ministers consulted the representatives of such persons as appeared to them likely to be affected by these Regulations.

PART 1

Preliminary Provisions

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) Amendment (No. 2) Regulations 2015 and come into force on 2nd February 2016.

(2) These Regulations have effect from 1st April 2015 other than for the purposes of—

- (a) regulations 5(b), 6(a), 7(a), 27(b) and 29(a), which have effect from 6th April 2015; and
- (b) regulations 41 and 43 to 45 which have effect from 16th December 2014.

(1) 1972 c.11. Section 7 was amended by paragraph 8 of Schedule 8 to the Public Service Pensions Act 2013 (c.25). Section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7).

(2) 2013 c.25.

Interpretation

2. In these Regulations—

“the Main Regulations” means the Local Government Pension Scheme (Scotland) Regulations 2014(3);

“the Transitional and Savings Regulations 2014” means the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014(4);

“the 1998 Regulations” means the Local Government Pension Scheme (Scotland) Regulations 1998(5);

“the 2008 Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008(6);

“the 2008 Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008(7); and

“the 2015 Regulations” means the Local Government Pension Scheme (Scotland) Amendment Regulations 2015(8).

PART 2

Amendment of the Main Regulations

Amendment of the Main Regulations

3. The Main Regulations are amended in accordance with regulations 4 to 31.

Amendment of regulation 9

4. In regulation 9—

(a) in paragraph (4), for “employing authority” and “authority” substitute “Scheme employer”; and

(b) in paragraph (10), for “employing authority” substitute “Scheme employer”.

Amendment of regulation 15

5. In regulation 15—

(a) in paragraph (3)(a)(ii), after “forces” insert “service”;

(b) in paragraph (4)(b), omit “, additional paternity leave”; and

(c) in paragraph (4), for “to a shared cost AVC” substitute “under an SCAVC”.

Amendment of regulation 16

6. In regulation 16—

(a) in paragraph (17)(a), omit “, additional paternity leave”; and

(b) in paragraph (18)—

(3) S.S.I. 2014/164 as amended by S.S.I. 2015/87.

(4) S.S.I. 2014/233 as amended by S.S.I. 2015/87.

(5) S.I. 1998/366. These Regulations were revoked by S.S.I. 2008/229 and S.S.I. 2014/233.

(6) S.S.I. 2008/230. These Regulations were revoked by S.S.I. 2014/233.

(7) S.S.I. 2008/229. These Regulations were revoked by S.S.I. 2014/233.

(8) S.S.I. 2015/87.

- (i) for “regulations 11(1), (3), (4)(b) or (4) (c)” substitute “regulation 11(4)(b) or (c)”; and
- (ii) for “that amount” substitute “the amount”.

Amendment of regulation 17

- 7. In regulation 17—
 - (a) omit paragraph (10); and
 - (b) in paragraph (11A), for “additional voluntary contributions” (in both places) substitute “AVC”.

Amendment of regulation 21

- 8. In regulation 21(7)—
 - (a) after “partners of active members”, for “,” substitute “and”; and
 - (b) after “the three years”, insert “(or the period of membership in that employment, if less than three years)”.

Amendment of regulation 22

- 9. In regulation 22—
 - (a) for paragraph (4)(g), substitute—
 - “(g) a payment under regulation 33 has been made;”;
 - (b) in paragraph (4)(h), for “Fund” substitute “fund”;
 - (c) in paragraph (6A)—
 - (i) after “unless” insert “within”; and
 - (ii) in sub-paragraph (a), omit “within”;
 - (d) in paragraph (6B)—
 - (i) after “unless” insert “within”; and
 - (ii) in sub-paragraph (a), omit “within”; and
 - (e) after paragraph (7), insert—
 - “(8) The option under paragraphs (6A) and (6B) to elect to retain the deferred member’s pension account does not apply to a member who is the subject of a transfer—
 - (a) to which the TUPE Regulations apply; or
 - (b) which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.”.

Amendment of regulation 29

- 10. In regulation 29—
 - (a) in paragraph (1), for “employer” substitute “employee”; and
 - (b) in paragraph (13), for “employing authority” (in each place) substitute “Scheme employer”.

Amendment of regulation 31

11. In regulation 31(9), for “of the determination that the member is permanently incapable” substitute “the member makes a request”.

Amendment of regulation 37

12. In regulation 37—

- (a) in paragraph (1), for “(5) to (7)” substitute “(5) and (6)”;
- (b) in paragraph (2), for “(5) to (7)” substitute “(5) and (6)”;
- (c) in paragraph (3), for “from which benefits are awarded” substitute “the member made a request under regulation 36”.

Amendment of regulation 39

13. After regulation 39(4), insert—

“(4A) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(a)(iii) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
 - (i) illness or injury;
 - (ii) child related leave; or
 - (iii) reserve forces special leave.”.

Amendment of regulation 40

14. After regulation 40(10), insert—

“(10A) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraphs (4)(a)(iii), (5)(a)(iii), (9)(a)(iii) and (10)(a)(iii) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
 - (i) illness or injury;
 - (ii) child related leave; or
 - (iii) reserve forces special leave.”.

Amendment of regulation 42

15. After regulation 42(4), insert—

“(4A) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(c) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
 - (i) illness or injury;
 - (ii) child related leave; or
 - (iii) reserve forces special leave.”.

Amendment of regulation 43

16. After regulation 43(10), insert—

“(10A) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraphs (4)(c), (5)(c), (9)(c) and (10)(c) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
 - (i) illness or injury;
 - (ii) child related leave; or
 - (iii) reserve forces special leave.”.

Amendment of regulation 45

17. After regulation 45(4), insert—

“(4A) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraph (4)(d) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or
- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
 - (i) illness or injury;
 - (ii) child related leave; or
 - (iii) reserve forces special leave.”.

Amendment of regulation 46

18. After regulation 46(10), insert—

“(10A) Additional pension purchased under regulation 16 is not excluded for the purposes of paragraphs (4)(e), (5)(e), (9)(e) and (10)(e) where the member has elected to purchase that additional pension to cover the amount of pension which would otherwise have accrued but for—

- (a) an absence from work with no pensionable pay in consequence of a trade dispute; or

- (b) an absence from work with permission with no pensionable pay, otherwise than because of—
 - (i) illness or injury;
 - (ii) child related leave; or
 - (iii) reserve forces special leave.”.

Amendment of regulation 48

19. For regulation 48(1), substitute—

“(1) Except to the extent that actuarial guidance issued by the Scottish Ministers provides otherwise, no person is entitled under any provision of these Regulations to receive benefits the capital value of which exceeds that person’s lifetime allowance and any benefits to which a person is entitled are restricted accordingly.”.

Amendment of regulation 58

20. In regulation 58(1)(aa), for “29(5)” substitute “29(13)”.

Amendment of regulation 62

21. In regulation 62—

(a) for paragraph (1) substitute—

“(1) Subject to paragraph (2A), if a person—

- (a) ceases to be a Scheme employer (including ceasing to be an admission body participating in the Scheme); or
- (b) is or was a Scheme employer but, irrespective of whether that employer employs active members contributing to one or more other funds, no longer has an active member contributing towards a fund (“a relevant fund”) which has liabilities in respect of benefits in respect of current and former employees of that employer,

that person becomes “an exiting employer” in relation to the relevant fund for the purposes of this regulation and is liable to pay an exit payment.”; and

(b) after paragraph (2) insert—

“(2A) An administering authority may by written notice (“suspension notice”) to an exiting employer suspend that employer’s liability to pay an exit payment for a period of up to 3 years starting from the date when that employer would otherwise become an exiting employer, if the condition in paragraph (2B) is met.

(2B) The condition mentioned in paragraph (2A) is that in the reasonable opinion of the administering authority the employer is likely to have one or more active members contributing to the fund within the period specified in the suspension notice.

(2C) If an administering authority serves a suspension notice on an employer, unless that suspension notice is withdrawn, paragraph (2) does not apply in respect of that employer, but the employer must continue to make such contributions towards the liabilities of the fund in respect of benefits in respect of the employer’s current and former employees as the administering authority reasonably requires.”.

Amendment of regulation 72

22. In regulation 72(6)(b), for “employing authority” substitute “Scheme employer”.

Amendment of regulation 74

23. In regulation 74(5), for “employing authority” substitute “Scheme employer”.

Amendment of regulation 77

24. In regulation 77—
- (a) in paragraph (2), for “employing authority” substitute “Scheme employer”; and
 - (b) in paragraph (8), for “listed” substitute “sisted”.

Amendment of regulation 83

25. In regulation 83(1), for “must” substitute “may”.

Amendment of regulation 93

26. In regulation 93—
- (a) in paragraph (4A), for “employing authority” substitute “Scheme employer”;
 - (b) for paragraph 7(a), substitute—
 - “(a) to which the TUPE Regulations apply;”;and
 - (c) in paragraph (9), before “Scottish Ministers” insert “the”.

Amendment of regulation 94

27. In regulation 94—
- (a) in paragraph (1), for “Chapter 4 or 5 of Part 4” substitute “Chapter 1 or 2 of Part 4ZA”; and
 - (b) omit paragraph (4).

Amendment of regulation 102

28. In regulation 102(3)(b), for “a returning officer” substitute “an acting returning officer”.

Amendment of Schedule 1

29. In Schedule 1—
- (a) in the definition of “child-related leave”, omit paragraph (e);
 - (b) in the definition of “eligible child”, in paragraph (b), omit sub-paragraphs (iii) and (iv) of Condition C;
 - (c) after the definition of “eligible child”, insert—
 - ““employment” for the purposes of these Regulations only shall include holding an office, with necessary modifications to these Regulations, if any, in respect of a person holding an office;
 - “enactment” has the same meaning as in section 126(1) of the Scotland Act 1998(9);”;
 - (d) in the definition of “pensions board”, for ““pensions board”” substitute ““pension board””; and
 - (e) at the end, insert—

(9) 1998 c.46.

““the Transitional and Savings Regulations 2014” means the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014⁽¹⁰⁾;

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006⁽¹¹⁾.”

Amendment of Schedule 4

30. In Schedule 4, for “employing authority” (in each place) substitute “Scheme employer”.

Amendment of Schedule 5

31. In Schedule 5—

- (a) omit paragraph 6A;
- (b) omit paragraph 6B;
- (c) after paragraph 6B, insert—

“**6C.** After regulation 22(8) insert—

“(9) In the case of a deferred member who has been a councillor member, an election under paragraph 6A or 6B 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.””

- (d) omit paragraph 8; and
- (e) for paragraph 9(a), substitute—

“(a) for paragraph (1) substitute—

“(1) Where a councillor member ceases to be a member of the member’s local authority on the grounds of ill-health or infirmity of mind or body before reaching normal pension age, the member is entitled to and must take early payment of a retirement pension if that member satisfies the condition in paragraph (3) of this regulation.””

PART 3

Amendment of the Transitional and Savings Regulations 2014

Amendment of the Transitional and Savings Regulations 2014

32. The Transitional and Savings Regulations 2014 are amended in accordance with regulations 33 to 38.

Amendment of regulation 1

33. In regulation 1(4), after the definition of “the Earlier Regulations” insert—

““Public Sector Transfer Club” means the group of occupational pension schemes in the public sector which operates an agreed reciprocal basis for transfer payments;”.

⁽¹⁰⁾ S.S.I. 2014/233.

⁽¹¹⁾ S.I. 2006/246.

Amendment of regulation 3

34. In regulation 3(1)(a), after “preserved” insert “, with the exception that a member who ceased active membership before 1st December 2006 and who aggregates that earlier membership, not having a continuous break in active membership of public service pension schemes of more than five years, shall have a normal pension age of 65 in relation to that earlier membership”.

Amendment of regulation 10

35. After regulation 10(10) insert—

“(11) In the case of a deferred member who has been a councillor member, the member 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.”.

Amendment of regulation 17

36. In regulation 17—

(a) in paragraph (2)—

(i) for “paragraphs (9) to (13)” substitute “paragraphs (9) to (15)”; and

(ii) after “member’s” insert “total”;

(b) in paragraph (4), for “paragraphs (9) to (13)” substitute “paragraphs (9) to (15)”; and

(c) after paragraph (13), insert—

“(14) Where—

(a) a deceased Scheme member was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004⁽¹²⁾;

(b) at the time of the member’s death, she was married to a woman and that marriage subsisted before the time when the certificate was issued; and

(c) the marriage took place after the member’s active membership ceased,

the Scheme member’s female survivor is to be treated for the purpose of these Regulations as if the certificate had not been issued.

(15) Where—

(a) a deceased Scheme member was a man by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004;

(b) at the time of the member’s death, he was married to a man and that marriage subsisted before the time when the certificate was issued; and

(c) the marriage took place after the member’s active membership ceased,

the Scheme member’s male survivor is to be treated for the purpose of these Regulations as if the certificate had not been issued.”.

Insertion of new regulation 25A

37. After regulation 25, insert—

“Employer payments for historic liabilities

25A.—(1) This regulation applies to an employer who—

(12) 2004 c.7.

- (a) is or was a Scheme employer or admission body in the 2015 Scheme or its equivalent under any of the Earlier Schemes;
- (b) has outstanding liabilities to a fund (“the relevant fund”) in relation to any person entitled to benefits under the 2015 Scheme or any of the Earlier Schemes;
- (c) irrespective of whether that employer employs active members contributing to one or more other funds, does not employ any active members contributing to the relevant fund; and
- (d) has not paid into the relevant fund an exit payment under regulation 62 of the 2014 Regulations (special circumstances where revised actuarial valuations and certificates must be obtained) or an equivalent payment under any of the Earlier Regulations.

(2) Where this regulation applies, an administering authority may require the employer to pay such payments as an actuary certifies must be paid to meet the outstanding liabilities to the relevant fund.

(3) Payments under paragraph (2) must be paid over such period of time as the administering authority considers reasonable.

(4) When an employer has paid the payments referred to in paragraph (2), no further payments are due from that employer in respect of those liabilities to the relevant fund relating to the benefits in respect of any current or former employees of that employer.”

Amendment of regulation 26

38. In regulation 26(1), for “Certificate of Protection” substitute “certificate of protection”.

PART 4

Amendment of the 1998 Regulations

Amendment of the 1998 Regulations

39. The 1998 Regulations (as they continue to have effect in accordance with regulation 3(1) of the Transitional and Savings Regulations 2014) are amended in accordance with regulations 40 to 42.

Amendment of regulation 30

40. In regulation 30(8) for “employing authority or former employing authority” substitute “administering authority”.

Insertion of new regulations 41A to 41C

41. After regulation 41, insert—

“Marriage of a same sex couple

41A.—(1) Subject to regulation 41C, in this Scheme—

- (a) a reference to civil partnership is to be read as including a reference to marriage of a same sex couple;
- (b) a reference to civil partners is to be read as including a reference to a married same sex couple; and

(c) a reference to a person who is in a civil partnership is to be read as including a reference to a person who is married to a person of the same sex.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, or a reference to a person whose civil partnership has ended) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

Living together as a same sex couple

41B.—(1) In this Scheme—

(a) a reference to persons who are not in a civil partnership but are living together as civil partners is to be read as including a reference to a same sex couple who are not married but are living together as a married couple; and

(b) a reference to a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

Continuation of marriage where Scheme member acquires new legal gender

41C.—(1) Where—

(a) a deceased Scheme member was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004(13); and

(b) at the time of the member's death, she was married to a woman and that marriage subsisted before the time when the certificate was issued,

the Scheme member's widow is to be treated for the purpose of these Regulations as if the certificate had not been issued.

(2) Where—

(a) a deceased Scheme member was a man by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and

(b) at the time of the member's death, he was married to a man and that marriage subsisted before the time when the certificate was issued,

the Scheme member's widower is to be treated for the purpose of these Regulations as if the certificate had not been issued."

Amendment of regulation 96

42. In regulation 96(9), for "Scheme employer" substitute "Scheme employer, in the case of regulation 26, or the administering authority in the case of regulation 30,".

PART 5

Amendment of the 2008 Regulations

Amendment of the 2008 Regulations

43. The 2008 Regulations (as they continue to have effect in accordance with regulation 3(1) of the Transitional and Savings Regulations 2014) are amended in accordance with regulation 44.

Insertion of new regulations 24A to 24C

44. After regulation 24, insert—

“Marriage of a same sex couple

24A.—(1) Subject to regulation 24C, in this Scheme—

- (a) a reference to civil partnership is to be read as including a reference to marriage of a same sex couple;
- (b) a reference to civil partners is to be read as including a reference to a married same sex couple; and
- (c) a reference to a person who is in a civil partnership is to be read as including a reference to a person who is married to a person of the same sex.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, or a reference to a person whose civil partnership has ended) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

Living together as a same sex couple

24B.—(1) In this Scheme—

- (a) a reference to persons who are not in a civil partnership but are living together as civil partners is to be read as including a reference to a same sex couple who are not married but are living together as a married couple; and
- (b) a reference to a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

Continuation of marriage where Scheme member acquires new legal gender

24C.—(1) Where—

- (a) a deceased Scheme member was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004⁽¹⁴⁾; and

(14) 2004 c.7.

(b) at the time of the member’s death, she was married to a woman and that marriage subsisted before the time when the certificate was issued,
the Scheme member’s widow is to be treated for the purpose of these Regulations as if the certificate had not been issued.

(2) Where—

(a) a deceased Scheme member was a man by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and

(b) at the time of the member’s death, he was married to a man and that marriage subsisted before the time when the certificate was issued,

the Scheme member’s widower is to be treated for the purpose of these Regulations as if the certificate had not been issued.”.

PART 6

Amendment of the 2008 Transitional Regulations

Amendment of regulation 7 of the 2008 Transitional Regulations

45. In regulation 7(3) of the 2008 Transitional Regulations (as it continues to have effect in accordance with regulation 3(1) of the Transitional and Savings Regulations 2014), at the end insert “, and for these purposes a person who enters into a same sex marriage is to be treated in the same way as a person who enters into a civil partnership”.

PART 7

Amendment of the 2015 Regulations

Amendment of the 2015 Regulations

46. The 2015 Regulations are amended in accordance with regulations 47 to 49.

Amendment of regulation 21

47. In regulation 21, omit paragraph (b).

Amendment of regulation 44

48. In regulation 44, for “45” substitute “102”.

Amendment of regulation 45

49. In regulation 45(a)(ii), for “(c)” substitute “(f)”.

St Andrew’s House,
Edinburgh
17th December 2015

JOHN SWINNEY
A member of the Scottish Government

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments to “the Main Regulations” which constitute the Local Government Pension Scheme in Scotland (namely the Local Government Pension Scheme (Scotland) Regulations 2014) and to the transitional and savings provisions in relation to that scheme contained in the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 (“the Transitional and Savings Regulations 2014”). They also make amendments to the Local Government Pension Scheme (Scotland) Regulations 1998 and the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 to allow for survivor benefits to be payable in relation to survivors of same sex marriages under old schemes which are carried over into the 2015 Scheme. A consequential change is also made to the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008.

Regulation 37 introduces a new regulation 25A into the Transitional and Savings Regulations 2014 to cover employer payments for historic liabilities. Similar exit and cessation type liabilities of employers are also dealt with by way of amendments to regulation 62 of the Main Regulations made by regulation 21 of these Regulations.