SCOTTISH STATUTORY INSTRUMENTS

2018 No. 141

The Local Government Pension Scheme (Scotland) Regulations 2018

PART 2

Administration

Forfeiture

Forfeiture of pension rights after conviction for employment-related offences

86.—(1) If a member is convicted of a relevant offence, the former Scheme employer may apply to the Scottish Ministers who may issue a forfeiture certificate.

(2) A relevant offence is an offence committed in connection with an employment in which the person convicted is a member.

(3) Where a former Scheme employer applies for a forfeiture certificate, it must at the same time send the convicted person and the appropriate administering authority a copy of the application.

(4) Where a forfeiture certificate is issued, the member's former Scheme employer may direct that any of the member's rights (including membership and survivor benefits) under these Regulations are forfeited, and in making the determination the Scheme employer must take into account any recommendations issued by Scottish Ministers when issuing a forfeiture certificate under paragraph (1).

(5) The former Scheme employer must serve a notice of its decision to make a direction on the member.

(6) A forfeiture certificate is a certificate that the offence—

(a) was gravely injurious to the State; or

(b) is liable to lead to a serious loss of confidence in the public service.

(7) If the former Scheme employer incurred loss as a direct consequence of the relevant offence, it may only give a direction under paragraph (4) if—

(a) it is unable to recover its loss under regulation 87 (recovery or retention where former member has misconduct obligation); or

(b) it is unable to recover its loss by any other means,

except after an unreasonable time or at disproportionate cost.

(8) A direction under paragraph (4) may only be given if an application for a forfeiture certificate has been made by the former Scheme employer before the expiry of the period of 3 months beginning with the date of conviction.

Recovery or retention where former member has misconduct obligation

87.—(1) This regulation applies where a person—

(a) has left an employment in which that person was or had at some time been a member of the Scheme, in consequence of grave misconduct or a criminal, negligent or fraudulent act or omission in connection with that employment;

(b) has incurred some monetary obligation, arising out of that misconduct, act or omission, to the body that was the Scheme employer in that employment; and

(c) is entitled to benefits under these Regulations, which for the purposes of this regulation includes entitlement to a refund of contributions.

(2) The former Scheme employer may recover or retain out of the appropriate fund the amount of the monetary obligation.

(3) The former Scheme employer must give the former employee—

(a) not less than 3 months' notice of the amount to be recovered or retained under paragraph (2); and

(b) a statement showing the amount recovered or retained, how it is calculated and the effect on the person's benefits or prospective benefits.

(4) If there is any dispute over the amount of the monetary obligation specified in paragraph (1)(b), the former Scheme employer may not recover or retain any amount under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbiter.

Adjustment of accounts following forfeiture etc

88.—(1) Where a direction for forfeiture is issued under regulation 86 (forfeiture of pension rights after conviction for employment-related offences) the appropriate administering authority must transfer out of the member's pension account the benefits which are forfeited and pay them to the relevant Scheme employer.

(2) Where an amount is recovered or retained under regulation 87 (recovery or retention where former member has misconduct obligation), the appropriate administering authority must transfer out of the member's pension account the amount recovered or retained and pay it to the relevant Scheme employer.

(3) If the effect of a forfeiture direction, or of the recovery or retention of an amount, is to extinguish the member's entitlement to benefits, the administering authority must close the member's pension account.

Protection of guaranteed minimum pension rights

89.—(1) The power to direct forfeiture of benefits under regulation 86 (forfeiture of pension rights after conviction for employment-related offences) or to recover or retain amounts under regulation 87 (recovery or retention where former member has misconduct obligation) may not be exercised so as to deprive a person of the guaranteed minimum pension or any widow's, widower's or surviving civil partner's guaranteed minimum pension.

(2) But such a power may be exercised if the person is convicted—

(a) of the offence of treason; or

(b) of one or more offences under the Official Secrets Acts 1911 to 1989(**1**) for which the person has been sentenced on the same occasion—

(i) to a term of imprisonment of at least 10 years; or

(ii) to 2 or more consecutive terms amounting in the aggregate to at least 10 years.

(**1**) Section 16(2) of the Official Secrets Act 1989 (c.6) provides that that Act and the Official Secrets Acts 1911 to 1939 may be cited together as the Official Secrets Acts 1911 to 1989.