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STATUTORY INSTRUMENTS

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**1998 No. 364**

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

*Preliminary provisions*

**Citation and commencement**

1. These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998 and shall come into force on 1st April 1998.

**Interpretation**

2.—(1) In these Regulations—

“the 1998 provisions” means the 1998 Regulations, these Regulations and the Investment Regulations;

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

“the commencement date” means 1st April 1998;

“the common provisions” means regulations 48 and 49 and Part IV of the 1998 Regulations and the Investment Regulations;

“the Investment Regulations” means regulations P5, P6, P12(4) and P15(3) of the 1987 Regulations;

“the old provisions” means the 1987 Regulations, the additional regulations specified in Schedule 1 (so far as they relate to the Scheme) and any other regulations relating to the Scheme and made under section 7 or 12 of the Superannuation Act 1972, so far as they continue in effect;

“the replaced provisions” means regulations C1, C12, E11A, E21, E33, E35, M1, R1, R2, R3, R5 and Parts J, N and P of and Schedules 16, 19 and 20 to the 1987 Regulations (but not including the Investment Regulations);

“the saved provisions” means the old provisions (other than the replaced provisions), in so far as they remain capable of having effect and subject to the provisions of these Regulations and, in particular, the amendments specified in Schedule 3.

(2) For these Regulations, a member must be treated as remaining an active member throughout—

(a) a period of maternity absence (as defined in regulation C3A(6) of the 1987 Regulations);

(b) any period which is treated as membership by virtue of regulation D1(2)(aa) of those Regulations (absence for illness or injury); and

(c) any period as respects which a notice under regulation C4(3) of those Regulations (trade disputes absence) is served,

whether or not he or she otherwise would be so treated.

(3) Paragraph (2) shall not apply as respects any part of such a period which falls after a time when the member ceases to be an active member by virtue of regulation B4A of the 1987 Regulations (opting out).

(4) Subject to the previous provisions of this regulation, expressions used in these Regulations and in the 1998 Regulations have the same meaning as in those Regulations (unless the context indicates otherwise).

#### *Application of 1998 Regulations and old provisions*

#### **Cessation of old provisions for active members**

**3.—**(1) Any person who is an active member of the Scheme immediately before the commencement date shall continue to be an active member on that date and, subject to the provisions of these Regulations, the old provisions (other than the Investment Regulations) shall cease to apply to him.

(2) Paragraph (1) shall not apply to any person who ceases to be an active member on March 31st 1998—

- (a) by virtue of regulation B4A of the 1987 Regulations (opting out); or
- (b) by virtue of leaving local government employment on that date and becoming a pensioner member on the commencement date,

and these Regulations shall apply to any such person as if he had already so ceased immediately before the commencement date.

(3) If any person has notified his employer under regulation B4A(1) of the 1987 Regulations before the commencement date that he does not wish to be an active member, but would not (apart from this paragraph) have ceased to be an active member immediately before the commencement date—

- (a) paragraph (1) shall not apply to him;
- (b) he shall cease to be such a member on March 31st 1998; and
- (c) these Regulations shall apply to him as if he had already so ceased immediately before the commencement date.

(4) Where (apart from these Regulations) a person away on relevant reserve forces service would be treated under the 1987 Regulations as an active member on the commencement date, paragraph (1) shall apply to him, unless as a result of a cancelling notice his relevant reserve forces services on and after the commencement date is not to be treated as such service.

(5) Where such a notice is served, these Regulations shall apply to such a person as if he had already ceased to be an active member immediately before the commencement date.

#### **Deferred members and pensioners: general**

**4.—**(1) Except where these Regulations provide otherwise, in relation to the persons specified in paragraph (2)—

- (a) the saved provisions shall continue to apply;
- (b) the common provisions shall apply; and
- (c) Part II (except regulations 48 and 49) and Parts III and V of the 1998 Regulations shall not apply (except in so far as they affect the common provisions).

(2) Those persons are—

- (a) any person who immediately before the commencement date was a deferred member or a pensioner member and does not on or after that date become an active member;
- (b) any person who is or may become entitled to any benefit under the Scheme in respect of such a person;
- (c) any other person whose entitlement to the payment of any pension or other benefit has arisen before that date or who may become so entitled by virtue of the death of any person who has died before that date.
- (d) any person who becomes a deferred member after the commencement date by virtue of an election made under regulation E2A(1) of the 1987 Regulations.

### **Re-employment of members**

5. Schedule 2 shall have effect for the purpose of making provision concerning cases where members are re-employed and regulations 3(1) and 4 are subject to that Schedule.

#### *Counting old membership of existing members under 1998 Regulations*

### **Entitlement of active members to count old membership**

6. Any person who continues as an active member of the Scheme on the commencement date by virtue of regulation 3 may count for regulation 8(1)(d) of the 1998 Regulations the same length of membership as the total period he was entitled to count under the old provisions immediately before that date (but see regulations 8 to 13 and Schedule 2).

### **Entitlement of re-employed members to count old membership**

7.—(1) Any member to whom regulation 3(1) does not apply who becomes an active member again on or after the commencement date may count for regulation 8(1)(d) of the 1998 Regulations the same length of membership as he would have been entitled to count for that regulation if regulation 6 had applied to him (but see Schedule 2).

(2) Where paragraph (1) applies to a female member, regulation 9 of these Regulations applies as if she had been an active member immediately before and on the commencement date.

(3) However, where paragraph (2) applies the resolution under regulation 9(2) of these Regulations must be passed as soon as is practicable after the member becomes an active member again.

(4) Where paragraph (1) applies to a member who is entitled to count a period of membership under regulation D1(2)(a) of the 1987 Regulations by virtue of regulation 11(5)(c) of these Regulations, for paragraph (1) the member shall be deemed to have been entitled to count that period immediately before the commencement date.

### **Membership before 1st April 1972**

8.—(1) If immediately before the commencement date a member who was then a married member—

- (a) was entitled to count a period of membership before 1st April 1972; and
- (b) had not made a relevant election as respects that period or had ceased to make payments under it,

for regulation 6 that period of membership or, as the case may be, the unpaid part of it must be reduced to 89 per cent. of its length (but see regulation 10).

(2) Paragraph (1) applies to a female member only if she duly elected under regulation E12(1)(b) of the 1987 Regulations (election by wife of dependent and permanently incapacitated husband).

(3) A relevant election is an election wholly or partly in respect of membership before 1st April 1972, made under regulation C8 of the 1987 Regulations (payments to avoid reduction of retiring allowance and death gratuity).

(4) Where a member to whom paragraph (1) would have applied if he had been married immediately before the commencement date marries on or after that date while he is an active member and before he becomes entitled to benefits under the Scheme, paragraph (1) shall apply to him as if he had been married immediately before that date.

(5) Despite anything in these Regulations, a relevant election under which payments were being made immediately before the commencement date shall continue to have effect on and after that date to the extent that it relates to a period of membership before 1st April 1972 (subject to the continuation of payments under it at the same rate as they were made before the commencement date) whether or not immediately before the commencement date the election also related to a later period.

(6) However, if a member to whom paragraph (1) would have applied apart from his continuing to make payments under a relevant election until the commencement date (“a continuing member”), fails after that date to complete the payments due under that election in respect of membership before 1st April 1972 (otherwise than by virtue of his death or his becoming entitled to a retirement pension under regulation 26 of the 1998 Regulations), paragraph (1) shall apply to him as if he had so ceased before the commencement date.

(7) If a continuing member—

- (a) completes the payments due under the election in respect of that membership; or
- (b) fails to complete them by virtue of his death or his becoming entitled to a retirement pension under regulation 26 of the 1998 Regulations,

for regulation 8(1)(d) of those Regulations he may count the full period of membership in relation to which he made the election.

(8) For paragraph (1) the unpaid part of the period is the part of it in respect of which payments (including payments by instalments of a lump sum) have not been made.

(9) Where paragraph (1) applies by virtue of paragraph (6) any payments made on or after the commencement date must be taken into account for paragraph (8).

### **Women with membership before 6th April 1988**

9.—(1) Any election or notice made or given (or having effect as if made or given) by a female member under regulation C8, C8A or E6(6) and (7) of the 1987 Regulations shall, in so far as it relates to membership after 31st March 1972, cease to have effect.

(2) Where an election made or a notice given by a member to whom regulation 3(1) applies ceases to have effect under paragraph (1), her employing authority must resolve that for regulation 8(1)(d) of the 1998 Regulations she may count the period in respect of which the election was made or the notice given as membership after 5th April 1988.

(3) Despite anything in these Regulations, an active member who was eligible immediately before the commencement date to make an election under regulation C8 or C8A of the 1987 Regulations or to give notice under regulation E6(6) of those Regulations as respects membership after 31st March 1972 may, with the agreement of her employing authority, make such an election or give such notice on or after the commencement date.

(4) An election made or a notice given by virtue of paragraph (3) has effect for the purposes of this regulation as if it had been made or given immediately before the commencement date.

(5) A resolution under paragraph (2) must be passed—

- (a) in a case where it is made on the cessation of the effect of an election made or a notice given by virtue of paragraph (3), before the expiry of the period of six months beginning with the day the employing authority agree to the making of the election or giving of notice); and
- (b) otherwise, before 1st November 1998.

#### **Certain members with membership before 16th May 1974**

**10.**—(1) Regulation 6 does not apply to any person to whom regulation E19 of the 1974 Regulations applied, but who did not make an election under that regulation before the commencement date.

(2) If such a person continues as an active member of the Scheme by virtue of regulation 3, the period he may count for regulation 8(1)(d) of the 1998 Regulations is such period as his appropriate administering authority determine to be appropriate.

(3) A period is appropriate only if the rights in respect of that period under the 1998 Regulations will be at least equal in value to those which cease to apply in respect of the member as a result of the old provisions ceasing to apply to him.

(4) If the appropriate administering authority think fit, they must obtain the advice of an actuary appointed by them before making a determination under paragraph (2) and a statement as to the actuarial basis of that advice.

#### **Rights under old provisions affecting membership periods (extra payments, absences etc.)**

**11.**—(1) Any notice given or having effect as if given or deemed to have been given under—

- (a) regulation C3(3) or (4) of the 1987 Regulations (payments in respect of long periods away from work);
- (b) regulation C3A(3) of those Regulations (payments in respect of maternity absence);
- (c) regulation C4(3) of those Regulations (payments in respect of absence owing to trade dispute);
- (d) regulation C6 of those Regulations (payments to increase reckonable service),

by a member to whom regulation 3(1) applies shall cease to have effect (but see regulation 14).

(2) Where a member to whom paragraph (1) applies has made any payment under regulation C3(3) or, as the case may be, regulation C3A, C4(3) or C6 of the 1987 Regulations in pursuance of the notice, the member's appropriate administering authority must calculate the period as respects which payment has been made.

(3) That authority must notify the member of that period as soon as practicable after the commencement date.

(4) The period the member may count for regulation 8(1)(d) of the 1998 Regulations includes the period calculated under paragraph (2).

(5) Nothing in these Regulations affects—

- (a) any right of any person who has ceased to be employed before the commencement date to give a notice under regulation C3(3) or C3A(3) of the 1987 Regulations not later than 30 days after he ceased to be employed;
- (b) any right of any person who has ceased to be employed before the commencement date (or his executors) to give a notice under paragraph (3) of regulation C4 of those Regulations within the period mentioned in paragraph (5) of that regulation; or
- (c) if such a person as is specified in paragraph (a) or (b) makes a payment in pursuance of the notice, his right to count the period as respects which the payment is made under regulation D1(2)(a) of those Regulations.

(6) In the case of a notice served under regulation C4(3) of those Regulations where the member has died, references in this regulation to the member shall be taken where appropriate as references to the member's executors.

### **Rights under regulation C9 of the 1987 Regulations: counting of membership**

**12.—**(1) Where any member to whom regulation 3(1) applies has any rights to make any payments which remain payable immediately before the commencement date by virtue of regulation C9(2) of the 1987 Regulations—

- (a) those rights shall cease (but see regulation 15);
- (b) the member's appropriate administering authority must calculate the period as respects which payment has been made and notify the member of that period as soon as practicable after the commencement date; and
- (c) the period the member may count for regulation 8(1)(d) of the 1998 Regulations includes the period so calculated.

(2) The period mentioned in paragraph (1)(c) is such period as his appropriate administering authority determine to be appropriate.

(3) A period is appropriate only if the rights in respect of that period under the 1998 Regulations will be at least equal in value to the member's rights in respect of the payments he has made under the old provisions.

(4) Where the appropriate administering authority think fit, they must obtain the advice of an actuary appointed by them before making a determination under paragraph (2) and a statement as to the actuarial basis of that advice.

### *Augmentation*

### **Duty of employing authority to increase total membership of members with membership before the commencement date**

**13.—**(1) Where a relevant event occurs—

- (a) in relation to a member who is entitled to count membership by virtue of regulation 6 or 7; or
- (b) in relation to a member to whom paragraph 6(6) of Schedule 2 applies as respects a period of membership,

the relevant authority must determine whether his rights under the Scheme in respect of that membership are at least equal in value to the rights to which he was entitled immediately before the commencement date ("his 1987 rights").

(2) If the relevant authority determine that a member's 1987 rights were of a greater value than his rights under the Scheme in respect of the membership mentioned in paragraph (1), they must resolve to increase the member's total membership for the 1998 Regulations by an additional period so that his rights under the Scheme in respect of the membership mentioned in paragraph (1) are at least equal in value to his 1987 rights.

(3) However, if that additional period would exceed the period which would be the maximum addition under Schedule 4 to the 1998 Regulations if the resolution were made under regulation 52 of those Regulations—

- (a) it must be reduced to the amount of the maximum addition; and
- (b) the relevant authority must resolve that the appropriate multiplier for one or both of the purposes mentioned in regulation 19(2) and (3) of those Regulations (calculations of

pensions and retirement grants) must be increased accordingly so that (taking the effects of the reduced additional period and the increase in any such multiplier together) his rights under the Scheme in respect of the membership mentioned in paragraph (1) are at least equal in value to his 1987 rights.

(4) Before—

- (a) making a determination under paragraph (1); or
- (b) determining the additional period under paragraph (2) or the increase in any appropriate multiplier under paragraph (3)(b),

the authority must consider the advice of an actuary if they consider it appropriate.

(5) Where the relevant authority have passed a resolution under paragraph (2), the additional period counts as part of the member's total membership for regulation 8(1)(d) of the 1998 Regulations.

(6) The relevant authority must give notice of the making of such a resolution to the member before the expiry of the period of six months beginning with the relevant date.

(7) The relevant authority is—

- (a) in the case of a member who is an active member when the relevant event occurs, his Scheme employer; and
- (b) otherwise, his appropriate administering authority or, if there is more than one, the appropriate administering authority in respect of the employment which he left last.

(8) A relevant event occurs in relation to a member if—

- (a) he becomes immediately entitled to payment of a benefit under the 1998 Regulations or any other person whose entitlement is in respect of him becomes so entitled; or
- (b) he applies under section 93A of the Pension Schemes Act 1993(1) for a statement of entitlement; or
- (c) he is provided with such information as is mentioned in regulation 119(3) of the 1998 Regulations (bulk transfers etc.).

(9) The relevant date is—

- (a) in the case mentioned in paragraph (8)(a), the date on which the amount of the benefit is determined;
- (b) in the case mentioned in paragraph (8)(b) or (c), the date the member's membership ceases.

#### *Special provisions about rights relating to old membership*

#### **Continuity of elections within regulation 11(1)**

14.—(1) The appropriate administering authority of an active member who has given or is deemed to have given a notice which ceases to have effect under regulation 11(1) must inform him in writing that they propose to treat the notice—

- (a) as having been given under the corresponding provision of the 1998 Regulations; and
- (b) as if the notice related only—
  - (i) to so much of the amount remaining to be paid in pursuance of the notice as has not been paid before the commencement date, and
  - (ii) to so much of the period as respects which he gave the notice as he may not count by virtue of regulation 11(4); and

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(1) 1993 c. 48; section 93A was inserted by the Pensions Act 1995 (c. 26), section 153.

(c) as enabling the member to make additional contributions at the protected rate.

(2) Where a member is so informed, the notice is to be so treated as from the commencement date unless the member (or, in a case where the member has died, his executor) has informed his appropriate administering authority in writing before the expiry of the period of three months beginning with that date (or such longer period as they may allow) that he does not wish it to be so treated.

(3) Any election by a member to whom regulation 3(1) applies which—

(a) was made or had effect as if made under regulation C9A of the 1987 Regulations (additional voluntary contributions); and

(b) was in effect immediately before the commencement date,

shall continue to have effect as if it had been under the 1998 Regulations.

(4) The protected rate is the rate at which the member was making payments by virtue of the notice immediately before the commencement date, expressed as a percentage of his remuneration at that time.

#### **Continuity of rights within regulation 12(1)**

**15.—**(1) Regulation 14 applies in relation to a right which ceases to have effect under regulation 12(1)(a) as if—

(a) that right arose under a notice which ceases to have effect by virtue of regulation 11(1), and

(b) the corresponding provision of the 1998 Regulations were regulation 54,

(but see the following provisions).

(2) If the right arose under regulation D6, D7 or D8 of the 1974 Regulations and immediately before the commencement date the member had the right to make any payments by lump sum payable by instalments, then for regulation 14 the protected rate is the rate at which he was paying instalments immediately before the commencement date, expressed as a percentage of his remuneration at that time.

(3) Paragraph (1) does not apply in the case of an election made under regulation C8 of the 1987 Regulations.

(4) Regulation 54(6) of the 1998 Regulations does not apply where regulation 54 applies by virtue of paragraph (1) above, and instead the member's appropriate administering authority must calculate the amounts of the additional contributions by reference to the preferential rate.

(5) The preferential rate is the rate at which the member was making payments (including payments by instalments of a lump sum) by virtue of regulation C9(2) of the 1987 Regulations immediately before the commencement date, expressed as a percentage of his remuneration at that time.

#### **Temporary right to pay off liabilities under regulation 15 by capital payment**

**16.—**(1) A member to whom regulation 14 applies by virtue of regulation 15(1), may make an election to make a capital payment in full satisfaction of his liabilities in respect of any period for which he remains liable to make any payment by virtue of regulation 15(1).

(2) Such an election may only be made by notice in writing to the member's appropriate administering authority before the end of the period of six months beginning with the commencement date.

(3) When an administering authority receive such an election they must notify the member of the amount of the capital payment required.



(4) However, if that capital payment, when aggregated with the member's total contributions (as mentioned in regulation 15(2) of the 1998 Regulations) payable in the tax year in which he makes the election, would exceed the maximum amount so payable by him, such an election is ineffective.

(5) Where following a payment under such an election any body's liabilities in respect of the member under regulation P13 of the 1987 Regulations continue by virtue of regulation 20(3), then, despite that regulation, he is entitled to count a period of membership of the same length as if all payments to be made in respect of that period under regulation P13 of the 1987 Regulations had been made.

### **Re-employment after return of contributions: service before 6th April 1978**

**17.**—(1) This paragraph applies to a member if—

- (a) he left a local government employment after 15th May 1974 and before 6th April 1978 with less than 5 years' total membership;
- (b) a return of contributions for that employment was made to him; and
- (c) he has subsequently begun another local government employment (whether before or after the commencement date) in which he is an active member.

(2) Despite regulation 8(3) of the 1998 Regulations, a member within paragraph (1) may count the period for which the contributions were returned, if he pays the appropriate sum to his appropriate fund in his new employment.

(3) That repayment must be made before the expiry of the period of six months beginning with his return to local government employment or such longer period as the authority who returned the contributions and, if different, his appropriate administering authority in his new employment may allow.

(4) The appropriate sum is an amount equal to—

- (a) the amount of returned contributions (net of any tax deducted, but including any increase under regulation M3 of the 1987 Regulations or any corresponding earlier provision and any interest paid on the return); plus
- (b) interest on the amount specified in paragraph (a) for the period beginning with the date the contributions were returned and ending with the date of payment of the appropriate sum.

(5) Interest must be calculated—

- (a) at 6 per cent. compounded with yearly rests for each complete period of a year ending before 1st April 1977; and
- (b) at 2.25 per cent. compounded with three-monthly rests for each complete period of three months beginning on or after that date.

(6) In any case where the whole or part of the period for which the contributions were returned was a period before 1st April 1972 which, if the member had been entitled immediately before the commencement date to count it, would have been reduced under regulation 8, the period which may be counted under paragraph (2) must be similarly reduced.

(7) The repayment by a member under paragraph (2) in any tax year must not, when aggregated with his total contributions (as mentioned in regulation 15(2) of the 1998 Regulations) payable in that tax year, exceed the maximum amount so payable by him.

### **Equivalent pension benefits**

**18.**—(1) This paragraph applies where—

- (a) when a member left his local government employment he was not entitled in relation to that employment to a retirement pension under regulation 24, 25, 26 or 30 of the 1998

Regulations (or any corresponding provision of any earlier regulations) and he receives a return of contributions;

- (b) the whole or some part of his period of membership was in service in a non-participating employment or in service which relates to employment with a non-local government employer in a non-participating employment;
- (c) a period of his service in a non-participating employment came to an end by reason—
  - (i) of the repeal of section 56(1) of the National Insurance Act 1965(2), or
  - (ii) of the provisions of regulation 2(2) of the National Insurance (Non-Participation Assurance of Equivalent Pension Benefits) Regulations 1960(3) (as modified by regulation 9(2)(a) or (b) of the National Insurance (Non-participation Transitional Provisions) Regulations 1974(4)); and
- (d) at some time during the settlement period (within the meaning of regulation 2 of those Regulations of 1974) he became, and has remained, assured of equivalent pension benefits.

(2) Where paragraph (1) applies, the member is entitled under the 1998 Regulations in relation to that employment to an annual retirement pension payable at the rate of the equivalent pension benefits applicable to him in respect of any period of membership—

- (a) in service in a non-participating employment; or
- (b) which relates to service with a non-local government employer in a non-participating employment.

(3) That pension is payable from the first date on which he—

- (a) has attained state pensionable age; and
- (b) is no longer in any local government employment.

(4) Where a pension is payable under paragraph (2) to a member who attains state pensionable age for a period of service in a non-participating employment, which counts for the purpose of calculating any benefits payable to the member (other than excepted service), no relevant provision shall apply so as to reduce the pension below the minimum rate of equivalent pension benefits applicable for that period of service under the Insurance Acts.

(5) A relevant provision is a provision of the 1998 Regulations for the surrender, assignation, reduction, termination or suspension of a pension.

(6) Paragraph (4) does not apply to relevant provision for the reduction, termination or suspension of a pension, which is used for a purpose prescribed by regulations made, or deemed to have been made, under section 57(1)(c) of the National Insurance Act 1965 (equivalent pension benefits).

(7) For these Regulations and the 1998 Regulations, a member to whom paragraph (1) applies shall be treated as having ceased to hold the employment for which he receives a return of contributions on the day before the date of receipt.

(8) Entitlement to a pension under paragraph (2) must be disregarded—

- (a) for regulations 19(4), (6) and (8), 28, 33(1), 37(5), 41, 44(5), 45(7) and 86(1)(a) of the 1998 Regulations; and
- (b) for determining whether a person is at any time a pensioner member or a deferred member.

(9) For this regulation a member may count the excess period referred to in regulation 123(1) of the 1998 Regulations (service not matched by period credited on transfer into the Scheme).

(10) In this regulation—

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(2) 1965 c. 51; section 56(1) was repealed by the Social Security Act 1973 (c. 38), section 100(2)(b), Schedule 28.

(3) S.I.1960/1103.

(4) S.I. 1974/2057.

“non-participating employment” has the same meaning as in section 56(1) of the National Insurance Act 1965;

“excepted service”, in relation to any person, is any earlier period of such service as is mentioned in paragraph (4), being service in respect of which—

- (a) a payment in lieu of contributions has been made; or
- (b) equivalent pension benefits satisfying the requirements of the Insurance Acts have already been assured to him.

### *Pension funds and authorities*

#### **Superannuation funds and appropriate fund authorities**

**19.**—(1) The funds which are appropriate superannuation funds for the old provisions immediately before the commencement date shall continue to be appropriate superannuation funds for those provisions and shall be the appropriate funds for the 1998 Regulations.

(2) Without prejudice to paragraph (1), any liabilities under the old provisions, as they continue to apply by virtue of these Regulations, shall continue to be payable by the appropriate administering authority from the fund which is the appropriate superannuation fund as respects those liabilities immediately before that date.

(3) Where immediately before that date any body is or may become liable to make payments to any such authority or to any superannuation fund in respect of any liability arising under the old provisions in respect of any person, liabilities in respect of whom continue to arise on or after that date under those provisions, that body shall continue to be the body which is or may become so liable.

#### **Continuation of employers' liability for certain payments**

**20.**—(1) Nothing in these Regulations affects the liability of any body to make payments under regulation P13 of the 1987 Regulations in respect of any member who continues as an active member on the commencement date by virtue of regulation 3(1).

(2) However, if the member (or his executor) informs the relevant authority under regulation 14(2) (as applied by regulation 15(1)) that he does not wish a right which ceases to have effect under regulation 12(1)(a) to be treated as mentioned in regulation 14(1), regulation P13 of the 1987 Regulations shall cease to apply in relation to that member's payments so far as they become due on or after the commencement date.

(3) Where, in a case in which payments continue to be made under regulation P13(1) of the 1987 Regulations by virtue of paragraph (1), following an election under regulation 16(1) a member makes a capital payment in full satisfaction of his liabilities in respect of any period, any liabilities which any body has in respect of him under that regulation are not affected.

### *Special cases*

#### **Civil servants transferred to the Scottish Environment Protection Agency**

**21.**—(1) The 1998 Regulations apply with the following modifications to a member who is employed by the Scottish Environment Protection Agency as a result of a relevant statutory transfer immediately before which he was a pensionable civil servant.

- (2) At the end of regulation 12(2) (exclusions from “pay”) add the words— “or

- (h) the amount of any supplement paid by the Scottish Environment Protection Agency in recognition of the difference in contribution rates between members of the principal civil service pension scheme and the Scheme”.
- (3) In regulation 30 (early leavers: deferred retirement benefits and elections for early payment)—
- (a) in paragraph (1) for the words “may elect to receive payment of them immediately” substitute the words “is entitled, on his so requesting the administering authority in writing, to receive payment of those benefits in respect of his SEPA service immediately or, at his option, at any time before he attains the age of 60”;
  - (b) omit paragraphs (2), (3) and (8);
  - (c) in paragraph (4) for the words from the beginning to “85 years” substitute the words “If the member has not attained the age of 60”;
  - (d) in paragraph (7) for “NRD” substitute the words “60th birthday”;
  - (e) at the end add the following new paragraph:—
    - “(9) In this regulation “SEPA service” means—
      - (a) the period during which the person concerned has remained an active member and in continuous employment of the Scottish Environment Protection Agency following a relevant statutory transfer (as defined in regulation 21(6) of the Transitional Regulations); and
      - (b) where a transfer value has been accepted from the Principal Civil Service Pension Scheme made under section 1 of the Superannuation Act 1972 and referred to as such in section 2(10) of that Act, the period of membership which he was entitled to count under regulation J9(1)(a) of the 1987 Regulations.”.
- (4) The employment with the Scottish Environment Protection Agency referred to in paragraph (1) does not count as new employment for regulation 109 (statements of policy concerning abatement of retirement pensions in new employment) or regulation 110 (application of abatement policy in individual cases).
- (5) The 1998 Regulations and these Regulations shall have effect, so long as the member remains an active member and in continuous employment of the Scottish Environment Protection Agency, as if they conferred on the member the same rights relating to service overseas as he would have enjoyed if he had remained subject to the principal civil service pension scheme.
- (6) A relevant statutory transfer in relation to a member is a transfer of his employment—
- (a) which took place on 1st April 1996 as a consequence of a transfer of functions on that date to the Scottish Environment Protection Agency; or
  - (b) which took place as a consequence of a transfer to the Scottish Environment Protection Agency of the undertaking in which he was formerly employed to which the Transfer of Undertakings (Protection of Employment) Regulations 1981(5) apply.
- (7) A pensionable civil servant is a person who is employed in the civil service of the State and is a member, or is eligible to be a member, of the principal civil service pension scheme.

### **Former members of NHS Superannuation Scheme for Scotland**

**22.—**(1) The 1998 Regulations apply with the modifications mentioned in paragraphs (3) to (5) to a member—

- (a) who became an active member immediately after being transferred to employment by the governing body of a university or designated institution within the meaning of Part II of the

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(5) S.I. 1981/1794; the definition of “undertaking” was amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 33.

Further and Higher Education (Scotland) Act 1992(6) or by the board of management of a college of further education within the meaning of Part I of that Act as a consequence of a transfer to the governing body or board of management on 1st September 1996, or in the case of a transfer to the governing body of the Robert Gordon University on 1st December 1996, of the undertaking in which he was employed, to which transfer the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply;

- (b) who immediately before that transfer was employed by a health board and was a member, or was eligible to be a member, of the pension scheme the rules of which are set out in the National Health Service Regulations; and
- (c) who since that transfer has been an active member in relevant local government employment.

(2) In regulation 30 of the 1998 Regulations (early leavers: deferred retirement benefits and elections for early payment)–

- (a) in paragraph (1) for the words “may elect to receive payment of them immediately” substitute the words “is entitled, on his so requesting the administering authority in writing, to receive payment immediately of those benefits in respect of his relevant local government employment and transferred service”;
- (b) omit paragraphs (2), (3) and (8);
- (c) in paragraph (4) for the words from the beginning to “85 years” substitute the words “If the member has not attained the age of 60”;
- (d) at the end add the following new paragraph:–

“(9) In this regulation–

“relevant local government employment” has the meaning given in regulation 22(5) of the Transitional Regulations;

“transferred service” means, where on the transfer referred to in regulation 22(1)(a) of the Transitional Regulations a transfer value has been accepted in respect of a person’s accrued rights from the National Health Service Superannuation Scheme for Scotland constituted under the National Health Service Superannuation Scheme (Scotland) Regulations 1995, the period of membership which he was entitled to count under regulation J9(1)(a) of the 1987 Regulations.”.

(3) Regulation 56 of those Regulations (effect of increases under Chapter III of Part III for older members) does not apply to so much of any period counted under that Chapter as is attributable to contributions paid under a contract–

- (a) which was deemed by paragraph 5 of Schedule 16B to the 1987 Regulations to have been made pursuant to an election under regulation C5 or C6 of those Regulations;
- (b) under which contributions were being made immediately before the commencement date; and
- (c) which is treated as continuing under regulation 14.

(4) For regulation 123 of the 1998 Regulations (rights as to service not matched by credited period), in the case of the transfer mentioned in paragraph (1) member’s transferred-in service means any service which for the National Health Service Regulations the member was entitled to count in relation to employment in which he was an officer (as defined in those Regulations) for determining whether he was entitled to a benefit under those Regulations, but for no other purpose.

(5) In this regulation–

“the National Health Service Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(7);

“relevant local government employment” means a continuous period of employment as an active member comprising—

- (a) the period, immediately following the transfer to employment by a governing body or board of management in terms of paragraph (1)(a), of employment by that governing body or board of management during which the member was continuously engaged in the work of the undertaking in which he was previously employed or in the work of another undertaking transferred to that governing body or board of management as mentioned in paragraph (1)(a); and
- (b) any further periods, immediately following the period described in sub-paragraph (a) and each other, of employment by another governing body or board of management of the kind specified in paragraph (1)(a) during which the member was continuously engaged in the work of an undertaking transferred to that governing body or board of management as mentioned in paragraph (1)(a).

### **Community scheme transferees**

**23.**—(1) Community scheme transferees and their surviving spouses, dependants and children are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

(2) A Community Scheme transferee is a person—

- (a) who became employed by a Community institution after having been employed in local government employment;
- (b) in respect of whom the scheme managers of the Communities' scheme were paid a transfer value under Chapter IV of Part IV of the Pension Schemes Act 1993(8) or Part J of the 1987 Regulations or any corresponding earlier provisions; and
- (c) whose fund authority (as defined in regulation 116 of the 1998 Regulations) have been repaid for the credit of their pension fund an amount which in accordance with that guidance may be treated as equivalent to that transfer value.

(3) The rights to which any person is entitled by virtue of guidance under this regulation must not be less valuable than those to which he would have been entitled if regulation J6 of the 1987 Regulations still applied to him.

### *Supplementary provisions*

### **Cost of resolutions**

**24.** Any extra charge on an appropriate fund resulting from a resolution under these Regulations by an authority in relation to any member must be repaid to the fund by that authority.

### **Minor and consequential amendments**

**25.** The provisions specified in Schedule 3 shall have effect with the amendments made by that Schedule.

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(7) S.I. 1995/365, amended by S.I. 1997/1434 and 1916.

(8) 1993 c. 48.

### **Transitional provisions and savings**

**26.**—(1) Schedule 4 shall have effect for the purpose of making transitional and transitory provision and savings.

(2) Nothing in that Schedule affects the general operation of sections 16 and 17 of the Interpretation Act 1978<sup>(9)</sup> (as applied by section 23 of that Act).

### **Revocations**

**27.** The replaced provisions are hereby revoked, but subject to the provisions of these Regulations and, in particular, Schedule 4.

St Andrew's House,  
Edinburgh  
20th February 1998

*Brian Wilson*  
Minister of State, Scottish Office