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STATUTORY INSTRUMENTS

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**1998 No. 364**

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

*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.