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STATUTORY INSTRUMENTS

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**1998 No. 366**

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

**PART II**

**PRIMARY PROVISIONS**

**CHAPTER IV**

**BENEFITS**

*Preliminary*

**General qualification for benefits**

- 18.**—(1) Membership of the Scheme entitles the member to benefits under this Chapter only if—
- (a) his total membership is at least two years; or
  - (b) a transfer value is credited to him.
- (2) Paragraph (1) does not apply—
- (a) to a benefit under regulation 24 (normal retirement) in a case where the member's normal retirement date is his 65th birthday or under regulation 27(3) (ill-health grants); or
  - (b) to benefits in respect of a member under regulation 37 (death grants), regulation 39 (surviving spouse's short-term pension), regulation 40 (surviving spouse's long-term pension) regulation 44 (children's short-term pensions) or regulation 45 (children's long-term pensions).

**Calculations**

- 19.**—(1) The amount of any benefit payable as a result of a person's membership is generally calculated by multiplying his final pay by the appropriate multiplier.
- (2) Unless another multiplier is indicated, the appropriate multiplier for a pension is—
- $$\frac{\text{the member's total membership}}{80}$$
- (3) Unless another multiplier is indicated, the appropriate multiplier for a retirement grant is—
- $$\frac{3 \times \text{the member's total membership}}{80}$$
- (4) However, benefits payable on or after the death of a pensioner member are calculated by multiplying the amount of his former retirement pension by the multiplier specified for the benefit in question.
- (5) Unless otherwise indicated, references to the amounts of pensions are to their annual rate.

(6) 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 28 (re-employed pensioners);
- (b) regulation 30 (elections for early payment);
- (c) regulation 32 (surrenders);
- (d) regulation 49 (commutation: exceptional ill-health);
- (e) regulation 53 (effect of increases under Chapter II of Part III for older members);
- (f) regulation 56 (effect of increases under Chapter III of Part III for older members); or
- (g) regulation 110 (application of abatement policy in individual cases).

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

(8) 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).

(9) Paragraph (8) does not stop a person to whom it applies from also counting as an active member.

### **Final pay**

**20.**—(1) A member's final pay for an employment is his pay for as much of the final pay period as he is entitled to count as active membership in local government employment (but see paragraphs (3) to (10), regulations 21 and 22(2) and Schedule 4).

(2) A member's final pay period is the year ending with the day on which he stops being an active member (but see paragraph (9) and regulations 21 and 22).

(3) In the case of part-time employment, the final pay is the pay which would have been paid for a single comparable whole-time employment.

(4) However, in calculating death grant or the rate of surviving spouse's or children's short-term pension payable on the death of an active member, actual pay in part-time employment is to be used.

(5) Any reduction or suspension of a member's pay during the final period because of his absence from work owing to illness or injury must be disregarded for this Chapter.

(6) If a member's final pay period includes reserve forces service leave, his final pay is—

- (a) in a case where he has paid contributions by virtue of regulation 16(4), the amount it would have been if his reserve forces pay were pay received in his former local government employment; or
- (b) otherwise, the amount it would have been if he had continued to be employed in his former employment during the period of that leave.

(7) If a member is absent from work for any other reason during his final pay period, he is to be treated for this Chapter as having received the pay he would otherwise have received only if he has made the appropriate contributions under Chapter III for the period he is absent.

(8) If in any case where regulation 12(5) (collective pay agreements) applies to a member's pay during any part of the final pay period—

- (a) his average weekly earnings from his local government employment in that period (other than payments for overtime and bonuses)—
  - (i) exceed by more than 50 per cent. the lower earnings limit at the end of that period, and
  - (ii) do not exceed the upper earnings limit at the end of that period; and
- (b) his final pay would be greater if determined using those earnings,

it is to be determined using them.

(9) If a member is only entitled to count part of the year specified in paragraph (2) as a period of active membership in relation to the employment which he ceases to hold, his final pay is his pay during that part multiplied by 365 and divided by the number of days in that part.

(10) Final pay does not include any pension in payment.

### **Other final pay periods**

**21.**—(1) Where the whole or part of a member's pay consists of fees, his final pay period for them is not the period specified in regulation 20(2) but—

- (a) the period of three years ending with the last day on which he was an active member; or
- (b) any other period he may with the consent of his employing authority elect, being a period of not less than three nor more than five years—
  - (i) ending with a day which is that last day or of which that last day is the anniversary, and
  - (ii) falling within the period of 13 years ending with that last day.

(2) However, if he was only entitled to receive fees during part of the period mentioned in paragraph (1)(a), that part is substituted for the period referred to in that paragraph.

(3) If a member has been absent from work during any part of the year specified in regulation 20(2), his final pay period is the last 365 days he is entitled to count as a period of active membership.

(4) A member to whom paragraph (5) applies may elect that instead of his final pay period being determined under regulation 20(2) or paragraph (1), (2) or (3) above, it should be—

- (a) as respects so much of his pay as does not consist of fees, a year ending with a day—
  - (i) falling within the period of three years ending with the last day on which he was an active member, and
  - (ii) of which that last day is the anniversary; and
- (b) as respects so much of his pay as consists of fees, that period of three years.

(5) This paragraph applies to a member whose pay in the period which he would elect as his final pay period if he made an election under paragraph (4) is higher than his pay in a final pay period determined under regulation 20(2) or paragraph (1), (2) or (3).

(6) Where paragraph (1) or (2) applies or a member elects for the period specified in paragraph (4) (b), as respects so much of his pay as consists of fees his final pay is the annual average of his fees during his final pay period.

(7) An election under this regulation by a member must be made by notice in writing given to the appropriate administering authority before the expiry of the period of one month beginning with the day on which he is notified of his entitlement to a benefit.

(8) Where a member has died without having made an election under this regulation, the appropriate administering authority may make an election on his behalf (whether or not the period within which he could have elected has expired).

### **Permanent reductions in pay: certificates of protection of pension benefits**

**22.**—(1) Where a certificate has been issued as respects a member's pay under paragraph (3) or (5) and the date of reduction or, as the case may be, restriction specified in the certificate is not more than 10 years before the date on which he ceases to be an active member, he may elect that his final pay period should be—

- (a) a year ending with a day–
    - (i) falling within the period of five years ending with the last day on which he was an active member, and
    - (ii) of which that last day is the anniversary; or
  - (b) any three consecutive years–
    - (i) falling within the period of 13 years ending with the last day on which he was an active member, and
    - (ii) ending with a day of which that last day is the anniversary.
- (2) Where a member elects for the period specified in paragraph (1)(b), his final pay is the annual average of his pay during that period.
- (3) If, otherwise than by virtue of a member's own circumstances–
- (a) his rate of pay is reduced; or
  - (b) the date at which it may be increased is restricted in such a way that it is likely that the rate of his retirement pension will be adversely affected,
- he is entitled to be issued with a certificate to that effect by the employing authority (but see paragraph (5)).
- (4) A member is not entitled to be issued with a certificate under this regulation if the reduction in his rate of pay–
- (a) is temporary; or
  - (b) consists of the termination of, or a reduction in, a temporary increase in the rate of pay.
- (5) The employing authority may issue a certificate without an application from the member, but need not issue a certificate if he does not apply for one within 12 months after the date of reduction or restriction.
- (6) A certificate issued under this regulation must specify the date of the reduction or restriction.
- (7) The employing authority must send a copy of the certificate to the member's appropriate administering authority.
- (8) The employing authority must keep a record of the certificate including such information as would be necessary for applying paragraph (1) for the period of 10 years beginning with the date of reduction or restriction specified in it.
- (9) An election under this regulation by a member must be made by notice in writing given to the appropriate administering authority before the expiry of the period of one month beginning with the date on which he is notified of his entitlement to a benefit.
- (10) Where a member has died without having made an election under this regulation, the appropriate administering authority may make an election on his behalf (whether or not the period within which he could have elected has expired).

### **Revenue limits**

23. Schedule 4 contains restrictions on the amounts of benefits to which a member is entitled under the Scheme.