
STATUTORY INSTRUMENTS

1998 No. 366

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

PART II

PRIMARY PROVISIONS

CHAPTER IV

BENEFITS

Surviving spouses' pensions

Surviving spouse's short-term pension

39.—(1) If an active or pensioner member dies leaving a surviving spouse, the spouse is entitled to a short-term pension.

(2) It is payable for three months after the member's death.

(3) However, if there are eligible children in the spouse's care, it is payable for a further three months.

(4) Where the deceased was an active member, the short-term pension is greater of—

(a) the deceased's final pay; or

(b) $\frac{(3 \times \text{his final pay})}{80} \times \text{his total membership.}$

(5) Where the deceased was a pensioner member, the short-term pension is equal to his retirement pension immediately before the death (but see regulation 41).

(6) In this regulation "pensioner member" includes a person whose retirement pension has been commuted under regulation 49 (exceptional ill-health).

(7) If there is more than one surviving spouse, they become jointly entitled under paragraph (1).

Surviving spouse's long-term pension

40.—(1) If a member dies leaving a surviving spouse, the spouse is entitled to a spouse's long-term pension.

(2) If the deceased was an active or pensioner member, the long-term pension is payable from the end of the period for which the short-term pension is payable.

(3) The long-term pension payable on a deferred member's death is payable from the death.

(4) If the deceased was an active member with a total membership of at least two years, the long-term pension is equal to half the ill-health pension to which the deceased would have been entitled under regulation 26 if he had become entitled to a pension under that regulation on the date he died.

(5) If the deceased was an active member with a total membership of less than two years or a deferred member, the multiplier for the long-term pension is—

the deceased's total membership
160

(but see regulation 41).

(6) If the deceased was a pensioner member, the long-term pension is equal to half his retirement pension immediately before the death (but see regulation 41).

(7) If there is more than one surviving spouse, they become jointly entitled under paragraph (1).

Reduction of some surviving spouses' pensions

41.—(1) Where a male pensioner member or deferred member marries and dies, the pension to which his widow is entitled under regulation 39 or 40 is calculated as if his retirement pension were only so much of his actual pension as is attributable to the period of his membership in contracted-out employment after 5th April 1978.

(2) Except in the case of a short-term pension payable to the widower of an active member, the pension to which a widower is entitled under regulation 39 or 40 is calculated as if the member's retirement pension were only so much of her actual pension as is attributable to her membership after 5th April 1988.

(3) However, relevant additional membership also counts as membership after that date.

(4) Relevant additional membership is membership—

- (a) forming the enhanced element of a member's total membership by virtue of a retirement to which regulation 27 applied after 5th April 1988;
- (b) added by virtue of a resolution under Chapter II of Part III or regulation 136 of these Regulations or under the Transitional Regulations after that date;
- (c) counted by reason of a payment made under Chapter III of Part III or paragraph 7 of Schedule 4 after that date (or treated by the Transitional Regulations as so made);
- (d) treated as membership after that date by virtue of the Transitional Regulations; or
- (e) attributable to a transfer value accepted by the Scheme after that date.

Surviving spouse's guaranteed minimum pension

42.—(1) If paragraph (2) applies, the pension to which a person is entitled under regulation 39 or 40 must be not less than the surviving spouse's guaranteed minimum.

(2) This paragraph applies if—

- (a) the employment in which the deceased was a member was contracted-out employment; and
- (b) he had a guaranteed minimum in relation to benefits under these Regulations.

(3) Paragraph (1) overrides any contrary provision in these Regulations except—

- (a) regulation 48 (commutation: small pensions);
- (b) regulation 111 (forfeiture); and
- (c) regulation 112 (interim payments directions).