
STATUTORY INSTRUMENTS

1998 No. 366

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

PART II

PRIMARY PROVISIONS

CHAPTER I

MEMBERSHIP

Eligibility for active membership

General eligibility for membership: employees of Scheme employers etc.

3.—(1) A person may be an active member only if this regulation or regulation 4 or Chapter I of Part V enables him to be one and he is not prevented by regulation 5.

(2) A person may be a member if he is employed by a Scheme employer.

(3) A Scheme employer is a body which is listed in Schedule 2.

Agreements to enable employees of non-Scheme employers to be members (“admission agreements”)

4.—(1) An administering authority may make an admission agreement with any admission body.

(2) An admission agreement is an agreement that all or any specified class of the admission body’s employees may be members.

(3) An admission agreement may provide that a period of employment by the admission body before the date of the agreement counts as membership of the Scheme (or does so for some purposes).

(4) An admission agreement must terminate if the admission body ceases to be such a body.

(5) An admission agreement may make such other provision about its termination as the parties consider appropriate.

(6) When an administering authority make an admission agreement, they must immediately inform the Secretary of State of the admission body’s name and the date the agreement takes effect.

(7) An administering authority and an admission body may make an admission agreement despite the fact that they do not exercise their functions in areas which overlap or adjoin each other.

(8) These are admission bodies—

(a) a body which provides a public service in the United Kingdom otherwise than for the purposes of gain;

(b) a body to the funds of which any local authority contribute;

(c) a body to which any grant is made out of money provided by Parliament;

- (d) a body representative—
 - (i) of local authorities, or
 - (ii) of local authorities and officers of local authorities, or
 - (iii) of officers of local authorities;
- (e) a voluntary organisation engaged in the provision of services under—
 - (i) Part III of the National Health Service (Scotland) Act 1978(1);
 - (ii) Part III of the National Assistance Act 1948(2);
 - (iii) the Disabled Persons (Employment) Act 1958(3);
 - (iv) the Mental Health (Scotland) Act 1984(4); or
 - (v) section 14 of the Social Work (Scotland) Act 1968(5).

(9) However, a body falls within paragraph (8)(d)(iii) only if it is formed for the purpose of consultation as to the common interests of local authorities and the discussion of matters relating to local government.

(10) These Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the body were a Scheme employer.

Further restrictions on eligibility

5.—(1) If a person's employment entitles him to belong to another statutory pension scheme, that employment does not entitle him to be a member, unless that other scheme was made under section 7 of the Superannuation Act 1972.

(2) A statutory pension scheme is an occupational pension scheme provided by or under an enactment (including a local Act).

- (3) A person may not become a member after his 65th birthday unless—
 - (a) his total membership does not exceed his permitted maximum; and
 - (b) he is a permitted late member.

(4) The permitted maximum for a Class A member is 40 years.

(5) The permitted maximum for a Class B member or a Class C member is the sum of—

- (a) his total membership before he attained 60 or, if less, 40 years, and
- (b) his total membership since he attained 60,

or, if less, 45 years.

- (6) A permitted late member is a person to whom—
 - (a) a pension which must be the subject of a policy formulated under regulation 110 (statements of policy concerning abatement of retirement pensions in new employment);
 - (b) an ill-health grant under regulation 26(3) or an ill-health retirement grant under regulation E4 of the 1987 Regulations or regulation E21 of the 1974 Regulations; or
 - (c) a short service grant under the Benefits Regulations,

has become payable or who is entitled to or has received relevant compensation.

(1) 1978 c. 29.

(2) 1948 c. 29.

(3) 1958 c. 33.

(4) 1984 c. 36.

(5) 1968 c. 49; section 14 was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 10 and the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 10(6).

- (7) Relevant compensation is compensation which—
- (a) is payable under any enactment for loss of employment or loss or reduction of employment benefits attributable to an enactment; and
 - (b) is liable to be reduced or suspended by reason of the person to whom it is payable entering employment with a Scheme employer, in the same way as it would have been if he had remained eligible to belong to the occupational pension scheme to which he belonged or was eligible to belong immediately before suffering the loss.
- (8) If a person has been entitled to an ill-health pension calculated by reference to an enhanced membership period, that period is counted as part of his total membership for paragraphs (3) and (5).
- (9) Part-time employment as a member of a fire brigade maintained in pursuance of the Fire Services Act 1947⁽⁶⁾ on terms under which the employee is or may be required to engage in fire-fighting does not entitle the employee to be a member of the Scheme.

Joining and leaving the Scheme

Joining the Scheme

- 6.—(1) A person who wishes to become an active member must apply in writing to his employer or future employer.
- (2) An eligible person who applies before he begins his employment becomes a member when his employment begins unless he applies to join later.
- (3) An eligible employee who applies becomes a member on the first day of the first payment period following the application.
- (4) A payment period is a period of service to which the employee's wages or salary payment relate.
- (5) An employee is deemed to have applied to become a member, unless he notified his employer in writing that he did not wish to become a member—
- (a) before his employment began; or
 - (b) if he only became eligible to be a member later, before the date he became eligible.
- (6) Paragraph (5) does not apply to—
- (a) casual employees; or
 - (b) former members who opted to leave the Scheme by a notification under regulation 7.
- (7) An application for membership may be withdrawn before membership begins.
- (8) A former active member may reapply for membership.
- (9) Notwithstanding paragraph (8), a person who has given more than one notification under regulation 7 may reapply again only if—
- (a) his employer or future employer consents;
 - (b) he is beginning a new employment with a new employing authority and he reapplies before he has been employed for three months; or
 - (c) he is an individual who during any period has been eligible to be a member but has instead made contributions to a personal pension scheme and has suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986⁽⁷⁾ (actions for damages in respect of contravention of rules etc. made under the Act).

⁽⁶⁾ 1947 c. 41.

⁽⁷⁾ 1986 c. 60.

Leaving the Scheme

7.—(1) A person may leave the Scheme if he wishes and stops being a member if he stops being eligible for membership.

(2) A person who wishes to leave the Scheme must notify his employer in writing.

(3) A member who gives such a notification stops being a member from the date the notification specifies.

(4) However, if a date earlier than the notification or no date is specified, he stops being a member at the end of the payment period during which the notification is given.

(5) Where notification is given by a person before he has been a member for one month, he must be treated as not having been a member in that period.

CHAPTER II

COUNTING MEMBERSHIP FOR THE SCHEME

Periods of membership: “total membership”

8.—(1) These are the periods which count as periods of membership—

(a) any period for which a member has paid (or is treated as having paid) contributions under regulation 11, 16 or 17;

(b) any period during which a member is away from work because of illness or injury;

(c) any period which a member is entitled to count as membership under—

(i) Chapter II or III of Part III; or

(ii) regulation 122(1) (periods credited on payment of transfer values);

(d) in the case of a member who belonged to the Scheme immediately before the commencement date, any period he is entitled to count under the Transitional Regulations.

(2) For most purposes a member’s “total membership” is the total of the periods he is entitled to count under paragraph (1), disregarding any period which would otherwise count twice (but see regulations 9, 10 and 31 and the Transitional Regulations).

(3) A person may not count any period of membership if his contributions for that period have been returned to him and, if all his contributions to the appropriate fund are returned to him, he may not count any period of membership credited to him on the receipt of a transfer value.

(4) A person may not count any period of membership if his rights in respect of it have been transferred to a non-local government scheme, a personal pension scheme, a self-employed pension arrangement, a retirement annuity contract or an appropriate policy by payment of a transfer value.

(5) Where a person pays contributions under regulation 17(3) (trade disputes) for any period, that period counts as a period within paragraph (1)(a) even if his contract of employment did not subsist throughout that period.

(6) Paragraph (1)(a) includes any period for which a member is treated as having paid contributions under regulation 86(4) (concurrent employments).

Excluded membership

9.—(1) Superannuable membership does not count towards the membership period required before a person is entitled to any benefit.

(2) “Superannuable membership” is—

(a) any period of added years;

- (b) any additional period of membership which counts as such by virtue of Chapter II of Part III;
- (3) The Table in Schedule 3 sets out other sorts of membership which do not count for some purposes.
- (4) The first column of that Table describes the membership and the second column specifies the purposes for which such membership does not count.
- (5) That Table has effect subject to the notes at the end.

Length of period of membership: calculation of benefit

- 10.—(1) In calculating the amount of any benefit, fractions of years of membership count.
- (2) The numerator of such fractions is the number of complete days of membership and 365 is the denominator.
- (3) Membership in part-time service is counted as the appropriate fraction of the duration of membership.
- (4) The numerator of that fraction is the number of contractual hours during the part-time service and its denominator is the number of contractual hours of that employment if it were on a whole-time basis.
- (5) Paragraph (3) does not apply in determining a member's total membership for regulation 27(1) (ill-health enhancement) (and see regulation 27(5) and (6) as to the determination of the enhanced membership period in such cases).

CHAPTER III CONTRIBUTIONS

Members' contributions

- 11.—(1) Each member shall make contributions to the Scheme at the standard contribution rate on his pay in each employment in which he is an active member (but see regulation 14).
- (2) The standard contribution rate for a member is six per cent., unless he is a member with lower rate rights.
- (3) The standard contribution rate for a member with lower rate rights is five per cent.
- (4) A person who is an active member in more than one employment must make contributions for each of those employments.
- (5) The appropriate administering authority may decide the intervals at which the contributions are made.
- (6) For this regulation any reduction in pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work shall be disregarded.
- (7) Regulations 15 to 17 affect this regulation.

Meaning of "pay"

- 12.—(1) An employee's pay is the total of—
 - (a) all the salary, wages, fees and other payments paid to him for his own use in respect of his employment;
 - (b) any other payment or benefit specified in his contract of employment as being a pensionable emolument.
- (2) However, an employee's pay does not include—

- (a) payments for non-contractual overtime;
 - (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
 - (c) any payment in consideration of loss of holidays;
 - (d) any payment in lieu of notice to terminate his contract of employment;
 - (e) any payment as an inducement not to terminate his employment before the payment is made;
 - (f) any amount representing the money value of the provision of a motor vehicle (but see paragraphs (8) and (9)); or
 - (g) any compensation paid under the Local Government (Compensation for Reduction of Remuneration or Reorganisation) (Scotland) Regulations 1995⁽⁸⁾.
- (3) For regulation 11, the pay of a part-time employee for any period is the pay he would have received if during that period he had worked the contractual hours.
- (4) However, paragraph (3) does not apply to periods during which the employee was away from work by reason of illness or injury with reduced or no pay.
- (5) If a Scheme employer agrees with the bodies or persons representative of any description of employees the method for determining the whole or a specified part of the pay of employees of that description for the period during which the agreement applies, the pay of a member who is such an employee is the amount so determined.
- (6) A Scheme employer must notify in writing every member affected by such an agreement.
- (7) That notification must include a conspicuous statement as to the place where he may obtain information about details of the agreement.
- (8) Where—
- (a) a member's contribution under regulation C2 or C3 of the 1987 Regulations for a period including 31st December 1992 was based on remuneration which for the 1987 Regulations as then in force included an amount representing the money value to him of the provision of a motor vehicle; and
 - (b) immediately before the commencement date his remuneration for the 1987 Regulations included such an amount,
- then his pay includes such an amount.
- (9) However, paragraph (8) shall cease to apply if—
- (a) he leaves employment with the employing authority who were employing him on 31st December 1992 (otherwise than as a result of a transfer to another Scheme employer which is beyond his control); or
 - (b) he is neither provided with a motor vehicle nor receives an amount representing the money value to him of the provision of such a vehicle.
- (10) No sum may be taken into account in calculating pay unless income tax liability has been determined on it.

Members with lower rate rights

- 13.**—(1) A member has lower rate rights for regulation 11 if he falls within paragraphs (2) and (3).
- (2) A member falls within this paragraph if—

⁽⁸⁾ S.I.1995/2865, amended by S.I. 1997/720.

- (a) immediately before the commencement date he was required (or would have been required if he had then been a member) to contribute to the Scheme at the rate of five per cent., and
- (b) since that date either—
 - (i) he has remained in continuous employment in the same capacity and a member, or
 - (ii) he has been continuously employed in local government employment.
- (3) A member falls within this paragraph if he is—
 - (a) a continuously-employed manual worker who immediately before the commencement date was in a local government employment in which he was entitled to contribute to the Scheme at the rate of five per cent. by reason of being a manual worker (as defined in Schedule 1 to the 1987 Regulations); or
 - (b) a statutory transferee who was so entitled immediately before he left the Scheme on statutory transfer and has applied to his employing authority to continue to be so entitled before the expiry of the period of 30 days beginning with the date he rejoins the Scheme or such longer period as they may allow; or
 - (c) a continuously-employed local Act member.
- (4) A continuously-employed manual worker is a person—
 - (a) who on or after the commencement date has been transferred from the employment he held immediately before that date to another local government employment which is described by his employer as a manual employment; or
 - (b) who on or after that date has been transferred more than once and all of those employments since that date have been local government employments which are so described.
- (5) A statutory transferee is a person who—
 - (a) left the Scheme by reason of his employment being transferred by virtue of an enactment to a person who was not a Scheme employer; and
 - (b) has rejoined the Scheme on a further transfer by virtue of an enactment to a person who is a Scheme employer and for whom he is employed in the same capacity as that in which he was employed immediately before he left the Scheme.
- (6) A continuously-employed local Act member is a person who has remained since before the commencement date continuously in employment which has entitled him to contribute to the Scheme at the rate of five per cent. by reason of rights under a local Act scheme.
- (7) For this regulation whether a person's employment is continuous must be determined in accordance with Chapter I of Part XIV of the Employment Rights Act 1996(9), but any period not exceeding one month and one day when he is not employed may be disregarded.

Employer's discretion to reduce members' contribution rate

14.—(1) The employing authority of a person who is an active member in their employment and has a total membership in a local government employment of at least 40 years may determine that he should not be liable to make contributions to the Scheme on his pay in their employment or should only be liable to make them at a rate less than the standard contribution rate.

(2) The member's liability is reduced or, as the case may be, extinguished at the expiry of the period of one month beginning with the date on which the employing authority so determined.

(3) However, for these Regulations the member shall continue to be treated as paying the contributions under regulation 11 for which he would otherwise be liable.

(4) For paragraph (1) membership counts as membership in local government employment unless—

- (a) it is a credited period counted under regulation 122 (periods credited on inward transfer); or
- (b) the member was entitled to count it under any corresponding earlier provision and he is entitled to count it under regulation 8(1)(d).

Inland Revenue limits on contributions

15.—(1) A Class A member may not pay contributions on any pay exceeding the Revenue permitted maximum.

(2) The total contributions to the Scheme and any other approved occupational pension scheme or approved personal pension scheme by a person in any tax year in respect of any employment in which he is a member must not exceed 15 per cent. of his total remuneration for that year in that employment.

(3) An occupational pension scheme or personal pension scheme is approved if it has been approved by the Commissioners of Inland Revenue under Part XIV of the Taxes Act.

(4) In this regulation “total remuneration” has the same meaning as in Schedule 4.

Obligatory contributions during absences

16.—(1) If a member—

- (a) is away from his employment with permission (otherwise than because of illness or injury) for a continuous period of less than 31 days or away on jury service for any period; and
- (b) is receiving reduced or no pay,

he must make contributions at the standard contribution rate on the pay he would have received during that period but for his absence.

(2) If a person who is a member or has applied to be a member goes on maternity leave, she must make contributions at the standard contribution rate, as respects any part of her period of maternity absence for which she is a member and entitled to receive pay (including any statutory maternity pay payable to her under the Social Security Contributions and Benefits Act 1992(10)), on that pay.

(3) That pay includes any such statutory pay but not any amount by which her actual pay is reduced on account of her possible entitlement to such statutory pay.

(4) If a person who is a member or has applied to be a member goes on reserve forces service leave, he must pay contributions under regulation 11 and any payments under Chapter III of Part III which he was paying immediately before his relevant reserve forces service began, if (and only if) during that service his reserve forces pay equals or exceeds the pay he would have received if he had continued to be employed in his former employment.

(5) Those contributions continue to be payable to the appropriate fund at the same rates on his reserve forces pay.

(6) If he is not obliged to pay contributions under paragraph (4), for the purposes of these Regulations he is treated as if he had paid them and also any payments under Chapter III of Part III which he would have been liable to pay if he had continued to be employed in his former employment.

(7) If a person who is a member or has applied to be a member goes on reserve forces service leave—

(10) 1992 c. 4.

- (a) he may continue to pay any contributions under Chapter IV of Part III (AVCs and SCAVCs) which he was paying immediately before his leave began;
 - (b) he may opt to discontinue payment under that Chapter; and
 - (c) unless he has so opted, the appropriate administering authority must continue throughout the period of his relevant reserve forces service leave to pay any such contributions which were to be used to provide benefits for him on his death.
- (8) If a person who is a member or has applied to be a member goes on reserve forces service leave—
- (a) his relevant reserve forces service counts as a period of membership in his former employment; and
 - (b) if during that service he dies, attains his normal retirement age or becomes incapable for health reasons of working efficiently in local government employment, he shall be treated as if he were in that employment at that time.

Optional contributions during absences

17.—(1) If a member—

- (a) is away from his employment with permission (otherwise than because of illness or injury) for a continuous period of more than 30 days; and
- (b) is receiving reduced or no pay,

he may make contributions under regulation 16 at the standard contribution rate for the whole period of his absence or, if it exceeds 36 months, for 36 months, on the pay he would have received but for his absence.

(2) If—

- (a) a person who is a member or has applied to be a member goes on maternity leave; and
- (b) for the whole or part of the period of her maternity absence (“the unpaid period”) she is not entitled to receive pay (including any statutory maternity pay payable to her under the Social Security Contributions and Benefits Act 1992⁽¹¹⁾) but is a member,

she may make contributions under regulation 16 at the standard contribution rate as respects the unpaid period, as if her pay in the employment were equal to the pay she was entitled to receive immediately before the unpaid period began (including any such statutory pay, but not any amount by which her actual pay is reduced on account of her possible entitlement to such statutory pay).

(3) If a person—

- (a) is away from work without permission for a period of one or more days during and because of a trade dispute (“a trade dispute absence”); and
- (b) was a member immediately before that period (or, where two or more periods of absence have occurred in consequence of one such dispute, the first such period),

he may make a contribution under regulation 16 for the relevant contribution period at the rate of 16 per cent. on his lost pay for that period.

(4) A person’s lost pay is the difference between—

- (a) his actual pay (if any); and
- (b) the pay he would have received but for any trade dispute absence,

(disregarding any guarantee payments under Part III of the Employment Rights Act 1996⁽¹²⁾).

⁽¹¹⁾ 1992 c. 4.
⁽¹²⁾ 1996 c. 18.

(5) A period is a person's relevant contribution period if—

- (a) it is coextensive with one of the intervals at which he was required under regulation 11 to make standard contributions; and
- (b) it includes all or part of his trade dispute absence.

(6) To make contributions under this regulation a person must apply to the employing authority in writing before the expiry of the period of 30 days beginning with the day on which he returns to work or such longer period as the authority may allow.

(7) However, if he ceases to be employed by that authority without returning to work, he may apply under paragraph (6) only before the expiry of the period of 30 days beginning with the day he so ceases or such longer period as they may allow.

(8) An application under paragraph (6) or (7) may be made by the person's executors if he has died without making such an application.

(9) The termination of a person's contract of employment in consequence of a trade dispute does not prevent this regulation applying to him if he again becomes an employee of the same Scheme employer and a member not later than the day after the dispute ends.

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.

Retirement benefits

Normal retirement

24.—(1) If a member who has attained his normal retirement age retires from a local government employment, he is entitled to a pension and retirement grant.

(2) The pension and grant are payable immediately.

(3) The normal retirement date (“NRD”) of a member who was not a member immediately before the commencement date is his 65th birthday.

(4) The NRD of a member who was a member immediately before the commencement date is—

(a) if on the day before his 60th birthday he has total membership of at least 25 years, that birthday;

(b) if the date when he first has such total membership is on or after his 60th birthday but before his 65th birthday, the day after that date; and

(c) otherwise, his 65th birthday.

(5) A member’s “normal retirement age” is his age on his NRD.

(6) If a member’s NRD or normal retirement age needs to be determined before he attains that age, it must be assumed that his local government employment and membership of the Scheme will be continuous.

Redundancy etc.

25.—(1) If—

(a) a member who is aged 50 or more retires from a local government employment; and

(b) his employing authority certify the reason for his retirement was his redundancy,

he is entitled to a pension and retirement grant.

(2) The pension and grant are payable immediately.

(3) However, a person who is notified under regulation 11 of the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995⁽¹³⁾ about compensation due because regulation 7 of those Regulations applies to his retirement may waive his right to immediate payment by notice in writing to his employing authority.

(4) In paragraph (1) “redundancy” includes retirement in the interests of efficiency, or because the member held a joint appointment which has been ended because the other holder has left it.

Ill-health

26.—(1) Where a member leaves a local government employment by reason of being permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body, he is entitled to an ill-health pension and grant (but see paragraph (3)).

(2) The pension and grant are payable immediately.

(3) A member—

(a) whose total membership is at least one year, but less than two years; and

(b) to whom no transfer value is credited,

is entitled to an ill-health grant (but not a pension), unless paragraph (4) applies to him.

(4) This paragraph applies to a member if—

⁽¹³⁾ S.I. 1995/340, amended by S.I. 1997/720.

- (a) he is entitled to any payment out of the appropriate fund (other than an injury allowance under regulation 7 of the Benefits Regulations or return of contributions);
- (b) he has received any payment under Part VI of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998(14); or
- (c) he would receive at least as much as the grant if his contributions were returned to him.

Amounts of ill-health pension and grant

27.—(1) Where the member's total membership is at least five years the multiplier for an ill-health pension or grant is by reference to the member's enhanced membership period instead of his total membership.

(2) A member's enhanced membership period is—

- (a) if his total membership is less than 10 years, twice his total membership;
- (b) if his total membership is at least 10 years, but not more than 13 $\frac{122}{365}$ years, 20 years; and
- (c) otherwise, his total membership plus 6 $\frac{243}{365}$ years.

(3) However, the enhanced membership period must not exceed 40 years or the total membership the member would have had if he had continued as an active member until he was 65, whichever is the shorter.

(4) If the member became entitled to ill-health benefits under the Scheme before he was in the employment from which he has retired, his enhanced membership period must be calculated by including in his total membership his total membership in the previous employment.

(5) The maximum period which may be added to a member's total membership to calculate his enhanced membership period in respect of all his local government employment is 10 years.

(6) Where membership includes membership in part-time employment, the enhanced membership period must be calculated by first working out what it would be if the employment were all whole-time, and then reducing the resulting period by the appropriate fraction (but see paragraph (9)).

(7) The appropriate fraction is the fraction of which the numerator is the member's total membership and the denominator is the period which would be his total membership if his employment had all been whole-time.

(8) In the case of a member in part-time employment with non-cyclical fluctuating contractual hours, that fraction must be determined by making separate calculations for each period over which averaging of the member's hours occurs in calculating his contractual hours.

(9) If the member's total membership includes a period of at least 13 $\frac{121}{365}$ years in whole-time employment, paragraph (6) does not apply and his enhanced membership period must be calculated by reference to that period of whole-time employment.

(10) If a member is entitled under regulation 26(3) to an ill-health grant (but not a pension) the multiplier for the grant is—

the member's total membership .
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Re-employed pensioners

28.—(1) Where a member is entitled to two retirement pensions because of being a member in two employments which were not concurrent, he may elect for a single new pension.

(2) If he so elects, he becomes entitled to a single retirement pension and retirement grant, each calculated by reference to the augmented period (but see paragraph (7)).

(3) The augmented period is the member's total membership in the later employment, increased by the period which would have been aggregated if he had made an election under regulation 31(1) as respects his earlier employment when he became an active member in his later employment.

(4) However, if the retirement pension from the earlier employment was calculated using a longer period of membership than the period which is the augmented period under paragraph (3), the longer period is the augmented period for paragraph (2).

(5) No election may be made if the pension for the earlier employment—

- (a) is paid under regulation 30 and subject to a reduction; or
- (b) is an EPB pension.

(6) The member must set off any retirement grant he received because of his membership in the earlier employment ("the first grant") against the retirement grant under this regulation and, if it was greater, repay the difference between the grants to the new authority.

(7) For paragraph (6), the first grant includes the amount by which it would have been increased under the Pensions (Increase) Act 1971(15) if it had become payable at the same time as the retirement grant under this regulation.

(8) Any additional period which did not count in the calculation of the first grant because of regulation 53(3) does not count in calculating the retirement grant under this regulation either.

(9) Any surrender of the pension from the earlier employment operates to the same extent on the single pension, but the surrendered pension is payable by the new authority.

(10) Where the later retirement is one to which regulation 26 (ill-health) applies and the member does not become entitled to a single pension—

- (a) if his earlier pension is also payable under that regulation and he gave notice under paragraph 4 of Schedule 10 to the 1987 Regulations when he left the earlier employment, regulation 27(1) does not apply (and so his total membership without enhancement is used for the multiplier for the later pension); but
- (b) if his earlier pension is not payable under that regulation, the membership enhancement period is $6\frac{243}{365}$ years more than his total membership.

Further provisions about elections under regulation 28

29.—(1) An election under regulation 28 must be made by giving notice in writing to the new authority.

(2) The new authority is the appropriate administering authority for the pension from the later employment.

(3) The election must be made before the expiry of the period of three months beginning with the date on which the member becomes entitled to the pension for the later employment and has effect from that date.

(4) If a member does not repay any amount due under regulation 28(6) before the expiry of the period of three months beginning with the date on which he elects, his election is void (and so he is not entitled to the single pension).

Other early leavers: deferred retirement benefits and elections for early payment

30.—(1) If a member leaves a local government employment (or is treated for these Regulations as if he had done so) before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he is aged 50 or more he may elect to receive payment of them immediately.

(2) However, an election made by a member aged less than 60 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6)).

(3) If the member so elects, he is entitled to a pension and retirement grant payable immediately.

(4) If the sum—

(a) of the member's age in whole years on the date on which his local government employment ends or the date on which he elects, if later; and

(b) of his total membership in whole years; and

(c) in a case where he elects after his local government employment ends, of the period beginning with the end of that employment and ending with the date on which he elects, is less than 85 years, his retirement pension and grant must be reduced by the amounts shown as appropriate in guidance issued from time to time by the Government Actuary (but see regulation 35(5) (guaranteed minimum pensions)).

(5) A member's employing authority may determine on compassionate grounds that his retirement pension and grant should not be reduced under paragraph (4).

(6) If a member who has left a local government employment before he is entitled to the immediate payment of a retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body—

(a) he may elect under paragraph (1) whatever his age; and

(b) paragraphs (2) and (4) do not apply.

(7) If the member does not elect for immediate payment under this regulation, he is entitled to receive a pension and grant payable from his NRD without reduction.

(8) An election under paragraph (1) must be made by notice in writing to the member's employing authority or former employing authority.

Re-employed and rejoining deferred members

31.—(1) Where a deferred member becomes an active member again before becoming entitled to the immediate payment of retirement benefits in respect of his former membership, he may elect to have his former membership aggregated with his membership on or after the date he becomes an active member again.

(2) However, an election may be made by a Class B member only as respects former Class B membership or Class C membership and an election may be made by a Class C member only as respects former Class C membership.

(3) Where a member elects under paragraph (1)—

(a) he ceases to be entitled to rights under the Scheme in respect of his former membership (except in so far as he is entitled by virtue of having become an active member again to rights in respect of the aggregated total membership); and

(b) he ceases to count as a deferred member for these Regulations as respects his former membership (unless he becomes a deferred member again after ceasing to be an active member).

(4) Where an election under paragraph (1) is made by a member who has ceased to be an active member more than once, the election may be made as respects his total membership at each of the times he so ceased or only as respects such of those periods of membership as are specified in the election.

(5) Where a member who may elect under paragraph (1) does not do so or does not elect as respects all periods of his membership—

- (a) in applying regulations 18(1), 19(2) and (3), 26(3), 27(1) and (2) and 30(4) as respects any later membership, his total membership excludes unaggregated periods; and
- (b) as respects each unaggregated period of his former membership—
 - (i) paragraph (3) does not apply,
 - (ii) he shall continue to be treated as a deferred member or, as the case may be, as a pensioner member (and not as an active member), and
 - (iii) he shall be entitled to the same rights as if he were not also an active member (but subject to regulation 33 and, in the case of a pensioner member, to regulation 28);
 and references in these provisions to his appropriate administering authority or appropriate fund shall be construed accordingly.

(6) For this regulation a period of membership is an unaggregated period if—

- (a) no previous election has been made under this regulation for its aggregation; and
- (b) in the case of a period as respects which the member was entitled to elect under regulation E2(9)(c) of the 1987 Regulations (elections to remain entitled to preserved benefits) or any previous corresponding provision of the Scheme, such an election was made.

(7) An election under paragraph (1) must be made by notice in writing to the member's appropriate administering authority in the employment in which he becomes an active member again whilst he is an active member in that employment.

(8) If the appropriate fund for membership in the new employment is different from that for any former employment as respects which the member is making the election, the notice under paragraph (7) must also be given to his appropriate administering authority in that former employment.

(9) References in this regulation to former membership include all membership which the member was entitled to count as total membership immediately before he ceased his former active membership (but excluding any unaggregated period).

(10) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, for paragraph (1) of this regulation he shall be treated as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

Surrenders of pension

32.—(1) A member may apply to the appropriate administering authority to surrender part of the retirement pension which is or may become payable to him, so that, if he is survived by his spouse or a dependant of his ("the beneficiary"), the equivalent value of that part is paid instead to the beneficiary under this regulation.

(2) The application must be made in the period of one month ending with or one month beginning with the date on which the member retires.

(3) The authority must allow the application if they are satisfied the member is in good health.

(4) The surrender must not result in a pension being paid to the beneficiary of less than such amount as is specified in guidance issued for this paragraph by the Government Actuary.

- (5) The aggregate amount surrendered must not—
 - (a) result in the reduction of the retirement pension to less than the pension which would become payable to the beneficiary; or
 - (b) exceed one third of the retirement pension.
- (6) On the death of the member, the beneficiary becomes entitled to a pension at a rate equivalent to the value of the surrender in the beneficiary's favour at the time when the surrender was made.
- (7) The equivalent rate is such rate as is indicated in guidance issued by the Government Actuary.
- (8) If the surrender is allowed, it has effect from the date the member retires from his employment.
- (9) However, it does not take effect if the beneficiary or member dies before that date, and it ceases to have effect if the beneficiary dies before the member.

No double entitlement

- 33.**—(1) Where (apart from this regulation) any member would be entitled to a pension or retirement grant under two or more regulations by reason of the same period of membership—
- (a) he may elect under which provision he is to be paid those benefits; and
 - (b) if he does not so elect, the employing authority may notify him in writing of the provision under which he is to be paid.
- (2) An election by a member must be by notice in writing, given to the employing authority before the expiry of the period of three months beginning with the day on which he becomes entitled to elect.
- (3) Paragraph (1) does not affect the member's rights under the Pension Schemes Act 1993(16).

Requirements as to time of payment

- 34.**—(1) Retirement benefits under this Chapter may not be paid to a person before he has retired from the employment in which he was a member.
- (2) They must begin to be paid not later than the member's 75th birthday even if he has not retired (and see also regulation 35(3)).

Guaranteed minimum pensions etc.

- 35.**—(1) Where a member's local government employment is contracted-out employment and he has a guaranteed minimum in relation to service before 6th April 1997, from the date he attains state pensionable age he is entitled to a pension at a weekly rate equal to not less than that guaranteed minimum.
- (2) However, if the member attains state pensionable age while in local government employment, he is not so entitled until he leaves that employment, unless paragraph (3) applies.
- (3) If the member—
- (a) continues in the same employment for a further period of five years after attaining state pensionable age; and
 - (b) does not then leave,
- he is entitled from the end of that period to so much of his retirement pension as equals that guaranteed minimum (unless he consents to a postponement of the entitlement).

(4) For the purposes of paragraph (1), a person has a guaranteed minimum if he has such a minimum under section 14 of the Pension Schemes Act 1993 in relation to benefits under these Regulations.

(5) A person's retirement pension is not to be reduced under regulation 30(4) to less than the aggregate of—

- (a) any minimum rate of equivalent pension benefits applicable under the Insurance Acts; and
- (b) one eightieth of his final pay (expressed as an annual rate) multiplied by the length in years of the whole period of his membership in contracted-out employment during the period beginning with the relevant date and ending with 31st March 1996.

(6) In paragraphs (5) and (7) “the relevant date” means—

- (a) in the case of a man, 17th May 1990; and
- (b) in the case of a woman, 6th April 1978.

(7) Where a person's local government employment is or was contracted-out employment, a surrender under regulation 32 (together with any previous surrenders) must not result in the annual rate of the retirement pension being less than one eightieth of his final pay, multiplied by the length in years of the whole period of his membership in contracted-out employment beginning with the relevant date and ending with 31st March 1996.

(8) Where a person making a surrender under regulation 32 has a guaranteed minimum, the surrender (together with any previous surrenders) must not result in the weekly rate of the retirement pension being less than the guaranteed minimum.

(9) Where a person making a surrender under regulation 32—

- (a) is in local government employment;
- (b) has attained normal retirement age; and
- (c) has a total membership of at least two years or has a transfer value credited to him,

references in paragraphs (7) and (8) to the retirement pension are references to the retirement pension which would become payable if he ceased to hold his employment on the day the surrender takes effect.

(10) This regulation overrides any provision in these Regulations to the extent to which it conflicts with it, except—

- (a) regulation 48 (commutation: small pensions);
- (b) regulation 110 (application of abatement policy in individual cases);
- (c) regulation 111 (forfeiture); and
- (d) regulation 112 (interim payments direction).

Revaluation of guaranteed minimum

36.—(1) Where the guaranteed minimum of a person who has ceased to be an active member is appropriately secured, his earnings factors for the purposes of section 14(2) of the Pension Schemes Act 1993 must be determined—

- (a) by reference to the last order under section 21 of the Social Security Pensions Act 1975⁽¹⁷⁾ or section 148 of the Social Security Administration Act 1992⁽¹⁸⁾ (revaluation orders) to come into force before the end of the tax year in which he ceased to be an active member; and

⁽¹⁷⁾ 1975 c. 60; section 21 was repealed by the Social Security (Consequential Provisions) Act 1992 (c. 6), section 3(1) and Schedule 1.

⁽¹⁸⁾ 1992 c. 5.

- (b) without reference to the last such order to come into force before the end of the final relevant year.
- (2) For such a person the weekly equivalent mentioned in section 14(2) of the Pensions Schemes Act 1993 is to be increased—
- (a) by at least the prescribed percentage for each relevant year after the end of the tax year in which he ceased to be an active member; and
- (b) in accordance with such additional requirements as may be prescribed for the purposes of section 16(3) of that Act⁽¹⁹⁾.
- (3) In this regulation—
- “appropriately secured” has the meaning given in section 19 of the Pension Schemes Act 1993;
- “prescribed percentage” has the meaning given in regulation 62 of the Occupational Pensions Schemes (Contracting-out) Regulations 1996⁽²⁰⁾;
- “relevant year” and “final relevant year” have the meanings given respectively in sections 14(8) and 16(5) of the Pension Schemes Act 1993⁽²¹⁾.

Death grants

Death grants

37.—(1) If a member dies, the administering authority may make payments to or for the benefit of the member’s nominee or executors or any person appearing to the authority to have been his relative or dependant at any time.

(2) A nomination must be made by notice in writing to the administering authority in such form as the administering authority may from time to time require and may be revoked in the same manner.

(3) A nomination is also revoked by any subsequent nomination which complies with the requirements referred to in paragraph (2).

(4) If not previously revoked, a nomination ceases to have effect on the member’s subsequent marriage.

(5) The aggregate amount paid under paragraph (1) must not exceed the member’s death grant.

(6) The amount of an active member’s death grant is the greater of—

- (a) $2 \times$ the member’s final pay; or
- (b) ~~$3 \times$ his final pay~~ **\times his total membership.**

(7) The multiplier for a deferred member’s death grant is the same as for his retirement grant.

(8) The multiplier for a pensioner member’s death grant is 5, but the amount so calculated is reduced by the amounts of any retirement pension paid to him.

(9) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member’s death grant before the expiry of the period of two years beginning with his death, they must pay an amount equal to the shortfall to the member’s executors.

(10) For these Regulations, any payments made under paragraph (1) must be treated as payments made by way of death grant.

⁽¹⁹⁾ Section 16(3) was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 28.

⁽²⁰⁾ S.I. 1996/1172.

⁽²¹⁾ Sections 14(8) and 16(5) were amended by the Pensions Act 1995, Schedule 5, paragraph 27 and 28.

Reduction of death grants: re-employed pensioners

38.—(1) If—

- (a) after the deceased became entitled to a pension under the Scheme (“the previous pension”) he entered further local government employment;
- (b) on leaving the further employment he became entitled to a pension (“the additional pension”) (but not to a single pension by making an election under regulation 28); and
- (c) his entitlement to the previous or additional pension was by virtue of an election under regulation 30,

the death grant payable because of his membership in the further employment must be reduced (or extinguished) to the extent necessary to prevent his total pension benefits exceeding (or further exceeding) his relevant final pay.

(2) A person’s total pension benefits are the total of—

- (a) every death grant and all pension payments made as respects his previous pension (including increases under the Pensions (Increase) Act 1971(22) and the Pensions Increase Act 1974)(23); and
- (b) all pension payments as respects of his additional pension (including such increases).

(3) A person’s relevant final pay is the greater of—

- (a) the final pay used for calculating his previous pension (adjusted for inflation); and
- (b) the final pay used for calculating his additional pension.

(4) The pay for an employment must be adjusted for inflation by calculating the amount to which it would have increased if it were an official pension becoming payable from the end of that employment.

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).

(22) 1971 c. 56.

(23) 1974 c. 9.

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).

Children's pensions

Meaning of “eligible child”

- 43.**—(1) The eligible child of a deceased member is—
- (a) a child of the deceased’s marriage or his adopted child; or
 - (b) a child who was wholly or mainly dependent on the deceased at the time of his death.
- (2) A person counts as a child only if—
- (a) he is aged under 17;
 - (b) since he became 17 he has been engaged continuously in full-time education or in training for a trade, profession or vocation; or
 - (c) he is physically or mentally incapacitated and became so whilst a child within sub-paragraph (a) or (b).
- (3) If an appropriate administering authority wish, they may treat education or training as continuous despite a break.

Children’s short-term pensions

- 44.**—(1) If an active or pensioner member dies leaving one or more eligible children, they are entitled to a children’s short-term pension.
- (2) If a short-term pension is payable to a surviving spouse under regulation 39, the children’s short-term pension is payable only for three months after the death.
- (3) Otherwise, it is payable for six months after the death.
- (4) Where the deceased was an active member, the pension is the greater of—
- (a) the deceased’s final pay; or
 - (b) ~~(3 x his final pay)~~ **x his total membership.**
80
- (5) Where the deceased was a pensioner member, the pension is equal to his retirement pension immediately before the death.
- (6) Where, if a children’s long-term pension and a surviving spouse’s long-term pension were payable instead of short-term pensions, that would result in a greater aggregate pension, long-term pensions shall be payable instead of short-term pensions.
- (7) Where—
- (a) a children’s short-term pension is payable for a child who is not in the care of a person to whom a short-term pension is payable (or would be payable apart from paragraph (6)); and
 - (b) a children’s long-term pension would be greater,
- the long-term pension shall be payable instead of the short-term pension.

- (8) In this regulation “pensioner member” includes a person whose retirement pension has been commuted under regulation 49 (commutation: exceptional ill-health).

Children's long-term pensions

45.—(1) If a member dies leaving one or more eligible children, they are entitled to a children's long-term pension.

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

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

(4) An eligible child ceases to be entitled to a long-term pension when he ceases to be a child within regulation 43(2).

(5) If the deceased was an active member, the pension is the appropriate fraction of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 26(1) (ill-health).

(6) If the deceased was a deferred member, the pension is the appropriate fraction of the amount of the pension to which he would have been entitled if on the date of death he had become entitled under regulation 24 (normal retirement).

(7) If the deceased was a pensioner member, the pension is the appropriate fraction of his retirement pension.

(8) If, apart from this paragraph the calculation of the long-term pension would be based on a member's retirement pension calculated on the basis of membership of less than—

(a) 10 years; or

(b) the period he would have been entitled to count if his active membership had continued until his 65th birthday,

(whichever is the shorter), then that period should be used instead in calculating it.

(9) The appropriate fractions are—

(a) where there is one eligible child—

(i) if a surviving spouse's long-term pension is payable, one quarter,

(ii) otherwise, one third;

(b) where there is more than one eligible child—

(i) if a surviving spouse's long-term pension is payable, one half,

(ii) otherwise, two-thirds.

(10) If a child in full-time training for a trade, profession or vocation is receiving pay at an annual rate exceeding the training rate—

(a) the pension is reduced by the excess; but

(b) if the pension would be greater without the child, he need not be counted.

(11) In paragraph (10) "the training rate" means the current annual rate of an official pension which began to be paid on 1st April 1994 at an annual rate of £1,450.

Discretion as to payment of children's pensions

46.—(1) If a children's pension is payable for more than one eligible child, the appropriate administering authority may apportion it amongst the children as they think fit.

(2) The appropriate administering authority may pay the whole or part of a children's pension to a person other than an eligible child, to be applied for the benefit of one or more eligible children as the authority direct.

Dependants of re-employed pensioners

47.—(1) If—

- (a) after a member became entitled to an unreduced retirement pension, he entered further local government employment in which he died; and
- (b) assuming that immediately before he died he had retired from the further employment, he would have been entitled to elect under regulation 28 for a single pension,

the benefits payable under the Scheme on his death (except short-term pensions) and any surrendered benefits must be calculated in the case of each beneficiary using whichever of assumptions A and B gives that beneficiary the more favourable benefits.

(2) Assumption A is that the deceased did so retire and assumption B is that he did so retire and so elect.

(3) An unreduced retirement pension is a pension which is not reduced under regulation 30(4) (early leavers).

(4) If after a member became entitled to a relevant pension, he entered further local government employment in which he died, the benefits payable under the Scheme on his death (except short-term pensions) must be calculated on assumption A.

(5) A relevant pension is a superannuation allowance under Part I of the Act of 1937 or a pension under the former Regulations, a local Act scheme, or a retirement pension under the 1974 Regulations, the 1987 Regulations or these Regulations, which was reduced or suspended on account of the further employment.

(6) Where—

- (a) a member dies in a new employment; and
- (b) assuming he had retired from it on the date he died, he would have been entitled to a retirement pension under this Chapter (whether payable immediately or not),

the short-term pension under regulation 39 is the sum of—

- (i) his final pay in the new employment; and
- (ii) the rate at which his retirement pension from his former employment is payable (after taking into account any reduction under regulation 110 (application of abatement policy in individual cases)).

(7) Where a member dies in a new employment, the long-term pension under regulation 40 is the greater of amount A or amount B.

(8) Amount A is half the sum of—

- (a) the member's retirement pension; and
- (b) the retirement pension to which he would have been entitled if on the date of death he had become entitled to a pension under regulation 26(1) (ill-health) from the new employment.

(9) Amount B is half the retirement pension to which the member would have been entitled if on the date of death he had become entitled under regulation 26(1) and had elected under regulation 28 for a single pension.

(10) Amount A and amount B are both to be calculated on the basis that the retirement pensions have not been—

- (a) reduced by virtue of a surrender under regulation 32; or
- (b) increased under regulation 53 (effect of increases under Chapter II of Part III for older members).

Commutation

Commutation: small pensions

48.—(1) If the annual rate of the retirement pension which a member who has attained state pensionable age is entitled to be paid is not more than £260 or such higher amount as may be prescribed from time to time by regulations made under section 21(1) of the Pension Schemes Act 1993⁽²⁴⁾, the appropriate administering authority may pay him a lump sum representing the capital value of the pension.

(2) The appropriate administering authority may also pay a lump sum representing the capital value of a long-term pension which is payable to any surviving spouse or to or in respect of an eligible child or children, if the annual rate does not exceed £260, or such higher amount as may be so prescribed.

(3) If a member is entitled to more than one retirement pension under the Scheme or more than one long-term pension is payable under the Scheme following a deceased member's death, a lump sum is payable only if the aggregate amount payable to that member or following that death is less than £260 or such higher amount as may be so prescribed.

(4) Any increase payable under the Pensions (Increase) Act 1971⁽²⁵⁾ in respect of a pension must be included in its annual rate.

(5) The capital value of a pension must be calculated as shown in guidance issued by the Government Actuary.

(6) Where a payment is made in respect of a retirement pension, a payment representing the capital value of any long-term pension, which would be payable to the member's spouse if that spouse survived the member, must also be made.

(7) The payment of a lump sum in respect of a pension discharges the appropriate administering authority from their liability for it and, where the payment is made to a member, for any short-term or long-term pensions which may become payable on his death.

(8) The appropriate administering authority must deduct from any payment under this regulation any tax to which they may become chargeable under section 599 of the Taxes Act⁽²⁶⁾.

Commutation: exceptional ill-health

49.—(1) If, when a retirement pension first becomes payable to a member, the appropriate administering authority are satisfied that his life expectancy is less than one year, they may pay him a lump sum equal to five times the amount by which the annual rate of the retirement pension exceeds his guaranteed minimum.

(2) Such a payment discharges the authority's liability for that pension (except the guaranteed minimum) and for any lump sum death grant calculated by reference to that pension under the Scheme.

(3) The authority must deduct from any such payment any tax to which they may become chargeable under section 599 of the Taxes Act.

⁽²⁴⁾ 1993 c. 48.

⁽²⁵⁾ 1971 c. 56.

⁽²⁶⁾ Section 599 was amended by the Finance Act 1989 (c. 26), Schedule 6, paragraphs 11, 18.