
STATUTORY INSTRUMENTS

1998 No. 366

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

PART IV

ADMINISTRATION

CHAPTER V

SPECIAL ADJUSTMENTS

Misconduct

Forfeiture of pension rights after conviction of employment-related offences

111.—(1) If a member is convicted of a relevant offence, the Secretary of State may issue a forfeiture certificate.

(2) Where a forfeiture certificate is issued the member's former employing authority may direct that any of the rights in respect of him under these Regulations or the 1987 Regulations as respects his previous membership shall be forfeited.

(3) A relevant offence is an offence, committed in connection with an employment in which the person convicted is a member, and because of which he has left that employment.

(4) A forfeiture certificate is a certificate that the offence—

- (a) was gravely injurious to the State; or
- (b) is liable to lead to serious loss of confidence in the public service.

(5) If the former employing authority incurred loss as a direct consequence of the relevant offence, they may give a direction under paragraph (2) only if they are unable to recover their loss under regulation 113 or 115 or otherwise, except after an unreasonable time or at disproportionate cost.

(6) A direction under paragraph (2) may only be given if an application for a forfeiture certificate has been made by the former employing authority before the expiry of three months from the date of the conviction.

(7) Where a former employing authority apply for a forfeiture certificate, they must at the same time send the convicted person and the appropriate administering authority a copy of the application.

Interim payments directions

112.—(1) If—

- (a) a person leaves an employment in which he was a member because of an offence in connection with that employment; and
- (b) a forfeiture certificate has been issued under regulation 111(1) in respect of that offence,

his former employing authority may give an interim payments direction to the appropriate administering authority.

- (2) However, they may not give such a direction if they have—
- (a) notified him of a decision under regulation 96 on any question as to entitlement to benefit; or
 - (b) given any direction under regulation 111(2) (“a forfeiture direction”).

(3) An interim payments direction is a direction to make interim payments to any person who appears to the former employing authority to be a person who would be entitled to receive payment of a benefit under the Scheme if no forfeiture direction were given.

(4) The person to whom payments must be made and the amounts must be specified in the direction.

(5) The amounts must not exceed the amounts which the person specified would be entitled to be paid if no forfeiture direction were given.

(6) An interim payments direction is not a decision under regulation 96 as to any person’s entitlement to a benefit.

(7) Payments in accordance with an interim payments direction shall be deemed to be payments in respect of a benefit to which the recipient was entitled (regardless of any contrary forfeiture direction or decision under regulation 96).

Recovery or retention where former member has misconduct obligation

113.—(1) This regulation applies where a person—

- (a) has left an employment, in which he was or had at some time been a member, in consequence of a criminal, negligent or fraudulent act or omission on his part in connection with that employment;
- (b) has incurred some monetary obligation, arising out of that act or omission, to the body who were his employing authority in that employment; and
- (c) is entitled to benefits under Part II.

(2) The former employing authority may recover or retain out of the appropriate fund—

- (a) the amount of the monetary obligation; or
- (b) the value at the time of the recovery or retention, of all rights in respect of the former employee under the Scheme with respect to his previous membership (as determined by an actuary),

whichever is less.

(3) The rights specified in paragraph (2)(b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of regulation 65(5) (including that regulation as it applies by virtue of regulation 71).

(4) The former employing authority must give the former employee—

- (a) not less than three months' notice of the amount to be recovered or retained under paragraph (2); and
- (b) a certificate showing the amount recovered or retained, how it is calculated, and the effect on his benefits or prospective benefits.

(5) If there is any dispute over the amount of the monetary obligation specified in paragraph (1)(b), the former employing authority may not recover or retain any amount under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbiter.

Protection of guaranteed minimum pension rights

114.—(1) The power—

- (a) to give directions under regulation 111(2); or
- (b) or to recover or retain amounts under regulation 113(2)

may not be exercised so as to deprive a person of his guaranteed minimum pension or any widow's or widower's guaranteed minimum pension.

(2) However, such a power may be so exercised if the person left his employment—

- (a) because of the offence of treason; or
- (b) because of one or more offences under the Official Secrets Acts 1911 to 1989 for which the former member has been sentenced on the same occasion—
 - (i) to a term of imprisonment of at least 10 years, or
 - (ii) to two or more consecutive terms amounting in aggregate to at least 10 years.

Transfer of sums from the pension fund to compensate for former member's misconduct

115.—(1) This regulation applies where—

- (a) a person has left an employment in which he was a member because of—
 - (i) an offence involving fraud, or
 - (ii) grave misconduct,

in connection with that employment;

- (b) his former employing authority in that employment have suffered direct financial loss by reason of the offence or misconduct; and

(c) either—

- (i) the former employee became entitled to benefits under Part II or the 1987 Regulations and a direction has been given under regulation 111(2), or
- (ii) he did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 86 (whether or not he has waived his right).

(2) If the former employing authority are an administering authority, they may transfer an appropriate amount from their pension fund to the appropriate fund or account.

(3) Otherwise, the appropriate administering authority must pay the former employing authority an appropriate amount out of the pension fund, if requested to do so.

(4) However, if a payment in lieu of contributions is due or has been made in respect of the former employee, the administering authority may reduce a payment under paragraph (3) by half the amount of the payment in lieu of contributions.

(5) An appropriate amount is an amount not exceeding—

- (a) the amount of the direct financial loss; or
- (b) the amount of any contributions which could have been returned to the former employee, or paid to his spouse or a dependant, under regulation 87(2) above or regulation C12(5) of the 1987 Regulations, less the amount of any which have been so returned or paid,

whichever is the less.

(6) If after making a payment under paragraph (3) the appropriate administering authority are required to make any transfer payment under Chapter IV of Part IV of the Pension Schemes Act 1993 or under regulation 119 or to make a payment under regulation 126 for a former employee, the former employing authority must repay it, if requested to do so.