
STATUTORY INSTRUMENTS

1998 No. 366

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

PART IV

ADMINISTRATION

CHAPTER V

SPECIAL ADJUSTMENTS

Abatement during new employment

Statements of policy concerning abatement of retirement pensions in new employment

109.—(1) Each administering authority must formulate and keep under review their policy concerning abatement (that is, the extent, if any, to which the amount of retirement pension payable to a member from any pension fund maintained by them under the Scheme should be reduced (or whether it should be extinguished) where the member has entered a new employment with a Scheme employer, other than one in which he is eligible to belong to a teachers scheme).

(2) Before formulating that policy an administering authority must consult with the authorities who employ active members for whom they are the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with the commencement date, each authority shall publish a statement as to the policy which is being applied by them where a member who is so entitled enters such a new employment on or after that date.

(4) Where, as a result of reviewing their policy concerning abatement, an administering authority determine to amend it, they must publish a statement of the amended policy before the expiry of the period of one month beginning with the date on which they determine to do so.

(5) In formulating their policy concerning abatement, an administering authority must have regard to—

- (a) the level of potential financial gain at which they wish abatement to apply;
- (b) the administrative costs which are likely to be incurred as a result of abatement in the different circumstances in which it may occur; and
- (c) the extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.

(6) In paragraph (5)(a) the reference to financial gain is a reference to the financial gain which it appears to the administering authority may be obtained by a member as a result of his entitlement both to a pension and to pay under the new employment.

Application of abatement policy in individual cases

110.—(1) Where a member who is entitled to the payment of a retirement pension proposes to enter a new employment with a Scheme employer, he must inform the employer about that entitlement.

(2) If such a member enters such a new employment he must immediately notify in writing the body from whom he has become entitled to receive the pension.

(3) Paragraphs (1) and (2) do not apply where the new employment is employment in which the person is eligible to belong to a teachers scheme.

(4) The authority which is the member's appropriate administering authority as respects the retirement pension to which he is entitled—

- (a) must apply the policy published by them under regulation 109 to the member; and
- (b) may reduce the annual rate of that pension or, as the case may be, may cease to pay it, during the period while he holds the new employment, in accordance with that policy.

(5) However, no reduction under paragraph (4) of the pension of a person who was a member immediately before the commencement date may exceed the reduction which would have applied under the 1987 Regulations if those Regulations had applied when the member entered his new employment.

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.