
STATUTORY INSTRUMENTS

1998 No. 366

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

PART IV

ADMINISTRATION

CHAPTER I

PENSION FUNDS AND EMPLOYERS' PAYMENTS

Pension funds

The pension funds

72. The bodies responsible for maintaining pension funds for the Scheme immediately before the commencement date must continue to maintain them unless the fund is vested in a different body by or under any enactment.

Appropriate funds

73.—(1) The appropriate fund for a member or a person who is entitled to any benefit in respect of a person who has been a member is—

- (a) in the case of an active member, the fund specified for a member of his description in accordance with Schedule 5;
- (b) in the case of—
 - (i) a deferred or a pensioner member who was an active member on the commencement date or has been an active member since that date, or
 - (ii) a member in respect of whom another person has rights under the 1987 Regulations and these Regulations,the fund so specified for a member of his description when he ceased to be an active member; and
- (c) in the case of any other deferred or a pensioner member, the fund specified for him by virtue of regulation 19 of the Transitional Regulations.

(2) Where these Regulations refer to payments being made without referring to the fund to which or from which they are to be made, the reference is to payments being made to or from the fund which is the appropriate fund for the member in question.

(3) Paragraph (2) does not apply where the payments are made under Chapter IV of Part III (AVCs and SCAVCs).

Admission agreement funds

74.—(1) An administering authority who have made an admission agreement may establish a further pension fund (an “admission agreement fund”) in addition to the fund maintained under regulation 73 (“the main fund”).

(2) Immediately after an authority establishes an admission agreement fund they must give the Secretary of State notice in writing that they have done so.

(3) The notice must specify the admission bodies whose employees are eligible for benefits from the admission agreement fund (“the transferred bodies”).

(4) Where an admission agreement fund is established, assets of such value as an actuary appointed by the appropriate administering authority determines to be appropriate must be transferred from the main fund to the admission agreement fund.

(5) When valuations under regulation 76 of both the main fund and the admission fund are first obtained after the admission agreement fund is established, the administering authority must obtain a transfer statement from the actuary appointed by them.

(6) The transfer statement must specify whether in the actuary’s opinion there is a need for further assets to be transferred from the main fund to the admission agreement fund, and, if so, the value of those assets.

(7) Where the transfer statement specifies that assets of a specified value need to be transferred, the administering authority must arrange for assets of that value to be transferred as soon as is reasonably practicable.

(8) Where an admission agreement fund is established, the liabilities of the main fund as respects membership in employment with the transferred bodies become liabilities of the admission agreement fund.

Accounts and audit

75. After any audit of any pension fund of theirs an administering authority shall immediately send copies—

- (a) of the revenue account and balance sheet of the fund; and
- (b) of any report by the auditor,

to each body whose employees are active members.

Actuarial valuations and certificates

76.—(1) Each administering authority must obtain—

- (a) an actuarial valuation of the assets and liabilities of each of their pension funds as at 31st March in 1999 and in every third year afterwards;
- (b) a report by an actuary; and
- (c) a rates and adjustments certificate.

(2) Each of these documents must be obtained before the first anniversary of the date (“the valuation date”) as at which the valuation is made or such later date as the Secretary of State may agree.

(3) A rates and adjustments certificate is a certificate specifying—

- (a) the common rate of employer’s contribution; and
- (b) any individual adjustments,

for each year of the period of three years beginning with 1st April in the year following that in which the valuation date falls.

(4) The common rate of employer's contribution is the amount which in the actuary's opinion should be paid to the fund by all bodies whose employees contribute to it so as to secure its solvency, expressed as a percentage of the pay of their employees who are active members.

(5) The actuary must have regard—

(a) to the existing and prospective liabilities of the fund arising from circumstances common to all those bodies; and

(b) to the desirability of maintaining as nearly constant a rate as possible.

(6) An individual adjustment is any percentage or amount by which in the actuary's opinion contributions at the common rate should in the case of a particular body be increased or reduced by reason of any circumstances peculiar to that body.

(7) A rates and adjustments certificate must contain a statement as to the assumptions on which the certificate is given as respects—

(a) the number of members who will become entitled to payment of pensions under provision of the Scheme; and

(b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(8) A report under paragraph (1)(b) must contain a statement as to the demographic assumptions used in making the valuation, showing how they relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(9) The authority must provide the actuary preparing a valuation or a rates and adjustment certificate with the consolidated revenue account of the fund and such other information as he requests.

(10) The authority must send copies of any valuation, report or certificate under this regulation or revision under regulation 77 to—

(a) the Secretary of State;

(b) each body with employees who contribute to the fund in question; and

(c) any other body which is or may become liable to make payments to that fund.

(11) They must also send the Secretary of State—

(a) a copy of the consolidated revenue account with which the actuary was provided under paragraph (9); and

(b) a summary of the assets of the fund at the valuation date (unless such a summary is contained in the report).

Special circumstances where revised actuarial valuations and certificates must be obtained

77.—(1) When obtaining a transfer statement under regulation 74(5) an administering authority must also obtain from the actuary a rates and adjustments certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for their main fund.

(2) Where an admission agreement ceases to have effect, the administering authority who made it must obtain—

(a) an actuarial valuation as at the date it ceases of the liabilities of the admission body which is ceasing to be a transferred body; and

- (b) a revision of any rates and adjustments certificate for any fund which is affected, showing the revised contributions due from that admission body and any other admission body in respect of which revised contributions are due.
- (3) This paragraph applies where—
 - (a) an administering authority agree with an employing authority under regulation 51(6)(a) that the employing authority will pay increased contributions under regulation 78; or
 - (b) it appears to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with an employing authority exceeds the amount specified in or likely as a result of the assumptions stated for that authority in a rates and adjustments certificate by virtue of regulation 76(7).
- (4) Where paragraph (3) applies, the administering authority must obtain a revision of the rates and adjustments certificate affected, showing the resulting changes as respects that employing authority.

Employers' liability to make payments

Employer's contributions

78.—(1) An employing authority must contribute to the appropriate fund in each year covered by a rates and adjustments certificate under regulation 76 or 77 the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).

(2) During each of those years an employing authority must make payments to the appropriate fund on account of the amount required for the whole year.

(3) Those payments on account must—

- (a) be paid at the end of the intervals determined under regulation 80(1); and
- (b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.

(4) An employer's contribution for any year is the common percentage for that year of the pay on which contributions have during that year been paid to the fund under Part II by employees who are active members (other than contributions under regulation 17(3)), increased or reduced by any individual adjustment specified for that employer for that year in the rates and adjustments certificate.

(5) The common percentage is the common rate of employer's contribution specified in that certificate, expressed as a percentage.

Employer's further payments

79.—(1) Where an authority pass a resolution under regulation 51, they must pay the appropriate sum to the appropriate fund before the expiry of relevant period (as defined in paragraph (7) of that regulation) unless before the end of that period they have agreed as mentioned in paragraph (6)(a) of that regulation.

(2) Where an authority pass a resolution under regulation 136 in a case where paragraph (4)(a) of that regulation does not apply, they must pay the appropriate sum to the appropriate fund before the expiry of the period of one month beginning with the date on which the resolution is passed.

(3) The appropriate sum for a member is such sum as is shown as appropriate in guidance issued by the Government Actuary.

(4) Any extra charge on the appropriate fund resulting from—

- (a) a determination under regulation 14 or a resolution under regulation 51, 52 or 136 of these Regulations; or

(b) a member's becoming entitled to an ill-health pension calculated under regulation 27 by reference to an enhanced membership period, must be repaid to the fund by the employing authority concerned (but, in the case of resolutions under regulations 51 and 136, only so far as not paid under paragraph (1) or, as the case may be, paragraph (2)).

Payments by employing authorities to appropriate administering authorities

80.—(1) Every employing authority must pay to the appropriate administering authority, on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine (but in the case of the amounts mentioned in sub-paragraph (a) not later than the time required under section 49(8) of the Pensions Act 1995)—

- (a) all amounts from time to time deducted from the pay of their employees under these Regulations;
- (b) any amount received by them under regulation 17, (by deduction or otherwise) during the interval;
- (c) any extra charge payable under regulation 79 of which they have been notified by the administering authority during the interval; and
- (d) a contribution towards the cost of the administration of the fund.

(2) Paragraph (1)(d) does not apply where the cost is paid out of the fund under regulation P5(2) or P6(9) of the 1987 Regulations.

(3) If the annual amount payable under paragraph (1)(d) cannot be settled by agreement, it must be determined by the Secretary of State.

(4) Every payment under paragraph (1)(a) is to be accompanied by a statement showing—

- (a) the name and pay of each of the employing authority's employees who is an active member;
- (b) which employees are paying voluntary contributions;
- (c) the amounts which represent deductions from the pay of each of the employees and the periods covered by the deductions, distinguishing amounts representing deductions for voluntary contributions.

(5) An administering authority may direct the information mentioned in paragraph (4) to be given to them instead in such form and at such intervals (not exceeding 12 months) as they specify in the direction.

(6) Paragraphs (1) and (4) do not apply to an employing authority which is an administering authority.

(7) Voluntary contributions are contributions other than those under Part II.

Interest

Interest

81.—(1) An administering authority may require an authority from which payment of any amount due under regulation 78, 79, 80, 90, 126 or 127 is overdue by more than one month to pay interest on that amount.

(2) Interest under paragraph (1) or under regulation 93(1) must be calculated at one per cent. above the base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

(3) Interest under regulation 86(1) or 88(5) must be calculated at nine per cent. per annum compounded with yearly rests on 31st March.

CHAPTER II

MEMBERS' CONTRIBUTIONS

Discontinuance of additional contributions

82.—(1) A member paying additional contributions under regulation 54 may elect to stop payment and must do so if he ceases to be an active member.

(2) Such an election must be made by notice in writing to the administering authority and the employing authority.

(3) If a member stops paying such contributions before his NRD on leaving his employment because of such permanent incapacity as is mentioned in regulation 26(1) or on his death, he is to be treated as having completed payment of those contributions.

(4) If a member stops paying such contributions before his NRD on leaving his employment by reason of redundancy at least 12 months after he elected to pay them, he may elect to make a lump sum payment to the appropriate fund.

(5) Such an election must be made by notice in writing to the administering authority given not later than the expiry of the period of three months beginning on the day after he leaves his employment (or such longer period as they allow).

(6) The amount of that payment must be calculated by an actuary appointed by the appropriate administering authority as representing the capital value of the unpaid contributions.

(7) If the member duly makes that payment before the expiry of the period of one month beginning with the date on which he is notified of its amount, he must be treated as having completed his additional contributions under regulation 54.

(8) If a member stops paying such contributions before his NRD and neither paragraph (3) nor (4) applies, such proportion of the original additional period covered by the election may be counted as part of his total membership as the length of the period during which he paid such contributions bears to the length of the full period during which they were to have been paid.

(9) If a member—

- (a) stops paying such contributions before his NRD on leaving his employment;
- (b) has not become entitled to the payment of any benefit under the Scheme for that employment and has not made an election under regulation 28;
- (c) is not treated under this regulation as having completed paying his contributions; and
- (d) within 12 months after leaving that employment again enters local government employment, without having received any payment under regulation 86 or 87,

he may pay his employing authority in his new employment an amount equal to the additional contributions that would have been payable if he had not stopped contributing.

(10) If he pays that amount within three months after re-entering local government employment the election under regulation 54 continues in effect and the break in payments must be disregarded.

(11) This regulation does not apply if the member who stops paying contributions receives a return of contributions which includes additional contributions under regulation 54.

(12) In paragraph (4) “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.

Separate treatment of AVCs and SCAVCs from other contributions

83.—(1) Regulations 86 and 87 (return of contributions) do not apply to AVCs or SCAVCs payable under (or interest on late payments which relate to AVCs or SCAVCs under) Chapter IV of Part III or under any agreement made for the payment of AVCs before the commencement date.

(2) The regulations mentioned in paragraph (3) do not apply in relation to benefits under such a policy or agreement.

(3) Those regulations are—

- (a) regulation 96 (first instance decisions);
- (b) regulation 111 (forfeiture);
- (c) regulation 112 (interim payments directions); and
- (d) regulation 113 (recovery or retention in cases of misconduct).

Over-provision: calculation and return of surplus AVC and SCAVC funds

84.—(1) The appropriate administering authority for any member who makes AVCs or SCAVCs must comply with the requirements of regulation 5 of the AVC Regulations.

(2) If the Scheme is the leading scheme in relation to a member, they must also comply with the requirements of regulation 6 of those Regulations, so far as they concern main schemes.

(3) Where surplus funds fall to be repaid under that regulation because of over-provision relating to death benefits, the administering authority must repay the member (or, if he has died, his executors) out of the accumulated value of the payments made by the administering authority with respect to the pension policy under regulation 62 or 69(1).

(4) Where any other benefit is abated, the repayment must be made out of the accumulated value of the additional contributions mentioned in regulation 63(2).

(5) In this regulation—

“AVC Regulations” are the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(1);

“leading scheme” and “main schemes” have the meanings given in regulation 2 of those Regulations; and

“surplus funds” has the meaning given in regulation 6 of those Regulations.

Cost of calculations for transfer of AVCs or SCAVCs into the Scheme where no transfer is requested

85. Where—

(a) at a member’s request an administering authority give him information concerning the amount payable if he elects under regulation 65(2) (including that regulation as applied by regulation 71(1)) for the accumulated value of his invested additional contributions to be used to acquire transfer credits in the Scheme; but

(b) he does not make such an election before the expiry of the period of three months beginning with the date on which they give him the information,

they may deduct the cost of calculating the transfer value from the accumulated value of the additional contributions mentioned in regulation 63(2).

Rights to return of contributions

86.—(1) If a member with less than 2 years' total membership—

- (a) ceases to be employed by a Scheme employer or to be an active member without becoming entitled to a retirement pension; or
- (b) ceases to be an active member by reason of a notification under regulation 7(2),

he is entitled to be repaid his contributions from the appropriate fund with interest.

(2) However, a person is not entitled to interest on his contributions if he ceased to be a member on leaving his employment by reason of his resignation or of his dismissal because of inefficiency, an offence of a fraudulent character or misconduct.

(3) Repayment of contributions with interest is due before the expiry of the period of one year beginning with the date on which active membership ceases unless the member elects within that period to waive his entitlement to the repayment of contributions.

(4) A person who continues as an active member in another employment he held concurrently with the employment in which he has ceased to be an active member may elect for an amount equal to the repayment to be treated as contributions to the Scheme as respects his membership in that concurrent employment, entitling him to such period of membership as is appropriate in accordance with guidance issued by the Government Actuary.

(5) A person who elects under paragraph (4) ceases to be entitled to that repayment (but without prejudice to any entitlement arising later in respect of the concurrent employment).

(6) The administering authority must deduct from any repayment under this regulation any tax to which they may become chargeable under section 598 of the Taxes Act (charge to tax on repayment of employee's contributions).

(7) The contributions which must be repaid under paragraph (1) are any contributions or payments paid by the member to any pension fund under Part II or Chapter III of Part III or by way of additional contributory payments or added period payments, or paid under any of the relevant old provisions (unless already returned and not repaid), which are attributable to a period of membership which might have counted under these Regulations in relation to the employment in which he has ceased to be a member, but not to any earlier period of membership in respect of which a benefit has been paid.

(8) The relevant old provisions are regulations C2, C3, C3A, C4, C6A, C7, C17, C8 and C8A of the 1987 Regulations.

(9) Added period payments are payments made for the purposes of regulation C5 or C6 of the 1987 Regulations, regulation D10 of the 1974 Regulations, or section 2(1) of the Act of 1953 or any similar provision contained in a local Act scheme.

(10) "Additional contributory payment" has the meaning given in Schedule 1 to the 1987 Regulations.

Exclusion of rights to return of contributions

87.—(1) A person is not entitled to a repayment under regulation 86(1) if—

- (a) he becomes a member again within one month and one day (otherwise than in employment he held concurrently with the employment in which he was previously a member);
- (b) he left his employment in consequence of—
 - (i) an offence of a fraudulent character; or
 - (ii) grave misconduct,in connection with this employment; or
- (c) regulation 117(2) applies.

(2) However, where paragraph (1)(b) applies the employing authority may direct the payment out of the appropriate fund to him or, in a case of an offence of a fraudulent character, to him or to his spouse or any dependant of his, of a sum equal to all or part of his contributions.

(3) A person is not entitled to a repayment under regulation 86(1) if—

(a) he is for the time being entitled to be paid, or has been paid, a benefit under regulation 26(3) (ill-health grants) or an ill-health retirement grant under regulation E4 of the 1987 Regulations;

(b) a transfer value has been credited to the appropriate fund for him.

(4) A person who is entitled to a repayment under regulation 86(1)(a) ceases to be entitled to it if he returns to local government employment before receiving it.

Deduction and recovery of member's contributions

88.—(1) An employing authority may deduct from a person's pay any contributions payable by him under these Regulations.

(2) Sums payable under regulation 16(4) or (7)(c) (reserve forces) may be deducted by the member's former employer from any payment made to him under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(2), to the extent that they are payable in respect of the same period.

(3) The appropriate administering authority may recover any such sum remaining due and not deducted under paragraph (1) or (2)—

(a) as a debt arising under a contract in any court of competent jurisdiction; or

(b) by deducting it from any payment by way of benefits to or in respect of the person in question under these Regulations.

(4) However, the sums mentioned in paragraph (2) are only recoverable under paragraph (3) if unpaid for 12 months after the person ceases to perform relevant reserve forces service.

(5) If an employing authority deduct any amount in error from a person's pay or any other sum due to him in respect of contributions, they must pay interest on that amount for the period beginning one month after the date of deduction and ending on the date of repayment.

CHAPTER III

PAYMENT OF BENEFITS ETC.

Pension increases and cash equivalents under the Pension Schemes Act 1993

89. Any increase in a pension required by reason of Chapter III of Part IV of the Pension Schemes Act 1993(3) (protection of increases in guaranteed minimum pensions: anti-franking) must be paid from the appropriate fund.

Pension increases under the Pensions (Increase) Acts

90.—(1) Where a pension to which the Pensions (Increase) Act 1971(4) ("the 1971 Act") applies is payable out of an appropriate fund, any increase under that Act or the Pensions (Increase) Act 1974(5) ("the 1974 Act") must be paid from that fund.

(2) Schedule 3 to the 1971 Act has effect only in relation to any such increase where—

(2) 1951 c. 65.

(3) 1993 c. 48.

(4) 1971 c. 56.

(5) 1974 c. 9.

- (a) the last employing authority is not a body required by regulation 78 to contribute to that fund; or
- (b) the last employing authority is such a body and the increase was payable before 1st April 1990.

(3) In a case where the last employing authority ceases after 31st March 1990 to be such a body, Schedule 3 to the 1971 Act has effect only so far as the cost of the increase has not, in the opinion of an actuary appointed by the administering authority of the fund, already been provided for by contributions under regulation 78.

(4) The amounts due under Schedule 3 to the 1971 Act must be paid on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine.

(5) The administering authority shall credit to the appropriate fund any amounts paid to them under Schedule 3 to the 1971 Act and any interest paid on them.

(6) The last employing authority has the same meaning as in paragraph 1(2) of Schedule 3 to the 1971 Act, except that if the pension became payable by reason of service with a relevant body, it means that body.

(7) Relevant bodies are—

- (a) an admission body which has made an admission agreement; or
- (b) a body employing persons deemed to be in employment by regulation 128.

Contributions equivalent premiums

91.—(1) Where a Scheme employer pays a contributions equivalent premium under section 55 of the Pension Schemes Act 1993(6) in respect of a member, that employer may recover, or if an administering authority retain, from the appropriate fund a sum not exceeding the premium.

(2) However, if the Scheme employer may recover or retain any sum under section 61 of that Act in respect of the premium, then only the balance may be recovered or retained under paragraph (1).

(3) Where a contributions equivalent premium is refunded under regulation 54(1)(c) of the Occupational Pension Schemes (Contracting-out) Regulations 1996(7) (re-entry into employment which is contracted-out by reference to the same scheme), the authority to whom it is refunded must pay to the appropriate fund a sum equal to the amount of the premium.

Commencement of pensions

92.—(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable begins with the day after the date on which his employment ends.

(2) The first period for which any retirement pension under regulation 30 is payable begins—

- (a) in a case where he elects under paragraph (1) of that regulation, with the day on which he elects; and
- (b) otherwise, with his NRD.

(3) Any short-term pension payable on the death of a member is payable in respect of a period beginning with the day after the date on which he dies.

(4) The first period for which any long-term pension is payable on the death of a member in a case where no short-term pension is payable begins with the day after the date on which he dies.

(6) 1993 c. 48; section 55 was amended by section 141 of the Pensions Act 1995 (c. 26).

(7) S.I. 1996/1172, amended by S.I. 1996/1977 and 1997/786 and 819.

Interest on late payment of certain benefits

93.—(1) Where all or part of a pension or lump sum payment due under these Regulations or the 1987 Regulations is not paid on the due date, the appropriate administering authority must pay interest on the unpaid amount to the person to whom it is payable—

- (a) in the case of a pension from one year after the due date; and
- (b) in any other case from one month after the due date.

(2) In the case of a pension the due date is one month after the amount becomes payable.

(3) In the case of a retirement grant, the due date is the date on which it becomes payable.

(4) In the case of a death grant, other than a payment made under regulation 37(1), the due date is the date on which—

- (a) confirmation, probate or letters of administration is or are produced to the administering authority; or
- (b) the authority become satisfied that the grant may be paid as provided in regulation 94.

(5) In the case of a payment made under regulation 37(1), the due date is the date one month after the expiry of the two year period referred to in paragraph (9) of that regulation.

(6) In the case of an ill-health grant, the due date is the day after the member ceased to hold his employment.

(7) In the case of a payment of a lump sum under regulation 48 or 49, the due date is the day after the member would otherwise become entitled to payment of a pension.

Payments due in respect of deceased persons

94.—(1) If when a person dies the total amount due to his executors under the Scheme (including anything due to him at his death) (“the amount due”) does not exceed the small payments amount, the appropriate administering authority may pay the whole or part of the amount due from their pension fund—

- (a) to his executors; or
- (b) to the person, or to or among any one or more of any persons, appearing to the authority to be beneficially entitled to the estate,

without the production of confirmation, probate or letters of administration of his estate.

(2) The small payments amount is the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965⁽⁸⁾ and applying in relation to his death.

(3) Such a payment discharges the appropriate administering authority from accounting for the amount paid.

Non-assignability

95.—(1) Every benefit to which a person is entitled under the Scheme is payable to or in trust for him.

(2) No such benefit is assignable or chargeable with his or any other person’s debts or other liabilities.

(8) 1965 c. 32.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to the permanent trustee, except in accordance with an order made under section 32(2) of the Bankruptcy (Scotland) Act 1985(9).

CHAPTER IV

DETERMINATIONS, INFORMATION AND RECORDS

Initial determinations of questions

First instance decisions

96.—(1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) Any question whether a person is entitled to a benefit under the Scheme must be decided by the Scheme employer who last employed him.

(3) That decision must be made as soon as is reasonably practicable after the employment ends.

(4) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount.

(5) That decision must be made as soon as is reasonably practicable after the event by virtue of which the entitlement arises or may arise.

(6) In relation to any employment in which a person is a member or prospective member, the appropriate administering authority must decide—

- (a) any questions concerning his period of membership or his previous service or employment;
- (b) what rate of contribution he is liable to pay to the appropriate fund;
- (c) any questions about counting added years or additional periods as membership; and
- (d) whether he is a Class A member, a Class B member or a Class C member.

(7) Those decisions must be made as soon as is reasonably practicable after the person becomes a member in the employment.

(8) Other questions in relation to any member or prospective member must be decided by his Scheme employer as soon as is reasonably practicable after he becomes a member or a material change affects his employment.

(9) Before making a decision as to whether a member may be entitled under regulation 26 or 30 on the ground of ill-health, the Scheme employer must obtain a certificate from an independent registered medical practitioner as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body.

(10) If the Scheme employer is not the member's appropriate administering authority, before referring any question to any particular registered medical practitioner under paragraph (9) the Scheme employer must obtain that authority's approval.

(11) In paragraphs (2) and (4) "benefit" includes a return of contributions.

(12) In paragraph (4) benefit includes a benefit specified in regulation F6(11) or (15) of the 1987 Regulations.

(13) For this Chapter, references to the Scheme employer or the appropriate administering authority of a prospective member are references to the body that would be his employer or

appropriate administering authority if he were to become an active member in the employment by virtue of which he would be eligible to join the Scheme.

Notification of decisions under regulation 96

97.—(1) Every person whose rights or liabilities are affected by a decision under regulation 96 must be notified of it in writing by the body who made it as soon as is reasonably practicable.

(2) A notification of a decision that the person is not entitled to a benefit must include the grounds for the decision.

(3) A notification of a decision as to the amount of a benefit must include a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

- (a) refer to the rights available under regulations 99 and 101;
- (b) specify the time limits within which those rights may be exercised; and
- (c) specify the name and address of the appointed person and the appropriate administering authority to whom applications under regulation 99 may be made.

Resolution of disputes

Appointment of persons to resolve disputes

98.—(1) Each administering authority must appoint a panel of persons they consider to be suitably qualified for the purpose of resolving disagreements in respect of which an application is made under regulation 99 in cases where they are the appropriate administering authority.

(2) For this Chapter an administering authority are the appropriate administering authority as respects such a disagreement if—

- (a) where the person making the application is a member or prospective member, they are or were his last appropriate administering authority for the other purposes of these Regulations; and
- (b) where the person making the application is the widow, widower or surviving dependant of a deceased member, they were his appropriate administering authority.

(3) For this Chapter the persons appointed under paragraph (1) are “appointed persons”.

(4) An application under regulation 99 may be decided by one or more appointed persons (and references to “the appropriate appointed person”, in relation to any application, are to the appointed person or persons to whom the application in question is referred).

(5) An application must not be referred to a person who has previously been involved in the subject matter of the disagreement.

(6) An appointed person shall hold and vacate office under the terms of his appointment.

(7) He may resign by notice in writing to the administering authority.

(8) Each administering authority shall determine—

- (a) the procedure to be followed by the persons appointed by them when exercising their functions as appointed persons, and
- (b) the manner in which those functions are to be exercised.

Right to apply for an appointed person to decide a disagreement

99.—(1) Where there is a disagreement about a matter in relation to the Scheme between a member or an alternative applicant and a Scheme employer, the member or, as the case may be, the alternative applicant (“the complainant”) may—

- (a) apply directly to the appropriate appointed person to decide the disagreement; or
- (b) apply to the appropriate administering authority for them to refer the disagreement to an appointed person for decision.

(2) These persons are alternative applicants—

- (a) a widow, widower or surviving dependant of a deceased member or any other person to whom benefits in respect of him may be paid;
- (b) a prospective member;
- (c) a person who ceased to be a member or to fall within sub-paragraph (a) or (b) during the period of six months ending with the date of the application; and
- (d) in the case of a disagreement relating to the question whether a person claiming to be a member or to fall within sub-paragraph (a), (b) or (c) does so, the claimant.

(3) The application for a decision must set out particulars of the disagreement, including a statement as to its nature with sufficient details to show why the applicant is aggrieved.

(4) An application by—

- (a) a member or prospective member;
- (b) a person who ceased to be such a person during the period of six months ending with the date of the application; or
- (c) a person claiming to be a person within paragraph (a) or (b),

must set out his full name, address, date of birth, his national insurance number (if any) and the name of his employing authority.

(5) An application by any other person must set out—

- (a) his full name, address and date of birth;
- (b) his relationship to the member; and
- (c) the member’s full name, address, date of birth and national insurance number and the name of his employing authority.

(6) The application must be signed by or on behalf of the applicant.

(7) The application must be accompanied by a copy of any written notification issued under regulation 97.

(8) The application must be made before the end of the period of six months beginning with the relevant date or such further period as the appropriate appointed person considers reasonable (but see regulation 104(6)).

(9) Where the disagreement relates to a decision under regulation 96, the relevant date is the date on which notification of it is given under regulation 97.

(10) Otherwise, the relevant date is the date of the act or omission which is the cause of the disagreement or, if there is more than one, the last of them.

Decision by appointed person and notice of it

100.—(1) Where an application has been duly made under regulation 99, the appropriate appointed person shall decide on the disagreement.

(2) A decision on the matters raised by the application must be issued by the appropriate appointed person—

- (a) to the applicant;
- (b) to the Scheme employer; and
- (c) if the Scheme employer is not the appropriate administering authority, to that authority,

by notice in writing before the expiry of the period of two months beginning with the date on which the application was received.

(3) However, if no such notice is issued before the expiry of that period, an interim reply must immediately be sent to those persons, setting out the reasons for the delay and an expected date for issuing the decision.

(4) A notice under paragraph (2) must include—

- (a) a statement of the decision;
- (b) a reference to any legislation or provisions of the Scheme relied upon;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion; and
- (d) a reference to the rights of the applicant and the Scheme employer's right to refer the disagreement for reconsideration by the Secretary of State under regulation 101, specifying the time within which they may do so.

Reference of disagreement to the Secretary of State

101.—(1) Where an application about a disagreement has been made under regulation 99, an application may be made to the Secretary of State to reconsider the disagreement by the person who applied under regulation 99 or the Scheme employer in question.

(2) The application must set out particulars of the grounds on which it is made, including a statement that the applicant under this regulation wishes the disagreement to be reconsidered by the Secretary of State.

(3) An application made by the person who applied under regulation 99 must set out the matters required by paragraph (4) or, as the case may be, paragraph (5) of that regulation to be included in his application.

(4) The application must be accompanied by a copy of any written notification issued under regulation 97.

(5) Where notice of a decision on the application under regulation 99 has been issued, the application under this regulation must state why the applicant is dissatisfied with that decision and be accompanied by a copy of that notice.

(6) The application must be signed by or on behalf of the person making it.

(7) An application for reconsideration may only be made before the expiry of the period of six months beginning with the relevant date.

(8) Where notice of a decision on the matters raised by the application under regulation 99 has been issued, the relevant date is the date of that notice.

(9) Where—

- (a) an interim reply has been sent under regulation 100(3); but
- (b) no notice of decision has been issued before the expiry of the period of one month beginning with the date specified in the reply as the expected date for issuing the decision,

the relevant date is the date on which that period expires.

(10) Where no notice of decision has been issued or interim reply has been sent before the expiry of the period of three months beginning with the date the application under regulation 99 was made, the relevant date is the date on which that period expires.

Decision of the Secretary of State and notice of it

102.—(1) Where an application has been duly made under regulation 101, the Secretary of State shall reconsider and decide on the disagreement.

(2) The Secretary of State must issue his decision on the matters raised by the application to the parties to the disagreement by notice in writing before the expiry of the period of two months beginning with the date on which the application was received (but see paragraph (3)).

(3) If no such notice is issued before the expiry of that period, an interim reply must be sent immediately to those parties, setting out the reasons for the delay and an expected date for issuing the decision.

(4) A notice under paragraph (2) must include—

- (a) a statement of the decision;
- (b) in a case where there has been a decision made under regulation 100, an explanation as to whether and, if so, to what extent that decision is confirmed or replaced;
- (c) a reference to any legislation or provisions of the Scheme relied upon;
- (d) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (e) a statement that OPAS (the Occupational Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with difficulties which they have failed to resolve with the Secretary of State and of the address at which it may be contacted; and
- (f) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes Act 1993(10) and of the address at which he may be contacted.

Rights of representation

103.—(1) An application under regulation 99 or 101 may be made or continued on behalf of the applicant by a representative nominated by him.

(2) Where a person who has the right to make or has made such an application dies, the application may be made or continued on his behalf by his executor.

(3) Where such a person is under a legal disability because of non-age or is or becomes otherwise incapable of acting for himself, the application may be made or continued on his behalf by a member of his family or some other person suitable to represent him.

(4) Where a representative is nominated before an application is made, the application must specify his full name and address and whether that is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used, he must be sent a copy of a notification under 100(2) or 102(2) or an interim reply under 100(3) or 102(3).

Appeals by administering authorities

104.—(1) Where—

- (a) a Scheme employer has decided or failed to decide any question falling to be decided by that employer under regulation 96 (otherwise than in the exercise of a discretion); and
- (b) the Scheme employer is not an administering authority,

the administering authority maintaining the pension fund to which the Scheme employer pays contributions may appeal to the Secretary of State to decide that question.

(2) Such an appeal must be made by notice in writing given before the end of the period of six months beginning with the relevant date or such further period as the Secretary of State considers reasonable.

(3) Where the appeal relates to a decision notified under regulation 97(1), the relevant date is the date of the notification of that decision.

(4) Where the appeal relates to a failure to decide any question, the relevant date is the date of that failure.

(5) For paragraph (4) an employer is to be taken to have failed to decide a question at the expiry of the period of three months beginning with the date on which the administering authority have requested a decision by notice in writing.

(6) Where an appeal has been made under paragraph (1), the period within which an application may be made under regulation 99 may not be extended under regulation 99(8).

(7) The Secretary of State must issue his decision on the appeal by notice in writing to the appellants and to any other persons appearing to him to be affected by it.

- (8) Where an appeal is made by an authority under this regulation and any other person—
 - (a) has made an application under regulation 99 or regulation 101 which has not been determined in respect of any of the matters which are the subject of the appeal; or
 - (b) makes such an application contemporaneously with the appeal or after it and before the appeal is determined,

the appeal shall be sisted pending notification of a decision under regulation 100 or, as the case may be, regulation 101 or until the application is withdrawn.

Information and records etc.

Statements of policy concerning exercise of discretionary functions

105.—(1) Each administering authority and Scheme employer must formulate and keep under review their policy concerning the exercise of their functions under regulation 30 (early leavers) and under Part III.

(2) Before formulating that policy an administering authority must consult 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—
 - (a) each Scheme employer must send each relevant administering authority; and
 - (b) each administering authority must send each relevant Scheme employer,

a written statement as to the policy which is being applied by that employer or, as the case may be, authority in the exercise of their functions on or after that date.

(4) Where, as a result of a review under paragraph (1), a Scheme employer or administering authority determine to amend their policy, they must send a copy of the statement of the amended policy to each relevant administering authority or, as the case may be, relevant Scheme employer before the expiry of the period of one month beginning with the date on which they so determine.

(5) A relevant administering authority, in relation to a Scheme employer, are any authority who are an appropriate administering authority for that employer's employees, and a relevant Scheme employer, in relation to an administering authority, is any Scheme employer for whose employees they are the appropriate administering authority.

(6) In formulating their policy under paragraph (1), an administering authority or Scheme employer must have regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service.

Information to be supplied by employees

106.—(1) Before the expiry of the period of three months beginning with the date a person becomes a member, the Scheme employer must ask him in writing for the documents specified in paragraph (2).

(2) Those documents are—

- (a) a statement in writing listing all the person's previous periods of employment; and
- (b) copies of all notifications previously given to him under these Regulations or the old Regulations.

(3) They must also ask for those documents before the expiry of the period of three months beginning with the occurrence of any change as respects his employment which is material for the Scheme.

(4) A request under paragraph (1) or (3) must include a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining his rights under the Scheme.

(5) The Scheme employer need not request any documents if satisfied that they or the appropriate administering authority (if different) already have all material information.

(6) The old Regulations are the 1987 Regulations, the 1974 Regulations, the Local Government Superannuation (Administration) (Scotland) Regulations 1954⁽¹¹⁾ the Local Government Superannuation (Administration) (Scotland) Regulations 1938⁽¹²⁾ and the Local Government Superannuation (Administration) (No.2) (Scotland) Regulations 1938⁽¹³⁾.

Exchange of information by authorities

107.—(1) A Scheme employer who is not an administering authority must inform the appropriate administering authority of all decisions made by the employer under this Chapter concerning members and give that authority such other information as they require for discharging their functions under the Scheme.

(2) If—

- (a) an administering authority make any decision under this Chapter about a person for whom they are not the Scheme employer; and
- (b) information about the decision is required by his Scheme employer for discharging that employer's functions under the Scheme,

that authority must give that employer that information.

Provision of information and calculation of restitution payment: mis-sold personal pensions

108.—(1) Where—

⁽¹¹⁾ S.I. 1954/1243.

⁽¹²⁾ S.I. 1938/245.

⁽¹³⁾ S.I. 1938/1384.

- (a) in relation to an individual mentioned in regulation 6(9)(c) information is requested by a prescribed person in the prescribed circumstances for the purpose of calculating what payment would need to be made to the Scheme in respect of the individual to restore the position to what it would have been if the individual had been an active member of the Scheme throughout the period referred to in that regulation (“the restitution payment”); or
- (b) an individual mentioned in sub-paragraph (a) applies to become a member of the Scheme or applies to have a restitution payment accepted having become a member of the Scheme after that period,

the administering authority who maintain the fund which would be the appropriate fund for that individual must calculate the restitution payment in accordance with regulation 124.

(2) In this regulation “prescribed person” and “prescribed circumstances” have the same meaning respectively as in regulations 3 and 4 of the Local Government, Teachers' and National Health Service (Scotland) Pension Schemes (Provision of Information and Administrative Expenses etc.) Regulations 1996(14).

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.

CHAPTER VI

TRANSFERS

Transfers out

Application of Chapter IV of Part IV of the Pension Schemes Act 1993

116.—(1) For sections 12C (requirements as to transfer, commutation etc. for contracting-out), 19 (discharge of liability) and 20 (transfer of accrued rights) and Chapter IV or Part IV (transfer values) of the Pension Schemes Act 1993⁽¹⁵⁾ and any regulations made under any of those sections or that Chapter, the managers of the Scheme in relation to a member are the fund authority.

(2) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996⁽¹⁶⁾ (pre-1986 leavers), Chapter IV of Part IV of the Pension Schemes Act 1993 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service.

(3) The references in regulation 4 of those Regulations to regulation 3 of those Regulations include a reference to paragraph 4(1) and (2) of Schedule 16 to the 1987 Regulations and any corresponding earlier provisions.

(4) Regulation 5 of those Regulations (treatment of a number of employments as a single employment) only applies if the employments are treated as a single employment for the purposes of the Scheme.

(5) Sub-paragraph (a) of regulation 10(2) of those Regulations (interest on late payment of cash equivalents) does not apply where the member has required the cash equivalent to be paid to a club scheme.

(6) Regulation 18 of those Regulations (termination of pensionable service in certain circumstances to be disregarded) only applies if—

- (a) in the case of a termination before the commencement date, no election was made under regulation E2(9)(c) of the 1987 Regulations (or any corresponding earlier provision) in respect of the service which terminated; and
- (b) in any case, no election has been made under regulation 31(1) to have the service which terminated aggregated with later service.

(7) For this regulation and regulation 117, the fund authority, in relation to a member, is the body maintaining the pension fund to which he was contributing immediately before his pensionable service terminated.

(8) However, if that fund has been closed, the fund authority is the body which would be liable to pay him his pension for that employment if he had been entitled to receive payment of such a pension when his pensionable service terminated.

Rights to payment out of fund authority's pension fund

117.—(1) The amount of any transfer payment due in respect of a member under Chapter IV of Part IV of the Pension Schemes Act 1993 is payable by the fund authority from their pension fund.

(2) Where such a transfer payment is to be or has been paid from a fund, no other payment or transfer of assets may be made from the fund as respects the accrued rights covered by the transfer payment.

(15) 1993 c. 48.

(16) S.I. 1996/1847, amended by S.I. 1996/3126 and 1997/786 and 1613.

(3) Paragraph (2) overrides anything to the contrary in the former Regulations, any local Act scheme, the 1974 Regulations, the 1987 Regulations or any other provision of these Regulations or the Transitional Regulations.

Contracting-out requirements affecting transfers out

118.—(1) There must be deducted from the transfer payment to be made in respect of any person—

- (a) the amount of any contributions equivalent premium payable pursuant to section 55 of the Pension Schemes Act 1993⁽¹⁷⁾; or
- (b) an amount sufficient to meet the liability in respect of his contracted-out rights.

(2) However, the amount mentioned in paragraph (1)(b) may not be deducted where—

- (a) the transfer payment is made to an occupational pension scheme which is contracted-out or an appropriate personal pension scheme; and
- (b) that scheme’s trustees or managers undertake to accept liability for his contracted-out rights.

(3) Where the amount mentioned in paragraph (1)(a) is deducted, if the appropriate administering authority think fit, that amount may be used in preserving the liability mentioned in paragraph (2) (b) in the appropriate fund.

(4) Otherwise, it must be used in paying the premium.

(5) Contracted-out rights, in relation to a member, are—

- (a) his and his surviving spouse’s rights to guaranteed minimum pensions; and
- (b) his section 9(2B) rights (as defined in regulation 1(2) of the Occupational Pension Schemes Contracting-out) Regulations 1996⁽¹⁸⁾).

Bulk transfer arrangements

Bulk transfers (transfers of undertakings) etc.

119.—(1) This paragraph applies where—

- (a) two or more members' active membership ends on their joining an approved non-local government scheme (“the new scheme”);
- (b) it is agreed by—
 - (i) the members' appropriate administering authority,
 - (ii) the members' employing authorities (if different), and
 - (iii) the trustees or managers of the new scheme,

that a payment should be made under this regulation; and

- (c) the members agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter IV of Part IV of the Pension Schemes Act 1993 and waive any rights they might have under that Chapter by virtue of the cessation of their active membership.

(2) The appropriate administering authority must not give their agreement under paragraph (1)(b) unless they are satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which he would have obtained if a transfer value had been paid to the same scheme under Chapter IV of Part IV of the Pension Schemes Act 1993, as it applies by

⁽¹⁷⁾ 1993 c. 48.

⁽¹⁸⁾ S.I. 1996/1172; the definition of “section 9(2B) rights” was substituted by S.I. 1997/786, Schedule 1, paragraph 4(2).

virtue of regulation 116, (assuming in any case where the member would not be entitled to such a payment that he was).

(3) The appropriate administering authority must provide each member with sufficient information in writing to check that fact before he agrees as mentioned in paragraph (1)(c).

(4) Where paragraph (1) applies, the appropriate administering authority must—

(a) set aside (whether in cash or in assets or both) such part of the appropriate fund (“the transfer payment”) as an actuary appointed by them and an actuary appointed by the scheme managers of the new scheme for the purpose may agree as appropriate for the acquisition of such rights in that scheme as they may so agree; and

(b) pay or transfer it to the trustees or managers of the new scheme for the benefit of the relevant members.

(5) The appropriate administering authority must certify to the new scheme’s trustees or managers the amount included in the transfer payment which represents each member’s contributions and interest on them.

(6) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made from the pension fund by reason of membership covered by the transfer payment.

(7) Paragraph (6) overrides anything to the contrary in the former Regulations, any local Act scheme or any provision of the 1974 Regulations, the 1987 Regulations or these Regulations.

Calculation of amount of transfer payment under regulation 119

120.—(1) The amount of the transfer payment to be paid under regulation 119 is the amount determined by an actuary appointed by the members' appropriate administering authority to be equal to the value at the date they join the new scheme of the actual and potential liabilities payable from their fund which have then accrued in respect of the members and the persons who are or may become entitled to benefits under the Scheme through them.

(2) The actuary may make such adjustments as he thinks fit in calculating that amount and, in particular, as respects the period from that date to the date of actual payment of the transfer value.

(3) He must specify in his valuation the actuarial assumptions he has used in making it.

(4) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund.

(5) However, if there is more than one employing authority involved, each shall bear such part of the costs as the actuary determines to be appropriate.

Transfers in

Inward transfers of pension rights

121.—(1) If a person who becomes an active member has relevant pension rights, he may request his fund authority to accept a transfer value for some or all those rights from the relevant transferor.

(2) Relevant pension rights are accrued rights under—

(a) an occupational pension scheme (other than the Scheme);

(b) a personal pension scheme;

(c) a retirement annuity contract approved by the Commissioners of Inland Revenue under section 620 or 621 of the Taxes Act;

(d) a self-employed pension arrangement; or

- (e) an additional voluntary contributions scheme (other than a FSAVC scheme or a scheme constituted by virtue of Chapter IV of Part III).
- (3) Accrued rights include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993⁽¹⁹⁾.
- (4) For this regulation and the following regulations of this Chapter the fund authority, in relation to a transferring person, are the body maintaining the pension fund of the scheme to which he is contributing.
- (5) The relevant transferor is the trustees or managers of the scheme, contract or arrangement under which the transferring person's relevant pension rights arise.
- (6) However, the relevant transferor for the rights specified in paragraph (3) is the trustees or managers of the scheme, contract or arrangement, or the insurance company, to which a payment in respect of his accrued rights has been made.
- (7) A request from a transferring person under paragraph (1) must be made by notice in writing.
- (8) That notice must be given before the expiry of the period of 12 months beginning with the date on which he became an active member (or such longer period as his employer may allow).
- (9) Where a request under paragraph (1) is duly made the fund authority may accept the transfer value and credit it to their pension fund.

Right to count credited period

- 122.**—(1) Where a transfer value has been accepted under regulation 121, the member may count the credited period as a period of membership for these Regulations (but see Schedule 3).
- (2) If the transfer value—
 - (a) is paid by the trustees or managers of a club scheme;
 - (b) represents all the rights relating to the member in that scheme;
 - (c) has been calculated—
 - (i) in a case where Chapter IV of Part IV of the Pension Schemes Act 1993 applies, in accordance with that Chapter, and
 - (ii) otherwise, in a manner consistent with that prescribed under that Chapter,
 the credited period is the period which, if used to calculate a transfer value to be paid by the Scheme, would produce an amount equal to the transfer value received.
 - (3) If the transfer value is not paid by the trustees or managers of a club scheme, the credited period must be calculated in a manner consistent with that Chapter.
 - (4) In calculating the credited period under paragraph (3) due allowance must be given for the expected increase in the member's pensionable pay between the date on which he became a member (or, if more than twelve months later, the date on which the transfer value is received) and his NRD.
 - (5) If the member is a man, the credited period must be treated as a period after 5th April 1978.
 - (6) If the member is a woman, the credited period must be treated as a period after 5th April 1988.
 - (7) The fund authority must give the member a written notice stating the period of membership he may count under paragraph (1).
 - (8) The notice must contain a statement of the kind required by regulation 97(4).

(19) 1993 c. 48.

Rights as to service not matched by credited period

123.—(1) Where the member’s transferred-in service exceeds the credited period, he may count the excess as a period which counts towards his total membership for the purposes of the provisions mentioned in paragraph (2).

(2) Those provisions are—

- (a) regulation 18(1) (general qualification for benefits);
- (b) paragraphs (a) and (b) of the definition of “normal retirement date” in regulation 24(4);
- (c) regulation 40(4) and (5) (amount of active member’s surviving spouse’s long-term pension);
- (d) regulation 86(1) (return of contributions).

(3) A period which may be counted under paragraph (1) counts as its actual length.

(4) The fund authority must give the member a written notice stating the period of membership he may count under paragraph (1).

(5) The notice must contain a statement of the kind required by regulation 97(4).

(6) The transferred-in service of a transferring member is the service in respect of which he has accrued rights to benefits under his previous occupational pension scheme or appropriate policy (whether or not the transfer value covers all those rights).

(7) The period of that service is the period certified by the trustees or managers of that scheme or issuers of that policy.

Credited periods for transferring members with mis-sold pension rights

124.—(1) Regulation 122(3) does not apply where—

- (a) the transferring person is a person mentioned in regulation 6(9)(c); and
- (b) the transfer value satisfied the conditions specified in paragraph (2).

(2) Those conditions are that—

- (a) it is paid by the trustees or managers of the personal pension scheme mentioned in section 172(1)(a)(ii) of the Pensions Act 1995⁽²⁰⁾;
- (b) it represents all the rights relating to the member in that scheme;
- (c) it is paid on an application made to the appropriate administering authority before the expiry of the period of 12 months beginning with the date on which the transferring person becomes an active member (or such longer period as they may allow); and
- (d) in the opinion of the appropriate administering authority it is not less than the restitution amount.

(3) Where paragraph (1) applies, the credited period is the period of membership the transferring person could have counted if he had been an active member throughout the personal pension period.

(4) The restitution amount is the aggregate of—

- (a) the capitalised value (as at the date on which the request for the calculation of the restitution amount is made) of the rights which would have accrued to the transferring person under the Scheme if he had remained an active member of the Scheme throughout the personal pension period (including rights under the Pensions (Increase) Act 1971⁽²¹⁾ and the Pensions (Increase) Act 1974⁽²²⁾);

⁽²⁰⁾ 1995 c. 26.

⁽²¹⁾ 1971 c. 56.

⁽²²⁾ 1974 c. 9.

- (b) the transfer value (if any) paid out of the Scheme to the personal pension scheme; and
 - (c) interest on any such transfer value at such rate as is approved for the time being by the Government Actuary, calculated on a daily basis over the period from the date on which that transfer value was paid out of the Scheme to the date as at which the transfer value is taken to be paid to the Scheme.
- (5) The appropriate administering authority must determine the value mentioned in paragraph (4)
- (a) in such manner as is for the time being indicated in guidance issued by the Government Actuary.
 - (6) The personal pension period is the period referred to in regulation 6(9)(c).

Community scheme transferees

Community scheme transferees

125.—(1) Community scheme transferees and their surviving spouses, dependants and children are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

(2) A Community Scheme transferee is a person who became employed by a Community institution after having been employed in local government employment.

Payments between funds and authorities

Changes of fund

126.—(1) This regulation applies where—

- (a) a pension fund becomes an active member's appropriate fund;
- (b) immediately before it does so, another fund was his appropriate fund;
- (c) in a case where regulation 31(1) applies to him, he has made an election under that regulation.

(2) Where the member's appropriate administering authority has also changed, the authority which has ceased to be the member's appropriate administering authority must make such payment to his later appropriate administering authority as is indicated in guidance issued by the Government Actuary for this regulation (but see paragraph (3)).

(3) Where—

- (a) paragraph (2) applies as respects two or more members by virtue of a single event; and
- (b) the authority by which the payment under that paragraph must be made agree with the authority to which it must be made that it is appropriate for the amount of the payment to be determined by actuaries appointed by those authorities for the purpose,

that amount must be so determined.

(4) Any payment under paragraph (2) must be credited to the new appropriate administering authority's fund.

(5) Where the member's appropriate administering authority has not changed, they must arrange for a payment such as is indicated in guidance issued by the Government Actuary for this regulation to be made from the member's former appropriate fund to his new appropriate fund.

(6) Paragraph (1) does not apply where a member enters an employment which is concurrent with another in which he is also an active member.

Liability for combined benefits

127.—(1) Where—

- (a) a benefit under regulation 28 or 47 of these Regulations or regulation E6(1)(c), (2)(e) or (3)(b), E16 or E18 of the 1987 Regulations is payable out of a pension fund (“the new fund”); and
- (b) by means of that benefit being payable another benefit ceases to be payable out of another fund,

such payments must be made to the authority maintaining the new fund by the authority maintaining the other fund as are indicated in guidance issued by the Secretary of State for this regulation.

(2) Such payments must be credited to the new fund.