
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 228

**The Local Government Pension Scheme
(Administration) (Scotland) Regulations 2008**

PART 2

MEMBERSHIP OF SCHEME

General eligibility for membership

3.—(1) A person may only be an active member if—

- (a) this regulation, regulation 4 (employees of non-scheme employers: community admission bodies) to 7 (eligibility in certain cases of persons who are not employers); or
- (b) regulation 3(3) (active members) of the Benefits Regulations,

enables the person to be one and the person is not prevented from being one by regulation 9 (further restrictions on eligibility).

(2) A person may be a member if the person is employed by a body which is listed in Schedule 2.

Employees of non-Scheme employers: community admission bodies

4.—(1) Subject to the requirements of this regulation and regulation 6 (admission agreements further provisions), an administering authority may make an admission agreement with any community admission body.

(2) The following are community admission bodies—

- (a) a body, which provides a public service in the United Kingdom otherwise than for the purposes of gain and which either—
 - (i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise); or
 - (ii) is approved by the Scottish Ministers for the purposes of admission to the Scheme;
- (b) a body to the funds of which a Scheme employer contributes;
- (c) a body representative of—
 - (i) local authorities;
 - (ii) local authorities and officers of local authorities;
 - (iii) officers of local authorities where it is formed for the purpose of consultation on the common interests of local authorities and the discussion of matters relating to local government; or
 - (iv) Scheme employers;
- (d) A voluntary organisation engaged in the provision of services under—

- (i) Part III of the National Health Service (Scotland) Act 1978(1);
- (ii) Part III of the National Assistance Act 1948(2);
- (iii) The Disability Discrimination Act 1995(3);
- (iv) The Mental Health (Scotland) Act 1984(4) or the Mental Health (Care and Treatment) (Scotland) Act 2003(5); or
- (v) Section 14 of the Social Work (Scotland) Act 1968 (which places a duty on local authorities to provide domiciliary services and laundry facilities to certain households)(6).

(3) An approval under paragraph (2)(a)(ii) may be subject to such conditions as the Scottish Ministers think fit and they may withdraw an approval at any time if such conditions are not met.

(4) Where, at the date that an admission agreement is made with a body mentioned in paragraph (2)(b), the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, it must be a term of the admission agreement that the Scheme employer paying contributions (or, if more than one pays contributions, all of them) guarantees the liability of the body to pay all amounts due from it under these Regulations or the Benefit Regulations.

Employees of non-Scheme employers: transferee admission bodies

5.—(1) Subject to the requirements of this regulation and regulation 6 (admission agreements further provisions), an administering authority may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing or will provide—

- (a) a service or assets in connection with the exercise of a function of a Scheme employer as a result of—
 - (i) the transfer of the service or assets by means of a contract or other arrangement; or
 - (ii) guidance provided under section 2 of the Local Government in Scotland Act 2003(7) (requiring a local authority to have regard to guidance provided by the Scottish Ministers on performance of its duties) or a statement of findings under section 3 of that Act (which allows Audit Scotland to take certain actions following a report on a local authority by the Controller of Audit); or
- (b) a public service and which is approved by the Scottish Ministers for the purposes of admission to the Scheme.

(3) In the case of an admission agreement with a transferee admission body referred to in paragraph (2)(a) the Scheme employer, if it is not also the administering authority, must be a party to the admission agreement.

(4) An approval under paragraph (2)(b) may be subject to such conditions as the Scottish Ministers think fit and they may withdraw an approval at any time if such conditions are not met.

- (5) An admission agreement with a transferee admission body shall require—
 - (a) that in the case of a body under—

(1) 1978 c. 29.
 (2) 1948 c. 29.
 (3) 1995 c. 50.
 (4) 1984 c. 36.
 (5) 2003 asp 13.
 (6) 1968 c. 49.
 (7) 2003 asp 1.

- (i) paragraph (2)(a), the Scheme employer; or
 - (ii) paragraph (2)(b), the transferee admission body, to the satisfaction of the administering authority,
- shall carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee body; and
- (b) that, where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.
- (6) The indemnity or bond must be with—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000⁽⁸⁾ to accept deposits or to effect and carry out contracts of general insurance;
 - (b) an EEA firm of the kind mentioned in paragraph (5)(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or
 - (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.
- (7) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 3.
- (8) This paragraph applies where a transferee admission body undertakes to meet the relevant requirements of this regulation and—
- (a) in the case of a body under paragraph (2)(a), the Scheme employer undertakes to meet the relevant requirements of this regulation; or
 - (b) in the case of a body under paragraph (2)(b), the Scottish Ministers approve the body for admission to the Scheme and the conditions, if any, to which the approval is subject have been met.
- (9) Where paragraph (8) applies—
- (a) an administering authority must admit to the Scheme the eligible employees of the transferee admission body specified by the body; and
 - (b) where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.
- (10) Only those employees of the transferee admission body who are employed in connection with the provision of a service or assets mentioned in paragraph (2) are eligible to be designated, under regulation 6(1) (admission agreements – further provisions), members of the Scheme.

Admission agreements – further provisions

6.—(1) A person employed by a community admission body or an eligible person employed by a transferee admission body may only be a member if the person, or a class of employees to which the person belongs, is designated in the admission agreement by the body as being eligible for membership of the Scheme.

(2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.

(8) 2000 c. 8.

(3) When an administering authority makes an admission agreement it must promptly inform the Scottish Ministers of—

- (a) the date the agreement takes effect;
- (b) the admission body's name; and
- (c) in the case of an agreement with a transferee admission body under regulation 5(2)(a) (transferee admission bodies) the name of the relevant Scheme employer.

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

(5) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Scottish Ministers for determination.

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

Eligibility in certain cases of persons who are not employees

7.—(1) A person may be an active member if that person is an eligible officer.

(2) These are eligible officers—

- (a) a registration officer;
- (b) a person who immediately before 16th May 1974 was a member of a passenger transport executive or a director of a subsidiary of a passenger transport executive who was a contributory employee in that position and continues in it; or
- (c) a councillor.

(3) If a registration officer is an active member, the registration officer must be treated as being in employment with the local authority who are the local registration authority for the purposes of section 5 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965⁽⁹⁾ and by whom the registration officer was appointed or deemed to have been appointed under section 7 of that Act.

(4) If a person mentioned in paragraph (2)(b) is an active member that person must be treated as being in the employment of the passenger transport executive.

(5) A person who has been appointed as a rent officer under section 43 of the Rent (Scotland) Act 1984⁽¹⁰⁾ must be treated as being in employment of the local authority with whom the Scottish Ministers have made arrangements under that section to provide for the superannuation of the officer.

(6) A member of a passenger transport executive or a director of a subsidiary of such an executive must be treated as being in employment with the relevant executive.

(7) Regulation 8(1) (separate employments etc.) applies to the persons holding the positions specified in paragraph (6) as it applies to the employees specified in that regulation.

(8) If a councillor member is an active member, the councillor must be treated as being in the whole time employment of the local authority of which the councillor is a member and references to employment by or under such an employer and all similar expressions shall be construed accordingly.

⁽⁹⁾ 1965 c. 49. Section 5 was substituted by the [Local Electoral Administration and Registration Services \(Scotland\) Act 2006](#) (asp 14), section 37(2).

⁽¹⁰⁾ 1984 c. 58.

Separate employments etc.

8.—(1) Where a person holds separate employments under one employing authority, these Regulations and the Benefits Regulations apply as if each of them were under a different employer.

(2) This paragraph applies where a whole time or a part-time employee of an employing authority is also employed to carry out one or more of the additional duties.

(3) The additional duties are duties as—

(a) a returning officer at—

(i) local government elections; or

(ii) elections for the Scottish Parliament; or

(b) an acting returning officer (including as a regional or local returning officer at a European Parliamentary election which are required by regulations made under paragraph 2 of Schedule 1 to the European Assembly Elections Act 1978⁽¹¹⁾ to be discharged by a returning officer).

(4) This paragraph applies where, immediately before 1st April 1974, an employee mentioned in paragraph (2) was in whole time or part time employment and had duties which included one or more of the additional duties.

(5) Where paragraphs (2) or (4) apply, each additional duty must be treated as a separate variable time employment with a different employing authority from the employing authority with whom the employee is in the whole time or, as the case may be, part time employment.

(6) Where—

(a) paragraph (2) applies; and

(b) paragraph (4) does not apply,

the employee's employment to carry out an additional duty (or duties) must be treated as a single separate variable time employment with a different Scheme employer.

(7) A person who—

(a) is a member in any employment; and

(b) is also a medical inspector of immigrants appointed under the Immigration Act 1971⁽¹²⁾ who receives his or her pay in that appointment from a Scheme employer listed in Schedule 2,

is eligible to be an active member in that appointment and shall be deemed to be in the employment of that Scheme employer.

Further restrictions on eligibility

9.—(1) Subject to paragraph (6) if a person's employment entitles the person to belong to another public service pension scheme, or would so entitle him were it not for his age, that employment does not entitle the person to be a member, unless that other scheme was made under section 7 of the Superannuation Act 1972.

(2) "Public service pension scheme" has the meaning given by section 150 of the Finance Act 2004⁽¹³⁾ (meaning of "pension scheme").

(3) An employee of an admission body may not be a member if the employee is a member of another occupational pension scheme in relation to the employment in respect of which that

⁽¹¹⁾ 1978 c. 10.

⁽¹²⁾ 1971 c. 77.

⁽¹³⁾ 2004 c. 12.

employee would otherwise be eligible to be a member of the Scheme under regulation 6(1) (admission agreements – further provisions).

(4) A person may not become a member after the day before the person’s 75th birthday.

(5) Part-time employment as an employee of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005⁽¹⁴⁾) on terms under which the retained or voluntary member is or may be required to engage in fire fighting does not entitle the member to be a member of the Scheme.

(6) A person may be a member of the Scheme despite being entitled to be a member of the National Health Service Pension Scheme for Scotland⁽¹⁵⁾ (“the NHS Scheme”) if–

- (a) that person’s entitlement to be a member of the NHS Scheme is by reason of the person’s employment by an NHS Scheme employing authority as a result of a prescribed arrangement under section 15 of the Community Care and Health (Scotland) Act 2002⁽¹⁶⁾ (delegation etc. between local authorities and NHS bodies);
- (b) the person is specified in, or within a class of employees specified in, an admission agreement made between an administering authority and an NHS Scheme employing authority; and
- (c) the person was an active member of the scheme immediately before that person’s employment by the NHS Scheme employing authority.

Joining the Scheme

10.—(1) A person who is eligible to be an active member of the Scheme on the day the employment begins becomes an active member on that day unless the person notifies his or her employer in writing before his or her employment begins that he or she does not wish to become a member on that date.

(2) A person who applies to become a member after the date the member would otherwise become a member under paragraph (1) becomes a member on the first day of the first payment period following the application.

(3) Subject to paragraph (5), a person who only becomes eligible to be a member of the Scheme on a date after the employment begins becomes an active member on that date unless the person notifies his or her employer in writing before that date that he or she does not wish to become a member on that date.

(4) A person who applies to become a member after the date the person would otherwise become a member under paragraph (3) becomes a member on the first day of the first payment period following the application.

(5) A person referred to in paragraph (3) who is employed by a body listed in Schedule 2 may be an active member from the date that the employment began if the person applies to be so and pays contributions in respect of that earlier period at the appropriate contribution rate as provided in regulation 4 of the Benefits Regulations (contributions payable by active members).

(6) A former active member who is eligible for membership may reapply for membership of the Scheme and becomes an active member on the first day of the first payment period following the application.

(7) In paragraphs (2), (4) and (6), regulation 11(5) (ending of membership) and regulation 20(7) (payment of additional regular contributions), a payment period is a period of service to which the employee’s wages or salary payment relate.

(14) 2005 asp 5.

(15) The National Health Service Superannuation Scheme for Scotland is set up under section 10 of the Superannuation Act 1972. The current regulations are the National Health Service Superannuation Scheme (Scotland) Regulations 1995, S.I.1995/365, as amended.

(16) 2002 asp 5.

Ending of membership

11.—(1) A person stops being a member in an employment if the person stops being eligible for membership in that employment.

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

(3) A person with more than one employment may leave the Scheme if the person wishes in respect of one, some or all of the employments.

(4) A member who gives notice under paragraph (2) stops being a member in the specified employment from the date the notification specifies.

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

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

(7) A person who is a member and is an employee of a transferee admission body is treated for the purposes of these Regulations and the Benefit Regulations as leaving a local government employment when the person ceases to be employed in connection with the provision of the service or assets under regulation 5(2) (employees of non-Scheme employers: transferee admission bodies) by virtue of which the person became eligible to join the scheme.

Periods of membership

12.—(1) A person may not count any period of membership if the person's contributions for that period have been returned to the person.

(2) A person may not count any period of membership if the person's rights in respect of it have been transferred by payment of a transfer value (see Part 9).

(3) A person may not count as a period of membership for the purpose of calculating any benefit under regulations 16 (retirement benefits) to 20 (early leavers: ill health) or 29 (calculation on leaving early) to 31 (early payment of pensions: ill-health) of the Benefits Regulations so much of that person's membership as requires to be excluded to reduce the value referred to in regulation 68(2)(b) of these Regulations by the amount recovered or retained under regulation 68 (recovery or retention where former member has misconduct obligation) of these Regulations.

(4) Where a person pays contributions under regulation 17 (contribution during trade dispute absence) for any period, that period counts as a period within regulation 7 of the Benefits Regulations (periods of membership) even if the person's contract of employment did not subsist throughout that period.

(5) A period of membership under regulation 7(1)(a) of the Benefits Regulations includes any period for which a member is treated as having paid contributions under regulation 14 (concurrent employments) and regulation 41(4) (rights to return of contribution) of these Regulations.

Re-employed and rejoining deferred members

13.—(1) Subject to paragraph (2), where a deferred member becomes an active member in an employment ("the new employment") before becoming entitled to the immediate payment of retirement benefits, the member may, by giving notice in accordance with paragraph (8), elect to have his or her membership in any former employment aggregated with his or her membership in the new employment.

(2) In the case of a deferred member who has been a councillor member, an election under paragraph (1) may only aggregate councillor membership with former councillor membership and, as the case may be, membership which is not councillor membership with former membership which is not councillor membership.

- (3) Where a member elects under paragraph (1)–
- (a) the member ceases to be entitled to rights under the Scheme in respect of the member’s former membership (except in so far as the member is entitled by virtue of having become an active member again to rights in respect of the aggregated total membership); and
 - (b) the member ceases to count as a deferred member for these Regulations as respects the member’s former membership (unless the member becomes a deferred member again after ceasing to be an active member).
- (4) Where the member has ceased to be an active member more than once, the member may choose to aggregate under paragraph (1)–
- (a) the membership at each of the times the member so ceased; or
 - (b) only such periods of membership as are specified in the notice.
- (5) Where a member who may elect under paragraph (1) does not do so or does not elect as respects all periods of the membership–
- (a) in applying regulations 6(1) (benefits), 8 (calculation of periods of length of membership) and 20 (early leavers: ill health) of the Benefits Regulations as respects any later membership, the total membership excludes unaggregated periods; and
 - (b) as respects each unaggregated period of the member’s former membership–
 - (i) paragraph (3) does not apply;
 - (ii) the member shall continue to be treated as a deferred member or, as the case may be, as a pensioner member (and not as an active member); and
 - (iii) the member shall be entitled to the same rights as if the member were not also an active member;
- and references in these provisions to the member’s appropriate administering authority or appropriate fund shall be construed accordingly.
- (6) For this regulation a period of membership is an unaggregated period if–
- (a) no previous election has been made under this regulation for its aggregation; and
 - (b) in the case of a period as respects which the member was entitled to elect under regulation E2(9)(c) of the 1987 Regulations (elections to remain entitled to preserved benefits) or any previous corresponding provision of the Scheme, such an election was made.
- (7) But a member cannot choose to aggregate any period of former membership which the member could have chosen to aggregate with another period of former membership but did not before the expiry of the period mentioned in paragraph (8)(a).
- (8) Notice for the purposes of paragraph (1) must be given in writing–
- (a) while the deferred member is an active member in the new employment;
 - (b) to the member’s appropriate administering authority in that employment; and
 - (c) if the appropriate fund for membership in the new employment is different from that for any former employment to which the notice relates, to the appropriate administering authority in that former employment.
- (9) References in this regulation to former membership include all membership which the member was entitled to count as membership immediately before the member ceased former active membership.
- (10) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, the person shall be treated for the purposes of this regulation as if the person were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

Concurrent employments

14.—(1) Where a person—

- (a) ceases to be an active member in one employment in respect of which the person has at least two years' total membership (“the first employment”); and
- (b) continues as an active member in another employment the person held concurrently with the first employment,

the person may elect to have the former membership in respect of the first employment aggregated with the person’s membership in that other employment.

(2) If the person so elects, the provisions of regulation 13 (re-employed and rejoining deferred members) shall apply as if references to—

- (a) the person’s former membership or former active membership were references to the person’s membership from the person’s first employment;
- (b) the new employment were references to the person’s concurrent employment; and
- (c) the employment in which the person becomes an active member again were references to that concurrent employment.

(3) If no election is received within one month of a notification by an administering authority to a person of the person’s right to elect under paragraph (1), the administering authority may aggregate the person’s former membership in respect of the first employment with the membership in the other employment.

(4) In the case of a person to whom this regulation applies, the period of membership which will be aggregated with the person’s membership from the concurrent employment will be equal to the person’s membership from the person’s first employment, as reduced under regulation 8(3) and (4) (calculation of length of periods of membership) of the Benefits Regulations if the first employment was part time, multiplied by the fraction—

$$\frac{\textit{whole – time rate of pay in the first employment}}{\textit{whole – time rate of pay in concurrent employment}}$$

where

the rate of pay in each case is the annual rate of pay on the last day of the first employment.