
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 228

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

PART 4

PENSION FUNDS AND EMPLOYERS PAYMENTS

The pension funds

26. 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.

Governance compliance statement

- 27.**—(1) An administering authority must prepare a written statement setting out—
- (a) whether they delegate their function, or part of their function, in relation to maintaining a pension fund to a committee, a sub-committee or an officer of the authority;
 - (b) if they do so—
 - (i) the terms, structure and operational procedures of the delegation;
 - (ii) the frequency of any committee or sub-committee meetings;
 - (iii) whether such a committee or sub-committee includes representatives of employing authorities (including authorities which are not Scheme employers) or members and, if so, whether those representatives have voting rights; and
 - (c) the extent to which a delegation, or the absence of a delegation, complies with guidance given by Scottish Ministers and, to the extent that it does not so comply, the reasons for not complying.
- (2) An administering authority must publish the first such statement on or before 1st April 2010.
- (3) An administering authority must—
- (a) revise their statement following a material change in respect of any of the matters mentioned in paragraph (1); and
 - (b) publish the statement as revised.
- (4) In preparing or revising their statement an administering authority must consult such persons as they consider appropriate.
- (5) When they publish their statement, or the statement as revised, an administering authority must send a copy of it to the Scottish Ministers.

Appropriate funds

28.—(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 the description of such member in accordance with Schedule 4 (appropriate funds);
- (b) in the case of—
 - (i) a deferred or pensioner member who is an active member on the commencement date or has been an active member since that date, the fund so specified for a member of the description of such member when the member ceases to be an active member; or
 - (ii) a person who is entitled under the Benefits Regulations in respect of a member, the fund so specified for a member of the description of such member when the member ceased to be an active member;
- (c) in the case of any other deferred or pensioner member, the fund specified for such member by virtue of regulation 11 (appropriate funds) of the Transitional Regulations.

(2) Where these Regulations or the Benefits 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 made are benefits paid under an additional voluntary contributions scheme or a shared cost additional voluntary contributions scheme.

Admission agreement funds

29.—(1) An administering authority which has made an admission agreement may establish a further pension fund (an “admission agreement fund”) in addition to the fund maintained under regulation 26 (“the main fund”).

(2) Immediately after an authority establishes an admission agreement fund, it must give the Scottish Ministers written notice that it has done so.

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

(4) Where an admission agreement fund is established—

- (a) the liabilities of the main fund as respects membership in employment with those specified bodies become liabilities of the admission agreement fund; and
- (b) 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 32 (actuarial valuations and certificates) of both the main fund and the admission agreement fund are first obtained after the admission agreement fund is established, the administering authority must obtain a transfer statement from an actuary appointed by the authority.

(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, their value.

(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.

Accounts and audit

30.—(1) After any of its pension funds has been audited, an administering authority must immediately send copies of the following to each body whose employees are active members—

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

(2) The pension input period for the purposes of section 238 of the Finance Act 2004 is the year ending on 31st March 2009 and each year ending on 31st March after that year.

Funding strategy statement

31.—(1) This regulation applies to the funding strategy statement prepared and published by an administering authority under regulation 75A of the 1998 Regulations⁽¹⁾.

(2) The authority must—

- (a) keep the statement under review;
- (b) make such revisions as are appropriate following a material change—
 - (i) in its policy on the matters set out in the statement; or
 - (ii) to the current version of its statement under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998⁽²⁾ (statement of investment principles); and
- (c) if revisions are made, publish the statement as revised.

(3) In reviewing and making revisions to the statement, the authority must—

- (a) have regard to the guidance set out in the document published in March 2004 by CIPFA and called “CIPFA Pensions Panel guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No. 6)”; and
- (b) consult such persons as it considers appropriate.

Actuarial valuations and certificates

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

- (a) an actuarial valuation of the assets and liabilities of each of its pension funds as at 31st March 2011 and in every third year afterwards;
- (b) a report by an actuary in respect of the valuation; and
- (c) a rates and adjustments certificate prepared by an actuary.

(2) Each of those 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 Scottish Ministers may agree.

(3) A report under paragraph (1)(b) must contain a statement of the demographic assumptions used in making the valuation; and the statement must show how the assumptions relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

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

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

(1) Regulation 75A was inserted by [S.S.I. 2005/293](#).

(2) [S.I.1998/2888](#). Regulation 9A was inserted by [S.S.I. 2000/74](#) and amended by [S.S.I. 2003/138](#).

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

(5) 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.

(6) The actuary must have regard to—

- (a) the existing and prospective liabilities of the fund arising from circumstances common to all those bodies;
- (b) the desirability of maintaining as nearly constant a common rate as possible; and
- (c) the current version of the administering authority's funding strategy statement mentioned in regulation 31 (funding strategy statement).

(7) 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.

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

- (a) the number of members who will become entitled to payment of pensions under provisions of the Scheme; and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

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

Supply of copies of valuations, certificates etc

33.—(1) An administering authority must send copies of any valuation, report, certificate or revised certificate obtained under regulation 32 (actuarial valuations and certificates) or 34 (special circumstances where revised actuarial valuations and certificates must be obtained) to—

- (a) the Scottish Ministers;
- (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.

(2) An administering authority must also send to the Scottish Ministers—

- (a) a copy of the consolidated revenue account with which the actuary was provided under regulation 32(9); and
- (b) a summary of the assets of the fund at the valuation date (unless such a summary is contained in the report under regulation 32(1)(b)).

Special circumstances where revised actuarial valuations and certificates must be obtained

34.—(1) When obtaining a transfer statement under regulation 29(5) (admission agreement funds), 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 its main fund.

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

- (a) an actuarial valuation as at the date it ceases of the liabilities of the fund in respect of current and former employees of the admission body which is a party to that agreement (“the outgoing admission body”); and
 - (b) a revision of any rates and adjustments certificate for any fund which is affected, showing the revised contributions due from that body, and any other admission body in respect of which revised contributions are due.
- (3) Where, for any reason, it is not possible to obtain revised contributions from the outgoing admission body, or from an insurer or any person providing an indemnity or bond on behalf of that body, the administering authority may obtain a further revision of any rates and adjustments certificate for the fund, showing—
- (a) in a case where that body is a transferee admission body within regulation 5(2)(a) or (b) (employees of non-scheme employers), the revised contributions due from the body which is the Scheme employer in relation to that admission body; and
 - (b) in any other case, the revised contributions due from each employing authority which contributes to the fund.
- (4) An administering authority may obtain from an actuary a certificate specifying, in the case of an admission body, the percentage or amount by which, in the actuary’s opinion—
- (a) the contribution at the common rate should be adjusted; or
 - (b) any prior individual adjustment should be increased or reduced,
- with a view to providing that the value of the assets of the fund in respect of current and former employees of that body is neither materially more nor materially less than the anticipated liabilities of the fund in respect of those employees at the date the admission agreement is to end.
- (5) Paragraph (6) applies where—
- (a) an administering authority agrees with an employing authority as mentioned in regulation 36(4) (employer’s payment following decision to increase membership or award additional pension); 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 32(8) (actuarial valuations and certificates).
- (6) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that employing authority.

Employer’s contributions

35.—(1) An employing authority must contribute to the appropriate fund in each year covered by a rates and adjustments certificate under regulation 32 (actuarial valuations and certificates) or 34 (special circumstances) 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 38 (payment by employing authorities to appropriate administering authorities); 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 regulations 15 (contributions during child-related leave), 16 (contributions during reserve forces service leave) or 18 (contributions during absences with permission) of these Regulations or regulation 4 of the Benefits Regulations (contributions payable by active members) by employees who are active members, 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.

(6) Where an employee—

- (a) is treated under paragraph (4) of regulation 16 (contributions during child-related leave) as if the employee had paid contributions; or
- (b) has paid contributions during a period of maternity, paternity or adoption absence (within the meaning of that regulation),

the pay on which the common percentage is calculated is the pay the employee would have received if the employee had not been absent.

Employer's payment following resolution to increase membership or award additional pension

36.—(1) This regulation applies where an employing authority makes a resolution under—

- (a) regulation 12 of the Benefits Regulations (which confers power to increase the membership of an active member by an additional period); or
- (b) regulation 13 of those Regulations (which confers power to award additional pension).

(2) Unless paragraph (4) applies, the employing authority must pay the appropriate sum for the person to whom the resolution relates to the appropriate fund before the expiry of the relevant period.

(3) The appropriate sum for a person is such sum as is shown as appropriate in guidance issued by the scheme actuary.

(4) This paragraph applies where the administering authority and the employing authority agree before the expiry of the relevant period, that the employing authority will pay increased contributions under regulation 35 (employers contributions) or an amount to meet the cost of the increase in membership or the additional pension.

(5) Any extra charge on the appropriate fund resulting from the decision must be repaid to the fund by the employing authority concerned but only so far as not paid under paragraphs (2) or (4).

(6) In the case of a resolution under regulation 12 of the Benefits Regulations, the additional period in question may only be counted as a period of membership if one of the conditions in paragraph (8) is met.

(7) In the case of a resolution under regulation 13 of those Regulations, a person is only entitled to the additional pension awarded if one of those conditions is met.

(8) The conditions are that either—

- (a) the employing authority makes the payment required by paragraph (2) within the relevant period; or
- (b) paragraph (4) applies.

(9) The relevant period is—

- (a) the period of one month beginning with the date of the decision; or
- (b) such longer period as the employing authority and the administering authority agree.

(10) If neither of the conditions in paragraph (8) is met, the decision ceases to have effect.

Employer's further payments

37.—(1) Any extra charge on the appropriate fund resulting from a member's becoming entitled to benefits calculated under paragraphs (2)(b), (3)(b) or (4) of regulation 20 (early leavers: ill-health) or regulation 31 (early payment of pension: ill-health) of the Benefits Regulations must be repaid to the fund by the employing authority concerned.

(2) The appropriate administering authority may require the employing authority concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund resulting from retirement benefits becoming immediately payable to a member under regulation 18 (flexible retirement), 19 (early leavers: inefficiency or redundancy) or 30 (choice of early payment of pension) of the Benefits Regulations, including the costs, as calculated by the fund's actuary, incurred by the fund as a result of a waiver of such reduction as is referred to in regulation 18(3) of those Regulations.

(3) Where on such benefits and retirement grant becoming payable, the benefits and retirement grant also become payable to the member in respect of service with one or more other employing authorities, the employing authority in relation to whom the redundancy arose or by whom the consent to early retirement was given shall be responsible for making any additional payments in accordance with paragraph (2) in respect of all such service.

(4) Any additional payments that are due under paragraph (2) shall be made, if the administering authority agree, by—

- (a) a single payment of an amount determined by the administering authority on the advice of the fund actuary; or
- (b) instalments, each of an amount determined by the administering authority on the advice of the fund actuary, covering a period not exceeding the period between the member's leaving local government employment and reaching normal retirement age, or a period not exceeding 5 years, the first and subsequent instalments becoming payable as agreed between the administering authority and the employing authority.

Payment by employing authorities to appropriate administering authorities

38.—(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—

- (a) all amounts from time to time deducted from the pay of its employees under these Regulations;
- (b) any amount it has received by deduction or otherwise under regulation 15(5) (child related leave), 17 (trade dispute absence), 18(2) (absences with permission) or 22 (AVCs and SCAVCs) during the interval;
- (c) any extra charge payable under regulation 36 (employers payment following increase) or 37 (employers further payments) of which it has been notified by the administering authority during the interval; and
- (d) a contribution towards the cost of the administration of the fund.

(2) But—

- (a) an employing authority must pay the amounts mentioned in paragraph (1)(a), not later than the time required under section 49(8) of the 1995 Act; and

- (b) paragraph (1)(d) does not apply where the cost of the administration of the fund is paid out of the fund under regulation 5(6) of the Local Government Pensions Scheme (Management and Investment of Funds) (Scotland) Regulations 1998(3).
- (3) Every payment under paragraph (1)(a) must be accompanied by a statement showing—
- (a) the name, pay and band (as set out in column 1 of the table in regulation 4(2) (contributions payable by active members) of the Benefits Regulations) of each of the employing authority's employees who is an active member;
 - (b) which employees are paying contributions under regulation 20(1) (payment of additional regular contributions) or 22(1) (additional voluntary contributions and shared cost additional 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 any such voluntary contributions.
- (4) An appropriate administering authority may direct that the information mentioned in paragraph (3) shall be given to the authority instead in such form and at such intervals (not exceeding 12 months) as it specifies in the direction.
- (5) If an annual amount payable under paragraph (1)(d) cannot be settled by agreement, it must be determined by the Scottish Ministers.
- (6) Paragraphs (1) and (3) do not apply to an employing authority which is an appropriate administering authority.
- (7) An administering authority must pay to the fund of which it is the administering authority its fair share of any contribution towards the cost of the administration of the fund in circumstances where it has required a contribution towards such cost from employing authorities as referred to in paragraph (1)(d).
- (8) An administering authority must also pay any additional costs due to the fund which are incurred because of its level of performance in carrying out its functions under these Regulations.

Interest

- 39.**—(1) An administering authority may require an authority from which payment of any amount due under regulations 35 to 38 (employers' contributions or payments) or 81 (changes of fund) is overdue to pay interest on that amount.
- (2) The date on which any amount due under regulations 35 to 37 is overdue is the date one month from the date specified by the administering authority for payment.
- (3) The date on which any amount due under regulation 38 (payment by employing authorities to appropriate administering authorities) is overdue is the day after the date when that payment is due.
- (4) Interest due under paragraph (1) or payable to a person under regulation 40(5) (deduction and recovery of member's contributions), 41(2) (rights to return of contributions) or 47 (interest on late payment of certain benefits) must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three monthly rests.
- (5) Interest on any amount due in respect of regulation 81 shall be calculated in accordance with guidance issued by the scheme actuary.

Deduction and recovery of member's contributions

- 40.**—(1) An employing authority may deduct from a person's pay any contributions payable by him under these Regulations or the Benefits Regulations.

(2) Sums payable under regulation 16(2) or (5)(b) (reserve forces) may be deducted by the member's former employer from any payment made to the member under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(4), to the extent that they are payable in respect of the same period.

(3) The appropriate administering authority may recover any contributions or 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 or the Benefits Regulations.

(4) But 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–

- (a) an employing authority deduct in error any amount in respect of contributions from a person's pay or any other sum due to the person; and
- (b) the amount has not been repaid to the person before the expiry of the period of one month beginning with the date of deduction,

the appropriate body must pay the person interest on that amount; and the due date for the calculation of the interest under regulation 39(4) (interest) is the date of deduction.

(6) Where the employee's contributions have been paid into the appropriate fund, the repayment and interest must be made out of that fund.

(7) The “appropriate body” for the purpose of paragraph (5) is–

- (a) the appropriate administering authority where the employee's contributions have been paid into the appropriate fund; and
- (b) the person's employing authority where the employee's contributions have not yet been paid into the appropriate fund.

Rights to return of contributions

41.—(1) If a member with less than two years' membership ceases to be employed by an employing authority or to be an active member without becoming entitled to a retirement pension, the member is entitled to be repaid his or her contributions from the appropriate fund.

(2) If repayment of the contributions has not been made before the expiry of the period of one year beginning with the date when active membership ceases, the person is entitled to interest on the repayment which should have been made, calculated as provided in regulation 39(4) (interest), the due date being the date when active membership ceased.

(3) A person who is entitled to a repayment of contributions under paragraph (1) may waive his or her entitlement for any period and, if the person becomes an active member again before the expiry of that period, the person shall cease to be so entitled (but without prejudice to any entitlement arising later under that paragraph in respect of those contributions).

(4) Where a person who continues as an active member in another employment held concurrently with the employment in which that person has ceased to be an active member, an amount equal to the repayment is to be treated as contributions to the Scheme as respects that person's membership in that concurrent employment, entitling that person to a period of membership equal to the period of membership in the employment which has ceased, as reduced under regulation 8(3) (calculations of length of periods of membership) of the Benefit Regulations if the employment which has ceased was part time, multiplied by the fraction–

Whole – time rate of pay which has ceased
whole – time rate of pay which is continuing

where

the rate of pay in each case is the annual rate of pay on the last day of employment in the employment which has ceased.

Exclusion of rights to return of contributions

42.—(1) A person is not entitled to a repayment under regulation 41 (rights to return of contributions) if—

- (a) the person becomes a member again within one month and one day;
- (b) that person left the employment because of—
 - (i) an offence of a fraudulent character; or
 - (ii) grave misconduct,

in connection with that person’s employment; or

- (c) regulation 74(2) (right to payment out of fund authority’s pension fund) applies.

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

(3) A person is not entitled to a repayment under regulation 41(1) if a transfer value has been credited to the appropriate fund for the person and the person ceases to be entitled to such a repayment if the person returns to local government employment before receiving it.

Permanent reductions in pay: certificates of protection of pension benefits

43.—(1) Where a certificate has been issued as respects a member’s pay under paragraph (3) or (5) and the date of reduction or, as the case may be, restriction specified in the certificate is not more than 10 years before the date on which the member ceases to be an active member, that member may elect that his or her final pay period should be—

- (a) a year ending with a day—
 - (i) falling within in the period of five years ending with the last day on which the member was an active member; and
 - (ii) of which that last day is the anniversary; or
- (b) any three consecutive years—
 - (i) falling within the period of 13 years ending with the last day on which the member was an active member; and
 - (ii) ending with a day of which that last day is the anniversary.

(2) Where a member elects for the period specified in paragraph (1)(b), the member’s final pay is the annual average of the member’s pay during that period.

(3) If, otherwise than by virtue of a member’s own circumstances (including the member’s ill health)—

- (a) the member’s rate of pay is reduced; or

(b) the date at which it may be increased is restricted in such a way that it is likely that the rate of the member's retirement pension will be adversely affected,
the member is entitled to be issued with a certificate to that effect by the employing authority (but see paragraph (5)).

(4) A member is not entitled to be issued with a certificate under this regulation if the reduction in the member's rate of pay—

(a) is temporary; or

(b) consists of the termination of, or a reduction in, temporary increase in the rate of pay.

(5) The employing authority may issue a certificate without an application from the member, but need not issue a certificate if the member does not apply for one within 12 months after the date of reduction or restriction.

(6) A certificate issued under this regulation must specify the date of the reduction or restriction.

(7) The employing authority must send a copy of the certificate to the member's appropriate administering authority.

(8) The employing authority must keep a record of the certificate including such information as would be necessary for applying paragraph (1) for the period of 10 years beginning with the date of reduction or restriction specified in it.

(9) An election under this regulation by a member must be made by notice in writing given to the appropriate administering authority before the expiry of the period of one month beginning with the date on which the member is notified of his or her entitlement to a benefit.

(10) Where a member has died without having made an election under this regulation, the appropriate administering authority may make an election on the member's behalf (whether or not the period within which the member could have elected has expired).