
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 228

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

PART 8

SPECIAL ADJUSTMENTS

Statements of policy concerning abatement of retirement pensions in new employment

64.—(1) Each administering authority must formulate and keep under review its 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 it 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 it 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 it is the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with the 1st April 2009, each administering authority shall publish a statement as to the policy which is being applied by it where a member who is so entitled enters such a new employment on or after that date.

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

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

- (a) the level of potential financial gain at which it wishes 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 the member's entitlement both to a pension and to pay under the new employment.

Application of abatement policy to individual cases

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

(2) If such a member enters such a new employment the member must immediately notify in writing the body from whom the member 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 the member is entitled—

- (a) must have regard to regulation 12 (application of abatement policy) of the Transitional Regulations;
- (b) must apply the policy published by them under regulation 64 (statements of policy) to the member; and
- (c) may reduce the annual rate of that pension or, as the case may be, may cease to pay it, during the period while the member holds the new employment, in accordance with that policy.

(5) Any retirement pension paid following a request under regulation 18(1) of the Benefits Regulations (flexible retirement) is not subject to abatement under regulation 64 in respect of any subsequent employment with the person who is the member's employer at the date of the request.

Forfeiture of pension rights after conviction of employment-related offences

66.—(1) If a member is convicted of a relevant offence, the Scottish Ministers 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 the member under the Benefits Regulations, these Regulations or the Earlier Regulations as respects the member's previous membership are 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 the member 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, it may only give a direction under paragraph (2) if it is unable to recover its loss under regulation 68 (recovery or retention where former member has misconduct obligation) or 70 (transfer of sums from pension fund to compensate) 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 the period of three months beginning with the date of the conviction.

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

Interim payments directions

67.—(1) If—

- (a) a person leaves an employment in which the person was a member, because of an offence in connection with that employment; and
- (b) a forfeiture certificate has been issued under regulation 66(1) (forfeiture of pension rights) in respect of that offence,

the person's former employing authority may give an interim payments direction to the appropriate administering authority.

- (2) But it may not give such a direction if it has—
- (a) notified the person of a decision under regulation 51 (first instance decisions) on any question as to entitlement to benefit; or
 - (b) given any direction under regulation 66(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 51 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 51).

Recovery or retention where former member has misconduct obligation

- 68.**—(1) This regulation applies where a person—
- (a) has left an employment, in which the person was or had at some time been a member, in consequence of a criminal, negligent or fraudulent act or omission on the person’s part in connection with that employment;
 - (b) has incurred some monetary obligation, arising out of that act or omission, to the body that was the person’s employing authority in that employment; and
 - (c) is entitled to benefits under the Benefits Regulations.

- (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 the employee’s 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 AVCs or SCAVCs.

- (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 the former employee’s 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 arbitrator.

Protection of guaranteed minimum pension rights

- 69.**—(1) The power—

- (a) to give directions under regulation 66(2); or
- (b) to recover or retain amounts under regulation 68(2),

may not be exercised so as to deprive a person of the person's guaranteed minimum pension or any widow's, widower's or surviving civil partner's guaranteed minimum pension.

- (2) But such a power may be so exercised if the person left his or her employment—
 - (a) because of the offence of treason; or
 - (b) because of one or more offences under the Official Secrets Act 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 the aggregate to at least 10 years.

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

70.—(1) This regulation applies where—

- (a) a person has left an employment in which the person was a member because of—
 - (i) an offence involving fraud; or
 - (ii) grave misconduct,
 in connection with that employment;
- (b) the person's former employing authority in that employment has suffered direct financial loss by reason of the offence or misconduct; and
- (c) either—
 - (i) the former employee became entitled to benefits under the Benefits Regulations and these Regulations or the 1998 Regulations and a forfeiture direction has been given; or
 - (ii) the former employee did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 41 (rights to return of contributions) (whether or not the former employee has waived his or her right).

(2) If the former employing authority is an administering authority, it may transfer an appropriate amount from its 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) But 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, civil partner or a dependant, under regulation 42(2) (exclusion of rights to return of contributions) of these Regulations or regulation 87(2) of the 1998 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 is required to make any transfer payment under Chapter 4 or Chapter 5 of Part 4 of the 1993 Act or to make a payment under regulation 81 (changes of fund) for a former employee, the former employing authority must repay it, if requested to do so.

Members of local authorities

71. These Regulations apply to councillor members in respect of their councillor membership with the modifications set out in Schedule 5.