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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 141**

**The Local Government Pension  
Scheme (Scotland) Regulations 2018**

**PART 2**

Administration

*Administering authorities*

**Scheme managers**

**51.**—(1) The bodies listed in schedule 3, referred to in these Regulations as “administering authorities”, must maintain a pension fund for the Scheme.

(2) An administering authority is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate administering authority under these Regulations.

(3) The appropriate fund in relation to a person who is or has been a member of the Scheme, or is entitled to any benefit in respect of a person who is or has been a member of the Scheme, is the fund specified in schedule 4 in relation to that person.

**Admission agreement funds**

**52.**—(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 51(1) (Scheme managers) (“the main fund”).

(2) Immediately after an administering 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 relating to 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 60 (actuarial valuations of pension funds) 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 from the actuary appointed by the authority—

- (a) a transfer statement; and
- (b) a rates and adjustment certificate for the admission agreement fund for each remaining year of the period covered by the most recent such certificate for its main fund.

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**Changes to legislation:** There are outstanding changes not yet made by the [legislation.gov.uk](https://www.legislation.gov.uk) editorial team to The Local Government Pension Scheme (Scotland) Regulations 2018. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(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.

### **Administering authorities: governance compliance statement**

**53.**—(1) An administering authority must prepare a written statement setting out—

- (a) whether the authority delegates its functions, or part of its functions under these Regulations to a committee, a sub-committee or an officer of the authority;
- (b) if the authority does 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 Scheme employers or members, and if so, whether those representatives have voting rights;
- (c) the extent to which a delegation, or the absence of a delegation, complies with guidance given by the Scottish Ministers and, to the extent that it does not so comply, the reasons for not complying; and
- (d) details of the terms, structure and operational procedures relating to the local pension board established under regulation 5 (pension boards) of the Governance Regulations.

(2) An administering authority must keep a statement prepared under paragraph (1) under review, and make such revisions as are appropriate, following a material change to any of the matters mentioned in that paragraph.

(3) Before preparing or revising a statement under this regulation, an administering authority must consult such persons as it considers appropriate.

(4) An administering authority must publish its statement under this regulation, and any revised statement.

### **Accounts and audit**

**54.**—(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 <sup>M1</sup> is the year ending on 5th April 2016 and each year ending on 5th April after that year.

#### **Marginal Citations**

**M1** 2004 c.12; section 238 was amended by the [Finance Act 2011 \(c.11\)](#), [schedule 17\(1\)](#), paragraph 16 and the Finance No. 2 Act 2015 (c.33), schedule 4(1), paragraph 2.

## *Strategies, statements and reports*

### **Pension fund annual report**

**55.**—(1) An administering authority must, in relation to each year beginning on 1st April 2015 and each subsequent year, prepare a document (“the pension fund annual report”) which contains—

- (a) a report about the management and financial performance during the year of each of the pension funds maintained by the authority;
- (b) a report explaining the authority's investment policy for each of those funds and reviewing the performance during the year of the investments of each fund;
- (c) a report of the arrangements made during the year for the administration of each of those funds;
- (d) for each of those funds, a statement by the actuary who carried out the most recent valuation of the assets and liabilities of the fund in accordance with regulation 60 (actuarial valuations of pension funds), of the level of funding disclosed by that valuation;
- (e) the current version of the statement under regulation 53 (governance compliance statement);
- (f) for each of the funds, the fund account and net asset statement with supporting notes and disclosures prepared in accordance with proper practices;
- (g) an annual report dealing with—
  - (i) the extent to which the authority and the Scheme employers in relation to which it is the administering authority have achieved any levels of performance set out in a pension administration strategy in accordance with regulation 57 (pension administration strategy); and
  - (ii) such other matters arising from a pension administration strategy as it considers appropriate;
- (h) the current version of the statement referred to in regulation 56 (funding strategy statement);
- (i) the current version of the statement under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 2010 (statement of investment principles) <sup>M2</sup>;
- (j) the current version of the statement under regulation 59 (statements of policy concerning communications with members and Scheme employers); and
- (k) any other material which the authority considers appropriate.

(2) The authority must publish the pension fund annual report or details of where it may be obtained on or before 1st December following the Scheme year end.

(3) In preparing and publishing the pension fund annual report, the authority must have regard to guidance given by the Scottish Ministers.

#### **Marginal Citations**

**M2** [S.S.I. 2010/233](#).

### **Funding strategy statement**

**56.**—(1) An administering authority must, after consultation with such persons as it considers appropriate, prepare, maintain and publish a written statement setting out its funding strategy.

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- (2) The statement must be published no later than 31st March 2016.
- (3) The authority must keep the statement under review and, after consultation with such persons as it considers appropriate, make such revisions as are appropriate following a material change in its policy set out in the statement, and if revisions are made, publish the statement as revised.
- (4) In preparing, maintaining and reviewing the statement, the administering authority must have regard to—
- (a) the guidance set out in the current version of the document published by the Chartered Institute of Public Finance and Accountancy (“CIPFA”) and called “Preparing and maintaining a Funding Strategy Statement in the Local Government Pension Scheme”<sup>M3</sup>; and
  - (b) the statement of investment principles published by the administering authority under regulation 12 of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 2010.

#### **Marginal Citations**

**M3** ISBN: 9781845083359; copies may be obtained from CIPFA at 77 Mansell Street, London E1 8AN.

#### **Pension administration strategy**

**57.**—(1) An administering authority may prepare a written statement of the authority's policies in relation to such of the matters mentioned in paragraph (2) as it considers appropriate (“its pension administration strategy”) and, where it does so, paragraphs (3) to (7) apply.

- (2) The matters are—
- (a) procedures for liaison and communication with Scheme employers in relation to which it is the administering authority (“its Scheme employers”);
  - (b) the establishment of levels of performance which the administering authority and its Scheme employers are expected to achieve in carrying out their Scheme functions by—
    - (i) the setting of performance targets;
    - (ii) the making of agreements about levels of performance and associated matters; or
    - (iii) such other means as the administering authority considers appropriate;
  - (c) procedures which aim to secure that the administering authority and its Scheme employers comply with statutory requirements in respect of those functions and with any agreement about levels of performance;
  - (d) procedures for improving the communication by the administering authority and its Scheme employers to each other of information relating to those functions;
  - (e) the circumstances in which the administering authority may consider giving written notice to any of its Scheme employers under regulation 65 (additional costs arising from Scheme employer's level of performance) on account of that employer's unsatisfactory performance in carrying out its Scheme functions when measured against levels of performance established under sub-paragraph (b);
  - (f) the publication by the administering authority of annual reports dealing with—
    - (i) the extent to which that authority and its Scheme employers have achieved the levels of performance established under sub-paragraph (b); and
    - (ii) such other matters arising from its pension administration strategy as it considers appropriate; and

- (g) such other matters as appear to the administering authority after consulting its Scheme employers and such other persons as it considers appropriate, to be suitable for inclusion in that strategy.
- (3) An administering authority must—
  - (a) keep its pension administration strategy under review; and
  - (b) make such revisions as are appropriate following a material change in its policies in relation to any of the matters contained in the strategy.
- (4) In preparing or reviewing and making revisions to its pension administration strategy, an administering authority must consult its Scheme employers and such other persons as it considers appropriate.
- (5) An administering authority must publish—
  - (a) its pension administration strategy; and
  - (b) where revisions are made to it, the strategy as revised.
- (6) Where an administering authority publishes its pension administration strategy, or that strategy as revised, it must send a copy of it to each of its Scheme employers and to the Scottish Ministers as soon as is reasonably practicable.
- (7) An administering authority and its Scheme employers must have regard to its pension administration strategy when carrying out their functions under these Regulations.
- (8) In this regulation references to the functions of an administering authority include, where applicable, its functions as a Scheme employer.

#### **Statements of policy about exercise of discretionary functions**

**58.**—(1) A Scheme employer must prepare a written statement of its policy in relation to the exercise of its functions under regulations—

- (a) 16(2)(e) and 16(4)(d) (funding of additional pension);
- (b) 29(7) (flexible retirement);
- (c) 29(9) (waiving of actuarial reduction); and
- (d) 30 (award of additional pension),

and an administering authority must prepare such a statement in relation to the exercise of its functions under regulation 29(9) in cases where a former employer has ceased to be a Scheme employer.

(2) Each Scheme employer must send a copy of its statement to each relevant administering authority before 1st July 2015 and must publish its statement.

(3) A body required to prepare a statement under paragraph (1) must—

- (a) keep its statement under review; and
- (b) make such revisions as are appropriate following a change in its policy.

(4) Before the expiry of a month beginning with the date any such revisions are made, each Scheme employer must send a copy of its revised statement to each relevant administering authority, and must publish its statement as revised.

(5) In preparing, or reviewing and making revisions to its statement, a body required to prepare a statement under paragraph (1) must have regard to the extent to which the exercise of the functions mentioned in paragraph (1) in accordance with its policy could lead to a serious loss of confidence in the public service.

(6) In this regulation a relevant administering authority, in relation to a Scheme employer, is any authority which is an appropriate administering authority for that employer's employees.

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## **Statements of policy concerning communications with members and Scheme employers**

**59.**—(1) An administering authority must prepare, maintain and publish a written statement setting out its policy concerning communications with—

- (a) members;
- (b) representatives of members;
- (c) prospective members; and
- (d) Scheme employers.

(2) In particular the statement must set out its policy on—

- (a) the provision of information and publicity about the Scheme to members, representatives of members and Scheme employers;
- (b) the format, frequency and method of distributing such information or publicity; and
- (c) the promotion of the Scheme to prospective members and their employers.

(3) The statement must be revised and published by the administering authority following a material change in their policy on any of the matters referred to in paragraph (2).

## *Actuarial valuations*

### **Actuarial valuations of pension funds**

**60.**—(1) An administering authority must obtain—

- (a) an actuarial valuation of the assets and liabilities of each of its pension funds as at 31st March 2020 and on 31st March 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 primary rate of the employer's contribution; and
- (b) the secondary rate of the employer's contribution,

for each year of the period of 3 years beginning with 1st April in the year following that in which the valuation date falls.

(5) The actuary must have regard to—

- (a) the existing and prospective liabilities arising from circumstances common to all those bodies;
- (b) the desirability of maintaining as nearly constant a primary rate as possible;
- (c) the current version of the administering authority's funding strategy mentioned in regulation 56 (funding strategy statements); and
- (d) the requirement to secure the solvency of the pension fund and the long term cost efficiency of the Scheme, so far as relating to the pension fund.

(6) 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 the provisions of the Scheme; and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(7) The administering 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.

(8) In this regulation—

- (a) the primary rate of an employer's contribution is the amount in respect of the cost of future accruals which, in the actuary's opinion, should be paid to a 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; and
- (b) the secondary rate of an employer's contributions is any percentage or amount by which, in the actuary's opinion, contributions at the primary rate should, in the case of a Scheme employer, be increased or reduced by reason of any circumstances peculiar to that employer.

#### **Special circumstances where revised actuarial valuations and certificates must be obtained**

**61.**—(1) Subject to paragraph (3), if a person—

- (a) ceases to be a Scheme employer (including ceasing to be an admission body participating in the Scheme); or
- (b) is or was a Scheme employer, but, irrespective of whether that employer employs active members contributing to one or more other funds, no longer has an active member contributing towards a fund which has liabilities in respect of benefits in respect of current and former employees of that employer,

that person becomes “an exiting employer” in relation to the relevant fund for the purposes of this regulation and is liable to pay the exit payment or to receive the exit credit.

(2) When a person becomes an exiting employer, the appropriate administering authority must obtain—

- (a) an actuarial valuation as at the exit date of the liabilities of the fund in respect of benefits in respect of the exiting employer's current and former employees; and
- (b) a revised rates and adjustments certificate showing the exit payment due from the exiting employer, or exit credit payable to the exiting employer, in respect of those benefits.

(3) An administering authority may by written notice (“suspension notice”) to an employer suspend that employer's liability to pay an exit payment starting from the date when that employer would otherwise become an exiting employer.

(4) If an administering authority serves a suspension notice the employer must continue to make such contributions towards the liabilities of the fund in respect of benefits for the employer's current and former employees until a new and satisfactory valuation is carried out and the suspension notice is withdrawn.

(5) Where for any reason it is not possible to obtain all or part of the exit payment due from the exiting employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the exiting employer, the administering authority must obtain a further revision of any rates and adjustments certificate for the fund showing—

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- (a) in the case where a body is an admission body falling within paragraph 1(d) of Part 2 of schedule 2 of these Regulations (Scheme employers: bodies providing services as a result of transfer of a service), the revised contribution due from the body which is the related employer in relation to that admission body; and
- (b) in any other case, the revised contributions due from each Scheme employer which contributes to the fund,

with a view to providing that assets equivalent to the exit payment due from the exiting employer are provided to the fund over such period of time as the administering authority considers reasonable.

(6) Where in the opinion of an administering authority there are circumstances which make it likely that a Scheme employer (including an admission body) will become an exiting employer, the administering authority may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary's opinion—

- (a) the contribution at the primary rate should be adjusted; or
- (b) any prior secondary rate adjustment should be increased or reduced,

with a view to providing that assets equivalent to the exit payment that will be due from the Scheme employer are provided to the fund by the likely exit date or, where the Scheme employer is unable to meet that liability by that date, over such period of time thereafter as the administering authority considers reasonable.

(7) When an exiting employer has paid the exit payment into the appropriate fund (or received the exit credit), no further payments are due from that employer in respect of any liabilities relating to the benefits in respect of any current or former employees of that employer as a result of these Regulations.

(8) [F1Paragraph (9)] applies where—

- (a) a Scheme employer agrees to pay increased contributions to meet the cost of an award of additional pension under regulation 30 (award of additional pension); or
- (b) it appears likely to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with a Scheme employer exceeds the amount specified, or likely as a result of the assumptions stated, for that authority, in a rates and adjustments certificate by virtue of regulation 60(6) (actuarial valuations of pension funds: assumptions).

(9) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that Scheme employer.

(10) For the purposes of this regulation—

“exiting employer” means an employer of any of the descriptions specified in paragraph (1);

“exit payment” means the amount as set out in the rates and adjustments certificate referred to in sub-paragraph (2)(b) required to be paid by the exiting employer over such period of time as the administering authority considers reasonable, to meet the liabilities specified in paragraph (2);

“exit credit” means the amount required to be paid to the exiting employer by the administering authority to meet the excess of assets in the fund relating to that employer over the liabilities specified in paragraph (2)(a);

“exit date” means the date on which the employer becomes an exiting employer; and

“related employer” means any Scheme employer or other such contracting body which is a party to the admission agreement (other than an administering authority in its role as an administering authority).



### Textual Amendments

- F1** Words in [reg. 61\(8\)](#) substituted (with effect from 1.6.2018) by [The Local Government Pension Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/161\)](#), regs. 1(2), **2(21)**

## Payments

### Employer's contributions

**62.**—(1) A Scheme employer must contribute to the appropriate fund in each year covered by a rates and adjustment certificate under regulation 60 (actuarial valuations of pension funds) or 61 (special circumstances where revised actuarial valuations and certificates must be obtained) the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).

(2) During each of those years a Scheme employer 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 64 (payment by Scheme employers to 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 primary percentage for that year of—

- (a) the pensionable pay on which contributions have been paid into the fund by active members in accordance with regulations 9 to 12, 14 and 15 (contributions), except where sub-paragraph (b) applies; and
- (b) the assumed pensionable pay in respect of members on leave due to sickness or injury on reduced contractual pay or no pay or on child-related leave,

increased or reduced by any secondary rate adjustments specified for that employer for that year in the rates and adjustments certificate except where actual pay received during child-related leave is greater than assumed pensionable pay.

(5) The primary percentage is the primary rate of the employer's contribution specified in that certificate expressed as a percentage of the pay of its employees who are active members.

(6) A Scheme employer must also pay into the appropriate fund in each year any employer contributions made under regulation 16 (additional pension contributions).

### Employer's further payments

**63.**—(1) Any extra charge on the appropriate fund resulting from a member becoming entitled to benefits under regulation 34 (early payment of retirement pension on ill-health grounds) must be paid into the fund by the Scheme employer concerned.

(2) An administering authority may require the Scheme employer concerned to make additional payments to the appropriate fund in respect of any extra charge on the fund resulting from retirements benefits becoming immediately payable to a member under regulation 29(6) (early retirement) or under regulation 29(7) (flexible retirement) or (8) (early leavers on grounds of redundancy or business efficiency), including the cost as calculated by an actuary appointed by the administering authority, as a result of a waiver of any reduction under regulation 29(9).

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(3) Other than where regulation [F<sup>2</sup>61(8)] (special circumstances where revised actuarial valuations and certificates must be obtained) applies, a Scheme employer making an award under regulation 30 (award of additional pension) must pay a sum into the appropriate fund to meet the cost of any additional pension, in accordance with actuarial guidance issued by the Scottish Ministers.

#### Textual Amendments

**F2** Word in reg. 63(3) substituted (with effect from 1.6.2018) by [The Local Government Pension Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/161\)](#), regs. 1(2), **2(22)**

#### Payment by Scheme employers to administering authorities

**64.**—(1) Every Scheme employer 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 received from time to time from employees under regulations 9 to 14 and 16 (contributions);
- (b) any charge payable under regulation 63 (employer's further payments) of which it has been notified by the administering authority during the interval;
- (c) a contribution towards the cost of the administration of the fund;
- (d) any amount specified in a notice given in accordance with regulation 65 (additional costs arising from Scheme employer's level of performance); and
- (e) all amounts received from time to time from the Ministry of Defence in respect of employee and employer contributions for a member on reserve forces service leave.

(2) But—

- (a) a Scheme employer must pay the amounts mentioned in paragraph (1)(a) within the prescribed period referred to in section 49(8) of the Pensions Act 1995 <sup>M4</sup>; and
- (b) paragraph (1)(c) does not apply where the cost of the administration of the fund is paid out of the fund under regulation [F<sup>3</sup>4(4)] of the Local Government Pensions Scheme (Management and Investment of Funds) (Scotland) Regulations 2010 (management of pension fund) <sup>M5</sup>.

(3) Every payment under paragraph (1)(a) must be accompanied by a statement showing—

- (a) the total pensionable pay received by members during the period covered by the statement whilst regulation 9 (contributions) applied (including the assumed pensionable pay members were treated as receiving during that period);
- (b) the total employee contributions deducted from the pensionable pay referred to in subparagraph (a);
- (c) the total pensionable pay received by members during the period covered by the statement whilst regulation 10 (temporary reduction in contributions) applied (including the assumed pensionable pay members were treated as receiving during that period);
- (d) the total employee contributions deducted from pensionable pay referred to in subparagraph (c);
- (e) the total employer contributions in respect of the pensionable pay referred to in subparagraphs (a) and (c);
- (f) the total additional pension contributions paid by members under regulation 16 (additional pension contributions) during the period covered by the statement; and

- (g) the total additional pension contributions paid by the employer under regulation 16 (additional pension contributions) during the period covered by the statement.
- (4) An administering authority may direct that the information mentioned in paragraph (3) shall be given to the authority in such form and at such intervals as it specifies in the direction.
- (5) If an amount payable under paragraph (1)(c) or (d) cannot be settled by agreement, it must be determined by the Scottish Ministers.

#### Textual Amendments

- F3** Word in [reg. 64\(2\)\(b\)](#) substituted (with effect from 1.6.2018) by [The Local Government Pension Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/161\)](#), [regs. 1\(2\)](#), [2\(23\)](#)

#### Marginal Citations

- M4** [1995 c.26](#). Section 49(8) was amended by the [Welfare Reform and Pensions Act 1999 \(c.30\)](#), [Part 2](#), [section 10\(1\)](#).
- M5** [S.S.I. 2010/233](#).

### Additional costs arising from Scheme employer's level of performance

**65.**—(1) This regulation applies where, in the opinion of an administering authority, it has incurred additional costs which should be recovered from a Scheme employer because of that employer's level of performance in carrying out its functions under these Regulations.

- (2) The administering authority may give written notice to the Scheme employer stating—
  - (a) the administering authority's reasons for forming the opinion mentioned in paragraph (1);
  - (b) the amount the authority has determined the Scheme employer should pay under regulation 64(1)(d) (payments by Scheme employers to administering authorities) in respect of those costs and the basis on which the specified amount is calculated; and
  - (c) where the administering authority has prepared a pension administration strategy under regulation 57 (pension administration strategy), the provisions of the strategy which are relevant to the decision to give the notice and to the matters in sub-paragraph (a) or (b).

### Interest on late payments by Scheme employers

**66.**—(1) An administering authority may require a Scheme employer or former Scheme employer from which any payment under regulations 62 to 65 (employer's contributions or payments) is overdue to pay interest on that amount.

(2) The date on which any amount due under regulation 62 (employer's contributions), 63 (employer's further payments) or 65 (additional costs arising from Scheme employer's level of performance) is overdue is one month from the date specified by the administering authority for payment.

(3) The date on which any amount due under regulation 64 (payment by Scheme employers to administering authorities) (other than an extra charge payable under regulation 64 and referred to in regulation 64(1)(b)) is overdue is the day after the date when that payment is due.

(4) Interest payable under this regulation 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 3-monthly rests.

## Decisions

### First instance decisions

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

- (a) any question concerning the person's previous service or employment;
- (b) any question about counting additional periods as membership or crediting additional pension.

(3) Such a decision must be made as soon as is reasonably practicable after the person becomes a member in the employment.

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

(7) That decision must be made as soon as is reasonably practicable after the earlier of—

- (a) the date the employment ends; or
- (b) the date specified in the notification mentioned in regulation 5(4) or, where relevant, the date referred to in regulation 5(5) (ending active membership).

(8) In paragraphs (4) and (6) “benefit” includes a return of contributions.

(9) Any question concerning what rate of contribution a member is liable to pay to the appropriate fund must be decided by the member's Scheme employer.

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

### Notification of first instance decisions

**68.**—(1) Every person whose rights or liabilities are affected by a decision under regulation 67 (first instance decisions) must be notified of it in writing by the body which 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 about 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 69 (applications to resolve disagreements) and 71 (reference of disagreement for reconsideration by Scottish Ministers);
- (b) specify the time limits within which the rights under those regulations may be exercised; and

- (c) specify the job title and the address of the person to whom applications under regulation 69 (applications to resolve disagreements) may be made.

### **Applications to resolve disagreements**

**69.**—(1) This regulation applies where there is a disagreement about a matter in relation to the Scheme between a member (or an alternative applicant) and a Scheme employer or the administering authority.

(2) For the purposes of this Regulation, the following persons are alternative applicants—

- (a) a widow, widower or surviving civil partner or cohabiting partner of a deceased member;
- (b) a dependant of a deceased member or any other person to whom benefits in respect of the member may be paid;
- (c) a prospective member;
- (d) a person who ceased to be a member, or to fall within any of sub-paragraphs (a) to (c), during the period of 6 months ending with the date of the application; and
- (e) in the case of a disagreement relating to the question whether a person claiming to be a member or to fall within any of sub-paragraphs (a) to (d) does so, the claimant.

(3) The member or, as the case may be, the alternative applicant may apply to—

- (a) the person specified under regulation 68(5)(c) (notification of first instance decision) to give a decision on the disagreement; or
- (b) the appropriate administering authority for that authority to refer the disagreement to a person for decision.

(4) An application for a decision under paragraph (3) must—

- (a) set out the applicant's full name, address and date of birth;
- (b) include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;
- (c) be signed by or on behalf of the applicant; and
- (d) be accompanied by a copy of any written notification under regulation 68 (notification of first instance decision).

(5) An application by—

- (a) a member or prospective member;
- (b) a person who ceased to be a member or prospective member during the period of 6 months ending with the date of the application; or
- (c) a person claiming to be a person within sub-paragraph (a) or (b),

must also set out their national insurance number (if any) and the name of their Scheme employer.

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

- (a) that person's relationship to the member; and
- (b) the member's full name, address, date of birth and national insurance number (if any) and the name of the member's Scheme employer.

(7) An application must be made before the end of—

- (a) the period of 6 months beginning with the relevant date; or
- (b) such longer period as the person giving the decision on the disagreement considers reasonable.

(8) The relevant date is—

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- (a) in the case of a disagreement relating to a decision under regulation 67 (first instance decisions), the date notification of the decision is given under regulation 68 (notification of first instance decision); and
  - (b) in any other case, 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.
- (9) Paragraph (7)(b) does not apply where an appeal has been made under regulation 74(1) (appeals by administering authorities) in respect of a matter that is the subject of an application under this regulation.

### Notice of decisions on disagreements

**70.**—(1) Subject to paragraph (2), a decision on a disagreement to which an application under regulation 69 (applications to resolve disagreements) relates must be given by notice in writing to—

- (a) the applicant;
- (b) the Scheme employer; and
- (c) if the Scheme employer is not the appropriate administering authority, to that authority, before the expiry of the period of 2 months beginning with the date the application was received.

(2) If no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out—

- (a) the reasons for the delay; and
  - (b) an expected date for giving the decision.
- (3) A notice under paragraph (1) must include—
- (a) a statement of the decision;
  - (b) a reference to any legislation or provisions of the Scheme on which the person making the decision relied;
  - (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;
  - (d) a reference to the rights of the applicant and the Scheme employer's right to refer the disagreement for reconsideration by the Scottish Ministers under regulation 71 (reference of disagreement for reconsideration by Scottish Ministers) and to the time within which the applicant may do so; and
  - (e) a statement that the [F4Money and Pensions Service] is available to give assistance in connection with any difficulty with the Scheme that remains unresolved including the address at which the [F4Money and Pensions Service] may be contacted.

#### Textual Amendments

- F4** Words in reg. 70(3)(e) substituted (6.4.2019) by [The Financial Guidance and Claims Act 2018 \(Naming and Consequential Amendments\) Regulations 2019 \(S.I. 2019/383\)](#), reg. 1(1), **Sch. para. 28(a)**

### Reference of disagreement for reconsideration by Scottish Ministers

**71.**—(1) This regulation applies where an application about a disagreement has been made under regulation 69 (applications to resolve disagreements) and—

- (a) notice of a decision has been given under regulation 70(1) (notice of decisions on disagreements);

- (b) an interim reply has been sent under regulation 70(2) but no such notice has been given before the expiry of the period of one month beginning with the expected decision date; or
  - (c) no such notice has been given or interim reply sent before the expiry of the period of 3 months beginning with the date the application was made.
- (2) The applicant under regulation 69 (applications to resolve disagreements) may, before the expiry of the period of 6 months beginning with the relevant date, make an application to the Scottish Ministers to reconsider the disagreement.
- (3) The relevant date is—
- (a) in a case falling within paragraph (1)(a), the date of the notice given under regulation 70(1) (notice of decisions on disagreements);
  - (b) in a case falling within paragraph (1)(b), the date on which the period mentioned in that sub-paragraph expires; and
  - (c) in a case falling within paragraph (1)(c), the date on which the period mentioned in that sub-paragraph expires.
- (4) The application must—
- (a) set out the applicant's full name, address and date of birth;
  - (b) set out details of the grounds on which it is made (including any relevant supporting documentation);
  - (c) include a statement that the applicant wishes the disagreement to be reconsidered by the Scottish Ministers;
  - (d) be accompanied by a copy of any written notification under regulation 70 (notice of decisions on disagreements); and
  - (e) be signed by or on behalf of the applicant.
- (5) An application by a member or prospective member or a person claiming to be such must also set out his or her national insurance number (if any) and the name of the Scheme employer.
- (6) An application by any other person must also set out—
- (a) the person's relationship to the member; and
  - (b) the member's full name, address, date of birth and national insurance number (if any) and the name of the member's Scheme employer.
- (7) Where notice of a decision on the disagreement has been given under regulation 70 (notice of decisions on disagreements), the application must also—
- (a) state why the applicant is dissatisfied with that decision; and
  - (b) be accompanied by a copy of that notice.
- (8) The Scottish Ministers must determine—
- (a) the procedure to be followed when exercising their functions under this regulation; and
  - (b) the manner in which those functions are to be exercised.

#### **Notice of decisions on reconsideration of disagreement**

**72.**—(1) Subject to paragraph (2), the Scottish Ministers must give their decision on an application under regulation 71 (reference of disagreement for reconsideration by Scottish Ministers) by notice in writing to—

- (a) the applicant; and
- (b) the Scheme employer,

before the expiry of the period of 2 months beginning with the date the application was received.

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- (2) If no such notice is given before the expiry of that period an interim reply must immediately be sent to those parties setting out—
- (a) the reasons for the delay; and
  - (b) an expected date for giving the decision.
- (3) A notice under paragraph (1) must include—
- (a) a statement of the decision;
  - (b) in a case where a decision was given under regulation 70 (notice of decisions on disagreements), an explanation of whether and, if so, the extent to which that decision is confirmed or replaced;
  - (c) a reference to any legislation or provisions of the Scheme on which the authority relied;
  - (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 the [<sup>F5</sup>Money and Pensions Service] is available to give assistance in connection with any difficulty with the Scheme which remains unresolved including the address at which the [<sup>F5</sup>Money and Pensions Service] 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 <sup>M6</sup> including the address at which the Pensions Ombudsman may be contacted.

#### Textual Amendments

- F5** Words in reg. 72(3)(e) substituted (6.4.2019) by [The Financial Guidance and Claims Act 2018 \(Naming and Consequential Amendments\) Regulations 2019 \(S.I. 2019/383\)](#), reg. 1(1), [Sch. para. 28\(b\)](#)

#### Marginal Citations

- M6** 1993 c.48.

### Rights of representation

**73.—**(1) An application under regulation 69 (applications to resolve disagreements) or 71 (reference of disagreement for reconsideration by Scottish Ministers) may be made or continued on behalf of the applicant by a representative nominated by the applicant.

(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 the person's behalf by the person's executor.

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

(4) Where a representative is nominated before an application is made, the application must specify the representative's full name and address and whether that address 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 the representative must be sent a copy of—

- (a) a notice under regulation 70(1) (notice of decisions on disagreements) or 72(1) (notice of decisions on reconsideration of disagreement); or



- (b) an interim reply under regulation 70(2) (notice of decisions on disagreements) or 72(2) (notice of decisions on reconsideration of disagreement).

### **Appeals by administering authorities**

- 74.**—(1) This regulation applies where a Scheme employer—
- (a) has decided, or failed to decide, any question falling to be decided by that employer under regulation 67 (first instance decisions) (otherwise than in the exercise of a discretion); and
  - (b) is not an administering authority.
- (2) The administering authority maintaining the pension fund to which the Scheme employer pays contributions may appeal to the Scottish Ministers to decide the question.
- (3) Such an appeal must be made by notice in writing given before the end of—
- (a) the period of 6 months beginning with the relevant date; or
  - (b) such longer period as the Scottish Ministers consider reasonable.
- (4) The relevant date is—
- (a) in the case of an appeal relating to a decision notified under regulation 68(1), the date of the notification of the decision; and
  - (b) in the case of an appeal relating to a failure to decide any question, the date of that failure.
- (5) For the purposes of paragraph (4)(b), a Scheme employer is to be taken to have failed to decide a question at the expiry of the period of 3 months beginning with the date on which the administering authority have requested a decision in writing.
- (6) The Scottish Ministers must issue their decision on the appeal by notice in writing to the appellant and to any other person appearing to them to be affected by it.
- (7) Paragraph (8) applies where any other person—
- (a) has made an application under regulation 69 (applications to resolve disagreements) or 71 (reference of disagreement for reconsideration by Scottish Ministers) which has not been determined in respect of any of the matters which are the subject of an appeal under this regulation; or
  - (b) makes such an application—
    - (i) at the same time as such an appeal is made; or
    - (ii) after such an appeal is made and before it is determined.
- (8) The appeal must be sisted—
- (a) pending notification of a decision under regulation 70 (notice of decisions on disagreements) or 72 (notice of decision on reconsideration of disagreement); or
  - (b) until the application is withdrawn.

### **Exchange of information**

- 75.**—(1) A Scheme employer must—
- (a) inform the appropriate administering authority of all decisions made by the employer under regulation 67 (first instance decisions) or given under regulation 70 (notice of decisions on disagreements) by a person appointed by the Scheme employer under regulation 68(5)(c) (notification of first instance decisions) concerning members; and
  - (b) give that authority such other information as it requires for discharging its Scheme functions.
- (2) If—

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- (a) an administering authority makes any decision under regulations 67 (first instance decisions) or 70 (notice of decisions on disagreements) about a person for whom it is not the Scheme employer; and
  - (b) information about that decision is required by the person's Scheme employer for discharging that employer's Scheme functions,
- that authority must give that employer that information if asked to supply it.

(3) Within 3 months of the end of each Scheme year, each Scheme employer must give a statement to the appropriate administering authority giving the following details in respect of each employee who has been an active member during the Scheme year—

- (a) the employee's name and gender;
  - (b) the employee's date of birth and national insurance number;
  - (c) a unique reference number relating to each employment in which the employee has been an active member; and
  - (d) the information relating to the employee for the Scheme year in question for each employment which is specified in paragraph (4).
- (4) The information required by paragraph (3)(d) is—
- (a) the dates of active membership;
  - (b) the pensionable pay received and employee contributions deducted while regulation 9 (contributions) applied;
  - (c) the pensionable pay received and employee contributions deducted while regulation 10 (temporary reduction in contributions) applied;
  - (d) any contributions by the employer in relation to the employee's pensionable pay;
  - (e) any contributions by employee or employer under regulation 16 (additional pension contributions); and
  - (f) any contributions by employee or employer under regulation 17 (additional voluntary contributions).

### **Interest on late payment of certain benefits**

**76.**—(1) Where all or part of a pension or lump sum payment due under these Regulations (other than a payment due under regulation 17 (additional voluntary contributions)) is not paid within the relevant period after the due date, an administering authority must pay interest on the unpaid amount to the person to whom it is payable.

- (2) The relevant period is—
- (a) in the case of a survivor pension, the period ending one month after the date on which the administering authority receives notification of the member's death;
  - (b) in the case of any other pension, one year; or
  - (c) in the case of a lump sum payment, one month.
- (3) The due date is—
- (a) in the case of a pension, the date on which it becomes payable;
  - (b) in the case of a lump sum under regulation 32 (election for lump sum instead of pension) the benefit crystallisation event date;
  - (c) in the case of a death grant, the date on which the member dies or, where notification of death is received more than 2 years after the date of death, the date of notification; or

(d) in the case of a lump sum under regulation 33 (commutation and small pensions) the date of the commutation election or, if later, the nominated date within the meaning of paragraph 7(3) of Part 1 of schedule 29 of the Finance Act 2004 <sup>M7</sup>.

(4) Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with 3-monthly rests.

**Marginal Citations**

M7 2004 c.12.

**Payments due in respect of deceased persons**

77.—(1) Paragraph (2) applies if, when a person dies, the total amount due to that person's personal representatives under the Scheme (including anything due at that person's death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965 <sup>M8</sup> and applying in relation to that person's death.

(2) An administering authority may pay the whole or part of the amount due from its pension fund to—

(a) a person's personal representatives; or

(b) any person or persons appearing to the authority to be beneficiaries to the estate,

without the production of confirmation of the person's estate.

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

**Marginal Citations**

M8 1965 c.32; there are amendments to section 6 which are not relevant to this instrument.

**Payments for persons incapable of managing their affairs**

78. If it appears to an administering authority that a person is entitled to payment of benefits under the Scheme but is incapacitated (within the meaning of section 1 of the Adults with Incapacity (Scotland) Act 2000) <sup>M9</sup>—

(a) the authority may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the authority may determine, to be applied for the benefit of the person entitled; and

(b) in so far as the authority does not pay the benefits in that manner, the authority may apply them in such manner as the authority may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

**Marginal Citations**

M9 2000 asp 4.

**Non-assignability**

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

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(2) No such benefit may be assigned or charged and any such assignment or charge is void.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with a debtor contribution order fixed by the Accountant in Bankruptcy under section 90(1) of the Bankruptcy (Scotland) Act 2016<sup>M10</sup> or varied by a debtor's trustee under section 95(1) of that Act.

#### Marginal Citations

**M10** 2016 asp 21.

#### Deduction and recovery of member's contributions

**80.**—(1) A Scheme employer may deduct from a person's pay any contributions payable by the member under these Regulations.

(2) Sums payable under regulation 13(1) (contributions during reserve forces leave) may be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951<sup>M11</sup>, to the extent that they are payable in respect of the same period.

(3) An 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.

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

the appropriate body must pay interest on the amount, and the due date for the calculation of the interest payable is the date of the deduction.

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

(7) Interest must be calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with 3-monthly rests.

(8) The “appropriate body” for the purposes of paragraph (5) is—

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

#### Marginal Citations

**M11** 1951 c.65. Part 5 has been amended by the [Police and Magistrates' Court Act 1994 \(c.29\)](#), [schedule 9\(2\)](#), [paragraph 1](#), the [Fire and Rescue Services Act 2004 \(c.21\)](#), [schedule 1](#), [paragraph 12\(2\)](#), the

Civil Partnership Act 2004 (c.33), [schedule 26](#), paragraph 26, S.I. 2004/2306, S.I. 2014/560 and S.S.I. 2014/3229.

### Joint liability in respect of annual allowance charge

**81.**—(1) This regulation applies where a member gives notice to the appropriate administering authority of joint and several liability under section 237B (liability of scheme administrator) of the Finance Act 2004 <sup>M12</sup> in respect of the member's annual allowance charge.

(2) Where the joint liability amount specified in the notice is met by the pension fund, the appropriate administering authority must reduce the value of the member's rights accrued under the Scheme in accordance with actuarial guidance issued by the Scottish Ministers.

#### Marginal Citations

**M12** 2004 c.12. Section 237B was inserted by the [Finance Act 2011 \(c.11\)](#), [schedule 17\(1\)](#), paragraph 15 and is amended by the [Finance Act 2013 \(c.29\)](#), [schedule 46\(4\)](#), paragraph 129, the [Taxation of Pensions Act 2014 \(c.30\)](#), [schedule 1\(4\)](#), paragraph 68, S.I. 2015/80, S.I. 2015/1810 and S.I. 2017/468.

### Tax

**82.** The appropriate administering authority may deduct from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.

### Pension increase under the Pension Schemes Act 1993

**83.** Any increase of pension required by reason of Chapter 3 of Part 4 of the Pension Schemes Act 1993 (protection of increases in guaranteed minimum pensions: anti-franking) <sup>M13</sup> must be paid from the appropriate fund held by the administering authority.

#### Marginal Citations

**M13** 1993 c.48 amended by S.I. 2005/2050 and the [Pensions Act 2014 \(c.19\)](#), [schedule 13\(1\)](#), paragraph 38.

### Annual benefit statements

**84.**—(1) An administering authority must issue an annual benefit statement to each of its active, deferred and pension credit members.

(2) Subject to paragraph (3), the statement must be issued no later than 5 months after the end of the Scheme year to which it relates.

(3) A statement must be issued before the end of the 5 month period mentioned in paragraph (2) where a member makes a request in writing to the administering authority, unless that authority is unable to comply with the request because relevant data is not available.

(4) The statement for an active member must be provided in accordance with section 14 of the Public Services Pensions Act 2013 <sup>M14</sup>.

#### Marginal Citations

**M14** 2013 c.25.

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### **Information to be supplied by employees**

**85.**—(1) Before the expiry of 3 months beginning with the date on which a person becomes a member, the Scheme employer must ask the member 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 membership of a public service pension scheme (including the Scheme); and
- (b) copies of all notifications previously given to the member under these Regulations and their equivalents under any previous Regulations.

(3) A request under this regulation must contain a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining the member's rights under the Scheme.

(4) The Scheme employer need not request any documents if it is satisfied that it, or the appropriate administering authority (if different), already has all material information.

### *Forfeiture*

### **Forfeiture of pension rights after conviction for employment-related offences**

**86.**—(1) If a member is convicted of a relevant offence, the former Scheme employer may apply to the Scottish Ministers who may issue a forfeiture certificate.

(2) A relevant offence is an offence committed in connection with an employment in which the person convicted is a member.

(3) Where a former Scheme employer 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.

(4) Where a forfeiture certificate is issued, the member's former Scheme employer may direct that any of the member's rights (including membership and survivor benefits) under these Regulations are forfeited, and in making the determination the Scheme employer must take into account any recommendations issued by Scottish Ministers when issuing a forfeiture certificate under paragraph (1).

(5) The former Scheme employer must serve a notice of its decision to make a direction on the member.

(6) A forfeiture certificate is a certificate that the offence—

- (a) was gravely injurious to the State; or
- (b) is liable to lead to a serious loss of confidence in the public service.

(7) If the former Scheme employer incurred loss as a direct consequence of the relevant offence, it may only give a direction under paragraph (4) if—

- (a) it is unable to recover its loss under regulation 87 (recovery or retention where former member has misconduct obligation); or
- (b) it is unable to recover its loss by any other means,

except after an unreasonable time or at disproportionate cost.

(8) A direction under paragraph (4) may only be given if an application for a forfeiture certificate has been made by the former Scheme employer before the expiry of the period of 3 months beginning with the date of conviction.

## Recovery or retention where former member has misconduct obligation

- 87.**—(1) This regulation applies where a person—
- (a) has left an employment in which that person was or had at some time been a member of the Scheme, in consequence of grave misconduct or a criminal, negligent or fraudulent act or omission in connection with that employment;
  - (b) has incurred some monetary obligation, arising out of that misconduct, act or omission, to the body that was the Scheme employer in that employment; and
  - (c) is entitled to benefits under these Regulations, which for the purposes of this regulation includes entitlement to a refund of contributions.
- (2) The former Scheme employer may recover or retain out of the appropriate fund the amount of the monetary obligation.
- (3) The former Scheme employer must give the former employee—
- (a) not less than 3 months' notice of the amount to be recovered or retained under paragraph (2); and
  - (b) a statement showing the amount recovered or retained, how it is calculated and the effect on the person's benefits or prospective benefits.
- (4) If there is any dispute over the amount of the monetary obligation specified in paragraph (1) (b), the former Scheme employer 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.

## Adjustment of accounts following forfeiture etc

- 88.**—(1) Where a direction for forfeiture is issued under regulation 86 (forfeiture of pension rights after conviction for employment-related offences) the appropriate administering authority must transfer out of the member's pension account the benefits which are forfeited and pay them to the relevant Scheme employer.
- (2) Where an amount is recovered or retained under regulation 87 (recovery or retention where former member has misconduct obligation), the appropriate administering authority must transfer out of the member's pension account the amount recovered or retained and pay it to the relevant Scheme employer.
- (3) If the effect of a forfeiture direction, or of the recovery or retention of an amount, is to extinguish the member's entitlement to benefits, the administering authority must close the member's pension account.

## Protection of guaranteed minimum pension rights

- 89.**—(1) The power to direct forfeiture of benefits under regulation 86 (forfeiture of pension rights after conviction for employment-related offences) or to recover or retain amounts under regulation 87 (recovery or retention where former member has misconduct obligation) may not be exercised so as to deprive a person of the guaranteed minimum pension or any widow's, widower's or surviving civil partner's guaranteed minimum pension.
- (2) But such a power may be exercised if the person is convicted—
- (a) of the offence of treason; or
  - (b) of one or more offences under the Official Secrets Acts 1911 to 1989 <sup>M15</sup> for which the person has been sentenced on the same occasion—
    - (i) to a term of imprisonment of at least 10 years; or
    - (ii) to 2 or more consecutive terms amounting in the aggregate to at least 10 years.

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### Marginal Citations

**M15** Section 16(2) of the [Official Secrets Act 1989 \(c.6\)](#) provides that that Act and the Official Secrets Acts 1911 to 1939 may be cited together as the Official Secrets Acts 1911 to 1989.

## *Certificates of protection*

### **Certificate of protection**

**90.**—(1) Where, otherwise than by virtue of a member's own circumstances—

- (a) the member's rate of pay is permanently reduced; or
- (b) the rate at which it may be increased is restricted in such a way that it is likely that the rate of the member's pension will be adversely affected,

the member is entitled to be issued with a certificate to that effect by the Scheme employer, (but see paragraph (3)).

(2) A certificate of protection issued by a Scheme employer after the coming into force of these Regulations has effect for 10 years from the date the member's pay is reduced or restricted and, where the member elects, the member's pay for the purposes of calculating the member's pension (and other benefits under these Regulations) is the member's pay but as if the reduction or other restriction specified in the certificate had not come into effect.

(3) 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, a temporary increase in the rate of pay.

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

(5) The Scheme employer may issue a certificate without an application of 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) The Scheme employer must send a copy of the certificate to the member's appropriate administering authority.

(7) The Scheme employer must keep a record of the certificate including such information as would be necessary for applying paragraph (2) for the period of 10 years beginning with the date of reduction or restriction specified in it.

(8) If the member ceases to be an active member with the Scheme employer that issued the certificate, the certificate does not carry forward in relation to any further period of membership with another Scheme employer except where the member transfers employment from the Scheme employer that issued the certificate to employment with another Scheme employer as a result of a transfer—

- (a) to which the TUPE Regulations apply; or
- (b) which is treated as if it were a relevant transfer within the meaning of regulation 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

(9) If the member leaves the employment under which the certificate was issued, without becoming entitled to immediate or deferred pension benefits, the certificate lapses.

(10) The operation of a certificate issued under this regulation is subject to guidance issued by the Scottish Ministers.



## Transfers

### Rights to payment out of pension fund

**91.**—(1) A member is entitled to request a transfer under Chapter 1 or 2 of Part 4ZA of the Pension Schemes Act 1993 <sup>M16</sup> and where the member does so the amount of any transfer payment due in respect of the member under the relevant transfer may only be paid by the administering authority from its pension fund if the transfer payment is a recognised transfer (within the meaning of section 169 of the Finance Act 2004 <sup>M17</sup>) in accordance with guidance from Scottish Ministers.

(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.

(3) Paragraph (2) overrides anything to the contrary in these Regulations.

#### Marginal Citations

**M16** 1993 c.48.

**M17** 2004 c.12. Section 169 is amended by the Finance Act 2005 (c.7), **schedule 10**, paragraph 36, the Finance Act 2011 (c.11), **schedule 16(2)**, paragraph 66(a) and (b), the Finance Act 2013 (c.29), **section 53(3)**, the Taxation of Pensions Act 2014 (c.30), schedule 1(1), paragraph 8, schedule 1(7), paragraph 92, **schedule 2(1)**, paragraph 4 and schedule 7, paragraph 23(a) and the Finance Act 2017 (c.10), **schedule 4(2)**, paragraph 13(2) to (8).

### Contracting-out requirements affecting transfers out

**92.**—(1) There must be deducted from the transfer payment to be made in respect of any person to a contracted-in defined benefit registered pension scheme—

- (a) the amount of any contributions equivalent premium payable pursuant to section 55 of the Pension Schemes Act 1993 <sup>M18</sup>, or
- (b) an amount sufficient to meet the liability in respect of the person's contracted-out rights.

(2) Where the amount mentioned in paragraph (1)(a) is deducted, the appropriate administering authority must use that amount to pay the premium.

(3) Where the amount mentioned in paragraph (1)(b) is deducted, the appropriate administering authority may use the amount in preserving the liability mentioned in that sub-paragraph in the appropriate fund unless the member wishes a transfer payment in respect of it to be paid to the trustees or managers of a contracted-out defined benefit or contracted-in defined contribution registered pension scheme.

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

- (a) the member's, and any surviving spouse, civil partner or cohabiting partner's rights to guaranteed minimum pensions; and
- (b) the member's section 9(2B) rights as defined in regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 <sup>M19</sup>.

#### Marginal Citations

**M18** Section 55 was repealed by the Pensions Act 2014 (c.19), **schedule 13(1)**, paragraph 37 subject to savings by S.I. 2015/1502.

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**M19** [S.I. 1996/1172](#); the definition of section 9(2B) rights in regulation 1(2) was amended by [S.I. 1997/786](#), [S.I. 1999/3198](#) and [S.I. 2011/1246](#) which was also amended by [S.I. 1996/1462](#), [S.I. 2015/1677](#) and [S.I. 2016/200](#).

### **Bulk transfer (transfers of undertakings etc)**

**93.**—(1) This regulation applies where—

- (a) 2 or more members' active membership ends on their joining a different registered pension scheme (“the new scheme”);
- (b) it is agreed by—
  - (i) the members' appropriate administering authority;
  - (ii) the members' Scheme employers (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—
  - (i) agree in writing that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993; and
  - (ii) waive any rights they might have under those Chapters by virtue of the cessation of their active membership.

(2) The appropriate administering authority must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993, as they apply as modified by these Regulations (assuming in any case where a member would not be entitled to such a payment that the member was so entitled).

(3) The appropriate administering authority must calculate the appropriate amount of earned pension in accordance with actuarial guidance issued by the Scottish Ministers.

(4) The appropriate administering authority must provide each member with sufficient information in writing to check that the matters of which the authority must be satisfied under paragraph (2) are satisfied, before the member agrees as mentioned in paragraph (1)(c).

(5) The appropriate administering authority must—

- (a) set aside (whether in cash or in assets or both) such part of the appropriate fund (“transfer payment”) as an actuary appointed by the authority and an actuary appointed by the trustees or managers of the new schemes 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 the transfer payment to the trustees or managers of the new scheme for the benefit of the relevant members.

(6) 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.

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

(8) Paragraph (7) overrides anything to the contrary in these Regulations.

## Calculation of amount of transfer payment

94.—(1) The amount of the transfer payment to be paid under regulation 93 (bulk transfers) is the amount determined by an actuary appointed by the members' appropriate administering authority to be equal to the value at the date those members join the new scheme, of the actual and potential liabilities payable from its 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 the members.

(2) The actuary may make such adjustments as are thought fit in calculating that amount and in particular as respects the period from the date mentioned in paragraph (1) to the date of actual payment of the transfer value.

(3) The actuary must specify in the valuation the actuarial assumptions used in making it.

(4) The Scheme employer pays the costs of determining the appropriate part of the fund and apportioning the fund.

(5) But if there is more than one Scheme employer involved, each pays such part of the costs as the actuary determines to be appropriate.

## Inward transfers of pension rights

95.—(1) An active member with relevant pension rights may request the appropriate administering authority to accept a transfer value for some or all of those rights from the relevant transferor.

(2) In this regulation “relevant pension rights” are—

- (a) accrued rights under a registered pension scheme other than rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit; and
- (b) accrued rights under a European pensions institution.

(3) Accrued rights under a registered pension scheme include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993 <sup>M20</sup>.

(4) The relevant transferor for the rights specified in paragraph (1) is the trustees or managers of the scheme under which the transferring person's relevant pension rights arise.

(5) But the relevant transferor for the rights specified in paragraph (3) are the trustees and managers of the scheme, or the insurance company, to which a payment in respect of the person's accrued rights has been made.

(6) A request from a transferring person under paragraph (1) must be made by notice in writing given to the appropriate administering authority before the expiry of the period of 12 months beginning with the date on which the person first became an active member in an employment (or such longer period as the Scheme employer may allow).

(7) Where a request under paragraph (1) is duly made, the administering authority may accept the transfer value and credit it to its pension fund.

(8) The calculation of the appropriate amount of earned pension is to be in accordance with actuarial guidance issued by the Scottish Ministers.

### Marginal Citations

**M20** Section 19 was amended by [S.I. 2001/3649](#), [S.I. 2005/2050](#) and [S.I. 2007/3014](#).

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### Effect of acceptance of transfer value

**96.**—(1) Where a transfer value has been accepted under regulation 95 (inward transfer of pension rights), the administering authority must credit the active member's pension account with the appropriate amount of earned pension.

(2) The calculation of the appropriate amount of earned pension for the purposes of paragraph (1) is to be in accordance with actuarial guidance issued by the Scottish Ministers.

### Changes of administering authority

**97.**—(1) Subject to paragraph (7), this regulation applies where—

- (a) an administering authority becomes an active member's appropriate administering authority;
- (b) immediately before it does so, another administering authority was that member's appropriate administering authority; and
- (c) a member's past period of membership has been aggregated with the current period of membership.

(2) An administering authority which has ceased to be a member's appropriate administering authority must make a transfer value payment to the member's new appropriate administering authority in accordance with actuarial guidance issued by the Scottish Ministers.

(3) Where paragraph (2) applies as respects 10 or more members by virtue of a single event, the amount of the payment under that paragraph is determined by agreement between an actuary appointed by the administering authority by which the payment must be made and an actuary appointed by the administering authority to which it must be made.

(4) Where the actuaries cannot agree on the amount within 12 months of the date of transfer, or where there is more than one date of transfer, within 12 months of the date of the last transfer which relates to the single event—

- (a) the matter will be referred to a third actuary, chosen by agreement between the actuaries, or in default of agreement, by the President of the Institute and Faculty of Actuaries<sup>M21</sup>; and
- (b) that actuary's determination is final.

(5) The costs of determining the amount to be transferred shall be paid in equal shares by the fund held by the member's former appropriate administering authority and the fund held by the member's new appropriate administering authority.

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

(7) This regulation does not apply where a member enters an employment in local government service which is concurrent with another in which the member is also an active member.

#### Marginal Citations

**M21** The Institute and Faculty of Actuaries can be contacted at Staple Inn Hall, High Holborn, London WC1V 7QJ and at [www.actuaries.org.uk](http://www.actuaries.org.uk).

## *Councillors*

### **Councillors**

**98.** For the purposes of these Regulations, councillors of a local authority [<sup>F6</sup>are] treated as employees of a local authority subject to the modifications listed in schedule 5.

#### **Textual Amendments**

**F6** Word in reg. 98 substituted (with effect from 1.6.2018) by [The Local Government Pension Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/161\)](#), regs. 1(2), **2(24)**

## *Separate employments*

### **Separate employments etc.**

**99.—**(1) Where a person holds separate employments under one Scheme employer, these Regulations apply as if each of them were under a different employer.

(2) This regulation also applies where an employee of a Scheme employer 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

[<sup>F7</sup>(iii) UK Parliamentary elections;]

(b) an acting returning officer (including as a regional or local returning officer at a European Parliamentary election).

#### **Textual Amendments**

**F7** [Reg. 99\(3\)\(a\)\(iii\)](#) added (with effect from 1.6.2018) by [The Local Government Pension Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(S.S.I. 2019/161\)](#), regs. 1(2), **2(25)**

## *Scheme actuary and employer cost cap*

### **Scheme actuary**

**100.—**(1) The Scottish Ministers must appoint an actuary as Scheme actuary to carry out valuations of the Scheme and any connected scheme in accordance with Treasury directions made under section 11(2) of the Public Service Pensions Act 2013 <sup>M22</sup> (“the Treasury directions”).

(2) The person appointed as Scheme actuary under paragraph (1) must, in the opinion of the Scottish Ministers, be appropriately qualified to carry out a valuation of the Scheme.

(3) The Scottish Ministers must secure that the Scheme actuary carries out actuarial valuations of the assets and liabilities of the Scheme on the dates specified in regulation 60(1)(a) (actuarial valuations of pension funds) and prepare valuation reports in accordance with the Treasury directions, within such period as enables the requirements in those directions to be met.

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(4) An administering authority must provide the Scheme actuary with any data that the Scheme actuary reasonably requires, in accordance with the Treasury directions, in order to carry out a valuation and prepare a report on the valuation.

#### Marginal Citations

**M22** [2013 c.25](#).

### Employer cost cap

**101.**—(1) The employer cost cap for the Scheme is 15.5% of pensionable earnings of members of the Scheme.

(2) Where the cost of the Scheme, calculated following a valuation in accordance with Treasury directions under section 11(2) of the Public Service Pensions Act 2013, is more than the margins specified in the Public Service Pensions (Employer Cost Cap) Regulations 2014 <sup>M23</sup> above or below the employer cost cap, the Scottish Ministers must follow the procedure specified in paragraph (3) for reaching agreement with administering authorities, employers and members (or representatives of employers and members) as to the steps required to achieve the target cost specified in those Regulations.

(3) The procedure specified for the purposes of section 12(6)(a) of the Public Service Pensions Act 2013 is consultation for such period as the Scottish Ministers consider appropriate with the Scheme Advisory Board with a view to reaching an agreement endorsed by all members of that Board.

(4) If, following such consultation, agreement is not reached within 3 months of the date on which the consultation period ends, the Scottish Ministers must take steps to adjust the rate at which benefits accrue under regulation 23(4) or (5) (active member's pension accounts) so that the target cost for the Scheme is achieved.

#### Marginal Citations

**M23** [S.I. 2014/575](#).

### Revocations and transitional provisions

**102.**—(1) The Regulations specified in Schedule 6 are revoked.

(2) Anything done under or by virtue of any regulation revoked by these Regulations if it could have been done under or for the purpose of these Regulations, is deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under or by virtue of any such regulation may be continued under these Regulations as if begun under these Regulations.

**Status:**

Point in time view as at 28/06/2019.

**Changes to legislation:**

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