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STATUTORY INSTRUMENTS

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**2008 No. 239**

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

**PART 8**

**SPECIAL ADJUSTMENTS**

**Statements of policy concerning abatement of retirement pensions in new employment**

**70.**—(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 he is eligible to belong to a teachers' scheme).

(2) Before formulating that policy, an administering authority must consult with the authorities who employ active members for whom it is the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with 1st April 2008, each administering authority shall publish a statement as to the policy that it currently applies where a member who is entitled to a retirement pension 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 the policy, it must publish a statement of the amended policy before the expiry of the period of one month beginning with the date of its determination.

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

- (a) to the level of potential financial gain at which it wishes abatement to apply;
- (b) to 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) to the extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.

(6) In paragraph (5)(a) the reference to financial gain is a reference to the financial gain which it appears to the administering authority may be obtained by a member as a result of his entitlement both to a pension and to pay under the new employment.

**Application of abatement policy to individual cases**

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

(2) If such a member enters such a new employment, he must immediately notify in writing the body from whom he has become entitled to receive the pension.

(3) Paragraphs (1) and (2) do not apply where the new employment is employment in which the person is eligible to belong to a teachers' scheme.

(4) The authority which is the member's appropriate administering authority as respects the retirement pension to which he is entitled—

- (a) must have regard to regulation 12 of the Transitional Regulations;
- (b) must apply to the member the policy published by it under regulation 70; 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) A retirement pension paid following a request under regulation 18(1) of the Benefits Regulations (flexible retirement) is not subject to abatement under regulation 70 in respect of any subsequent employment with the person who is his employer at the date of his request.

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

**72.**—(1) If a member is convicted of a relevant offence, his former employing authority may apply to the Secretary of State 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, and because of which he has left that employment.

(3) Where a forfeiture certificate is issued, the member's former employing authority may direct that any of the rights in respect of him under the Benefits Regulations, these Regulations or the Earlier Regulations as respects his previous membership are forfeited.

(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 (3) if it is unable to recover its loss under regulation 74 or 76 or otherwise, except after an unreasonable time or at disproportionate cost.

(6) A direction under paragraph (3) 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**

**73.**—(1) If—

- (a) a person leaves an employment in which he was a member, because of an offence in connection with that employment; and
- (b) a forfeiture certificate has been issued under regulation 72(1) in respect of that offence,

his 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 him of a decision under regulation 55 (first instance decisions) on any question as to entitlement to benefit; or
- (b) given any direction under [regulation 72\(3\)](#) (“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 55 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 55).

### **Recovery or retention where former member has misconduct obligation**

**74.**—(1) This regulation applies where a person—

- (a) has left an employment, in which he was or had at some time been a member, in consequence of a criminal, negligent or fraudulent act or omission on his part in connection with that employment;
- (b) has incurred some monetary obligation, arising out of that act or omission, to the body that was his employing authority in that employment; and
- (c) is entitled to benefits under [the Local Government Pension Scheme \(Benefits, Membership and Contributions\) Regulations 2007 \(S.I. 2007/1166\)](#).

(2) The former employing authority may recover or retain out of the appropriate fund—

- (a) the amount of the monetary obligation; or
- (b) the value at the time of the recovery or retention of all rights in respect of the former employee under the Scheme with respect to his previous membership (as determined by an actuary),

whichever is less.

(3) The rights specified in paragraph (2) (b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of 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 his benefits or prospective benefits.

(5) If there is any dispute over the amount of the monetary obligation specified in paragraph (1) (b), the former employing authority may not recover or retain any amount under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbitrator.

### **Protection of guaranteed minimum pension rights**

**75.**—(1) The power—

- (a) to give directions under regulation 72(3); or
- (b) to recover or retain amounts under regulation 74(2),

may not be exercised so as to deprive a person of his 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 employment—

- (a) because of the offence of treason; or

- (b) because of one or more offences under the Official Secrets Act 1911 to 1989<sup>(1)</sup> 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**

76.—(1) This regulation applies where—

- (a) a person has left an employment in which he was a member because of—
  - (i) an offence involving fraud, or
  - (ii) grave misconduct,in connection with that employment;
- (b) his former employing authority in that employment 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 1997 Regulations and a forfeiture direction has been given, or
  - (ii) he did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 46 (whether or not he has waived his 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) 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, nominated cohabiting partner or a dependant, under [regulation 47\(2\)](#) of these Regulations or regulation 88(2) of the 1997 Regulations, less the amount of any contributions which have been so returned or paid,

whichever is the less.

(5) 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 Pension Schemes Act 1993 or to make a payment under regulation 86 (changes of fund) for a former employee, the former employing authority must repay it, if requested to do so.

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(1) 1911 c.28 and 1989 c.6.