

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2004 No.**

**PENSIONS**

**The Local Government Pension Scheme (Scotland)  
(Amendment No. 2) Regulations 2004**

<i>Made</i>	- - - -	2004
<i>Laid before Parliament</i>		2004
<i>Coming into force</i>		2004

The Scottish Ministers, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(a) and of all other powers enabling them in that behalf, after consultation with such associations of local authorities as appeared to them to be concerned, such representatives of other persons likely to be affected by the proposed Regulations as appeared to them to be appropriate, and not having considered consultation with any individual local authority to be desirable, all in accordance with section 7(5) of that Act, hereby makes the following Regulations:

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) (Amendment No. 2) Regulations 2004.

(2) These Regulations shall come into force on [upgrade version in other Misc Regs]

(3) In these Regulations, “the principal Regulations” means the Local Government Pension Scheme (Scotland) Regulations 1998(b).

(4) These Regulations extend to Scotland only(c).

**Amendment of the principal Regulations**

2. The principal Regulations shall be amended in accordance with regulations 3 to 34 of these Regulations.

**General eligibility for membership: employees of Scheme employers etc.**

3. In regulation 3—

In paragraph (1), after “regulation 4” insert “, regulation 4A”; and

---

(a) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).  
(b) S.I.1998/366 as amended by SI 1998/1129 and 1999/787 and SSI2000/199, 2001/23, 2001/460, 2002/311 and as modified for particular purposes by SI 1998/364.  
(c) The Secretary of State’s functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (1998 c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

### **Further restrictions on eligibility**

4. After paragraph 5(10) add new provision —

i(11) A person may be a member of the Scheme notwithstanding that he is entitled to be a member of the National Health Service Superannuation Scheme for Scotland (“the NHS Scheme”)(a) if—

- (a) his entitlement to be a member of the NHS Scheme is by reason of his employment by an NHS Scheme employing authority as a result of a prescribed arrangement under section 15 of The Community Care and Health (Scotland) Act 2002(b);
- (b) he is specified in, or within a class of employees specified in, an admission agreement made between an administering authority and an NHS Scheme employing authority; and
- (c) he was an active member of the Scheme immediately before his employment by the NHS Scheme employing authority.î.

### **Periods of membership: “total membership”**

5. In regulation 8(2), after “ regulations 9, 10” insert “, 28”.

### **Meaning of “pay”**

6. In regulation 12, omit paragraphs (5), (6) and (7).

### **General qualification for benefits**

7. In regulation 18—

- (a) in paragraph (1)(a), for “two years” substitute “three months”; and
- (b) in paragraph (2)(a), delete “or under regulation 26(3) (ill-health grants)”.

### **Calculations**

8. In regulation 19(6), omit sub-paragraph (a).

### **Final Pay**

9. In regulation 20, omit paragraph (8).

### **Ill-health**

10. In regulation 26—

- (a) omit paragraphs (3) and (4); and
- (b) in paragraph (5), for the definition of “permanently incapable” substitute—  
i“permanently incapable” means that the member will, more likely than not, be incapable, until, at the earliest, his 65th birthday.î.

### **Amounts of ill-health pension and grant**

11. In regulation 27—

---

(a) The National Health Service Superannuation Scheme for Scotland is set up under section 10 of the Superannuation Act 1972. The current regulations are the National Health Service Superannuation Scheme Regulations 1995, S.I. 1995/365, as amended.  
(b) 2002 esp5. esp 5

- (a) for paragraphs (4) and (5) substitute—
  - i(4) Where a member becomes entitled to a further ill-health pension and grant (because of having been a member in two or more employments), the multiplier for the further ill-health pension and grant will be the total membership without enhancement.
  - (5) But paragraph 4 does not apply to a member who becomes entitled to a further ill-health pension and grant as a result of being in concurrent employments which cease simultaneously.î; and
- (b) omit paragraph (10).

### **Re-employed pensioners**

- 12. For regulation 28, substitute—
  - i28. Where a pensioner member becomes an active member again, his former membership shall be taken into account only for the purpose of calculating—
    - (a) whether he has the necessary total membership referred to in—
      - (i) regulation 18(1)(a) to be entitled to benefits under this Chapter; and
      - (ii) regulation 27(1) to be entitled to calculate his ill-health pension and grant by reference to the enhanced membership period; and
    - (b) total membership in regulation 51 (power of employing authority to increase total membership).î.

### **Further provisions about elections under regulation 28**

- 13. Omit regulation 29

### **Re-employed and rejoining deferred members**

- 14. In regulation 31—
  - (a) after paragraph (1), insert—
    - i(1A) But a member cannot elect to aggregate any period of former membership which he could have elected to aggregate with another period of former membership but did not before the expiry of the period in paragraph (8A).î;
  - (b) in paragraph (5), for sub-paragraph (aa) substitute—
    - i(aa)for the purpose only of calculating—
      - (i) whether the member has the necessary total membership referred to in regulation 18(1)(a) to be entitled to benefits under this Chapter and regulation 27(1) to be entitled to calculate his ill-health pension and grant by reference to the enhanced membership period; and
      - (ii) total membership in regulation 51 (power of employing authority to increase total membership),
    - the unaggregated periods of membership shall be taken into account, andî; and
  - (c) after paragraph (8), insert—
    - i(8A) The notice under paragraph (7) must be given before the expiry of the period of 12 months beginning with the date that he became an active member again (or such longer period as his employer may allow).î.

### **Concurrent employments**

- 15. In regulation 31A, in paragraph (1), for “two years” substitute “three months”.

**Guaranteed minimum pensions etc.**

16. In regulation 35, in paragraph (9)(c), for “two years” substitute “three months”.

**Surviving spouse’s long-term pension**

17. In regulation 40, in paragraphs (4) and (5), for “two years” substitute “three months”.

**Dependants of re-employed pensioners**

18. Omit regulation 47.

**Power of employing authority to increase total membership**

19. In regulation 51—

- (a) in the heading, delete “of members leaving employment at or after 50”;
- (b) in paragraph (1), for “a member who leaves his employment on or after his 50th birthday” substitute “an active member”;
- (c) for paragraph (2) substitute—
  - i(2) A member’s total additional membership (including additional membership in respect of different employments) must not exceed—
    - (a) 6 243/365 years;
    - (b) the period by which the member’s total membership falls short of 40 years; or
    - (c) the period by which the member’s total membership falls short of the total membership the member will have if he continues as an active member until he is 65,whichever is the shortest.î;
- (d) omit paragraphs (3), (4) and (5);
- (e) in paragraph (7), for sub-paragraph (b) substitute—
  - i(b) such longer period as the employing authority and the administering authority agree.î; and
- (f) omit paragraph (9).

**Power of employing authority to increase total membership of new members**

20. Omit regulation 52

**Elections as to use of accumulated value of AVCs**

21. In regulation 65(7), omit sub-paragraph (a).

**Accounts and audit**

22. After regulation 75, insert—

**ifunding strategy statement**

75A.—(1) Each administering authority shall, after consultation with such persons as they consider appropriate, prepare, maintain and publish a written statement setting out their funding strategy.

(2) In preparing and maintaining the statement, the administering authority shall have regard to—

- (a) the guidance set out in the document published in March 2004 by CIPFA, the Chartered Institute of Public Finance and Accountancy and called “CIPFA Pensions Panel Guidance on Preparing and Maintaining a Funding Strategy Statement (Guidance note issue No. 6)”;
  - (b) the statement of investment principles published by the administering authority under regulation 9A of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998(a).
- (3) The first such statement shall be published on or before 31st March 2006.
- (4) The statement shall be revised and published by the administering authority following, and in accordance with, any—
- (a) material change in their policy on the matters set out in the statement; and
  - (b) material change to the statement of investment principles under regulation 9A(4) of the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998.i.

### **Actuarial valuations and certificates**

23. After regulation 76(5), insert—

- i(5A) The actuary must have regard to the administering authority’s funding strategy statement published under regulation 75A.i.

### **Employer’s further payments**

24. In regulation 79—

- (a) omit paragraph (2); and
- (b) in paragraph (4)—
  - (i) delete “,52 or 136”.
  - (ii) for “(but, in the case of resolutions” to the end of the paragraph substitute “(but, in the case of a resolution under regulation 51, only so far as not paid under paragraph (1)).”.

### **Interest**

25. In regulation 81—

- (a) in paragraph (1), for “, 126 or 127” substitute “or 126”; and
- (b) in paragraph (2), for “86(1) and (2A)” substitute “87(2A)”. [?]

### **Discontinuance of additional contributions**

26. In regulation 82(9)(b), delete “and has not made an election under regulation 28”.

### **Rights to return of contributions**

27. In regulation 86—

- (a) in paragraph (1), for “2 ye ars” substitute “three months” and delete “with interest calculated to the date he ceased to be employed”;
- (b) omit paragraph (2); and
- (c) in paragraph (2A), delete “(with interest due under paragraph (1), if applicable)”.

---

(a) S.I. 1998/2888, regulation 9A was inserted by S.I. 1999/3259 and amended by S.I. 2002/1852 {sort out numbers}.

**Exclusion of rights to return of contributions**

28. In regulation 87(3), omit sub-paragraph (a).

**Annual benefit statements**

29. After regulation 105 insert—

**iAnnual benefit statements**

**105A.**—(1) An administering authority shall issue an annual benefit statement to each of its active, deferred and pension credit members.

(2) The first such statements must be issued on or before 1st April 2006 and subsequent statements must be issued on or before each 1st April thereafter.

(3) An annual benefit statement shall contain an illustration of the amount of benefit entitlement, in respect of the rights that may arise under the Scheme, which—

- (a) has been accrued by the member at the relevant date, and
- (b) in the case of an active member, is capable of being accrued by the member if he remains in the Scheme until his NRD.

(4) The illustration shall be calculated—

- (a) in the case of active members, on the member's pay (or, in the case of part-time employees, the whole-time equivalent) for the twelve-month period ending with the relevant date;
- (b) in the case of deferred members, on the member's final pay; and
- (c) in the case of pension credit members, in accordance with regulation 153, as if the "normal benefit age" is the relevant date.

(5) The relevant date—

- (a) is 31st March prior to the date that the statement is issued, or
- (b) such later date as the authority may choose.î.

**Liability for combined benefits**

30. Omit regulation 127.

**Conversion of periods credited under Discretionary Payments Regulations etc. into membership**

31. Omit regulation 136.

**Revenue restrictions**

32. In Schedule 4—

- (a) in the heading above paragraph 8, for "regulations 52 and 54" substitute "regulation 54";
- (b) in paragraph 8(1), delete "52 or"; and
- (c) in paragraph 8(3), delete sub-paragraph (a).

**Transitional provisions**

33.—(1) Nothing in regulations 4 and 7 will affect the amount of pay or final pay determined in accordance with an agreement made under regulation 12(5) of the principal Regulations prior to [.....]

(2) This paragraph applies to a member who is an active member on [.....] and who on that date—

- (a) has less than two years' total membership, and
- (b) does not have a transfer value credited to him.

(3) Subject to paragraph (4), nothing in these Regulations shall prevent a member to whom paragraph (2) applies from opting to receive a return of contributions (with interest calculated to the date he ceased to be employed) in accordance with regulation 86 of the principal Regulations.

(4) A member to whom paragraph (2) applies is not entitled to receive a return of contributions if—

- (a) he is for the time being entitled to be paid, or has been paid, a benefit under Chapter IV of Part II of the principal Regulations; or
- (b) he is for the time being entitled to be paid, or has been paid, a benefit under regulation 26(3) of the principal Regulations (ill-health grant),

and a member is not entitled to interest if he would not have been entitled under regulation 86(2) of the principal Regulations.

(5) This paragraph applies to a member, who was a re-employed pensioner member on [.....], where the member—

- (a) has written to the appropriate administering authority within six months of that date to elect that the amendments in these Regulations in relation to regulations 28, 29 and 47 of the principal Regulations do not apply to him; and
- (b) has remained in the same employment, unless subject to a transfer, from that date until he retired or died.

(6) Nothing in these Regulations shall prevent a member to whom paragraph (5) applies from electing for a single pension in accordance with regulations 28 and 29 of the principal Regulations.

(7) Nothing in these Regulations shall affect the calculation of benefits under regulation 47 of the principal Regulations in respect of a member to whom paragraph (5) applies.

(8) In relation to deferred members who have become active members again prior to [.....] (but have not yet made an election under Regulation 31 of the principal Regulations), regulation 31(8A) of the principal Regulations (as inserted by regulation 14 of these Regulations) shall have effect as if “the date that he became an active member again” reads “[.....]”.

(9) Nothing in these Regulations shall prevent an authority from being obliged to make payments to another authority in accordance with regulation 127 of the principal Regulations (liability for combined benefits), or, in the case of an overdue payment, to pay interest under regulation 81 of the principal Regulations.

(10) So far as it is necessary to give effect to the entitlements in this regulation and to make provision for any matters incidental to them, the principal Regulations shall be treated as if they had continued in effect without the amendments made by these Regulations.

### **Right to opt out**

**34.—**(1) Where—

- (a) apart from this regulation, the amendments made by these Regulations would place any relevant beneficiary in a worse position than he would otherwise be, and
- (b) that relevant beneficiary so elects by notice in writing given to the appropriate administering authority within the period of six months beginning with the date on which these Regulations come into force,

then the principal Regulations shall have effect in relation to him as if those amendments had never been made.

(2) For the purposes of paragraph (1), a relevant beneficiary is a person to whom any benefit is or may become payable being a benefit payable to or in respect of a person who—

- (a) ceased to hold an employment in respect of which he was a member (whether or not he had subsequently recommenced any such employment), or
- (b) dies while in such employment,

before the date on which these Regulations come into force.

St Andrew's House  
Edinburgh  
2004

A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make various amendments to the Local Government Pension Scheme Regulations (Scotland) 1998 (the “principal Regulations”) to have effect from [.....]. The main changes are as follows—

- regulation 3 is a minor clarification to ensure that an appropriate member of a transferee admission body is included in the list of persons who may be an active member of the Scheme;
- regulation 4 adds a new provision which allows members who become employees of an NHS Superannuation Scheme employing authority as a result of an arrangement under section 15 of The Community Care and Health (Scotland) Act 2002 to remain members of the Local Government Pension Scheme;
- regulation 6 deletes provisions for Scheme employers and employee representatives to agree a method for determining employees’ pay;
- regulation 7 amends regulation 18 of the principal Regulations to reduce the total membership required to become entitled to benefits from two years to three months;
- regulation 10 amends regulation 26 of the principal Regulations to provide that a member with over three months’ total membership will be entitled to an ill-health pension and grant and clarifies the definition of “permanently incapable”;
- regulation 11 amends regulation 27 of the principal Regulations to provide that where a member becomes entitled to a further ill-health pension and grant (unless by virtue of being in concurrent employments which cease simultaneously), the multiplier for that pension and grant will be his total membership without enhancement;
- regulation 12 removes provisions relating to re-employed pensioners’ entitlement to elect for a single new pension and provides for when periods of former membership may be taken into account when calculating the total membership of a re-employed pensioner;
- regulation 14 amends regulation 31 of the principal Regulations so as to provide that where a deferred member becomes an active member again and wants to elect to have his former membership aggregated with his current membership, he must give notice of his election within 12 months of the date he became an active member again or such longer period as his employer may allow and makes provision for when unaggregated periods of membership should be taken into account;
- regulation 15 amends regulation 31A of the principal Regulations to provide that a person may aggregate membership in concurrent employments where he leaves one of the employments in respect of which he has at least three months’ total membership;
- regulation 17 amends regulation 40 of the principal Regulations to alter, from two years to three months, the amount of total membership required to determine the applicable calculation for surviving spouse’s long-term pension;
- regulation 18 removes calculations in relation to re-employed pensioners;
- regulation 19 and 20 amends regulations 51 and 52 of the principal Regulations to provide that employing authorities may increase an active member’s total membership;
- regulations 22 and 23 make provision for administering authorities to prepare, maintain and publish a written funding strategy statement, which must be taken into account by the actuary in specifying the common rate of employer’s contribution;

- regulations 27 and 28 amend regulations 86 and 87 of the principal Regulations so that members with less than three months' membership may be entitled to a refund of contributions if they cease to be employed by a Scheme employer;
- regulation 29 inserts provisions for the issue of annual benefit statements; and

Regulation 33 makes transitional provisions and regulation 34 allows certain persons who would be placed in a worse position by amendments made in these Regulations to elect for the amendments not to apply in their case. The remaining regulations make amendments consequential to the above.

The guidance published by CIPFA, the Chartered Institute of Public Finance and Accountancy, referred to in regulation 22, can be purchased from CIPFA, 3 Robert Street, London WC2N 6RL, tel. 020 7543 5602. The publication costs £50 to members of the public, £25 to local authorities and £12.50 to an administering authority.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of businesses, charities or voluntary bodies.