

2008 No.

PENSIONS

The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008

Made - - - - - [] 2008

Laid before the Scottish Parliament [] 2008

Coming into force - - - - - 1st April 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(a) and of all other powers enabling them to do so.

In accordance with section 7(5) of that Act, they have consulted such associations of local authorities as appeared to them to be concerned, such local authorities with whom consultation appeared to them to be desirable, and such representatives of other persons likely to be affected by the proposed regulations as appeared to them to be appropriate.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008.

- (2) These Regulations extend to Scotland only.
- (3) These Regulations come into force on 1st April 2009.

Interpretation

2. In these Regulations—

“the 1998 Regulations” means the Local Government Pension Scheme (Scotland) Regulations 1998(b);

“the 1998 Scheme” means the occupational pension scheme constituted by the 1998 Regulations;

“the Administration Regulations” means the Local Government Pensions Scheme (Administration) (Scotland) Regulations 2008(c);

“active member” has the same meaning as in section 124(1) of the Pensions Act 1995(d);

“appropriate administering authority” means the body maintaining the appropriate fund;

(a) 1972 c.11. The functions of the Secretary of State exercised in the making of these Regulations were transferred to the Scottish Ministers as regards Scotland by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I. 1999/1750).

(b) S.I. 1998/366; relevant amending instruments are S.S.I. 2000/199, 2001/23, 2002/311, 2005/293, 315 and 554, 2006/123, 468 and 514, and 2007/71.

(c) S.S.I. 2008/xxxx.

(d) 1995 c.26.

“appropriate fund”, in relation to a member, means the fund into which the member pays contributions and from which the member receives benefits;

“eligible child” has the meaning given by regulation 26 (meaning of “eligible child”);

“employing authority” means a body employing an employee who is eligible to be a member;

“financial year” means the year ending 31st March;

“local government employment” has the meaning given by Schedule 1 to the Administration Regulations;

“nominated cohabiting partner” has the meaning given by regulation 25 (meaning of “nominated cohabiting partner”);

“part-time employee” means an employee whose contract of employment provides—

(a) that the employee is a part-time employee for the purposes of the Scheme; or

(b) that the employee is neither a whole-time employee nor a variable-time employee;

“pensionable pay” has the meaning given in regulation 5 (pensionable pay);

“the Scheme” means the Local Government Pension Scheme (Scotland) 2009 constituted by these Regulations;

“variable-time employee” means an employee whose contract of employment provides that the employee is a variable-time employee for the purposes of the Scheme and—

(a) whose pay is calculated by reference to the variable-time employee’s duties (rather than necessarily by reference to the number of hours the variable-time employee has worked); or

(b) whose duties only have to be performed on an occasional basis; and

“whole-time employee” means an employee whose contract of employment provides—

(a) that the employee is a whole-time employee for the purposes of the Scheme; or

(b) that the whole-time employee’s contractual hours are not less than the number of contractual hours for a person employed in that employment on a whole-time basis.

Active members

3.—(1) Subject to paragraphs (2) and (3) an employee of a body listed in Part 2 of and Schedule 2 to the Administration Regulations is an active member of the Scheme.

(2) A person is not an active member unless the person is employed under a contract of employment of more than three months’ duration.

(3) An active member of the 1998 Scheme is an active member of the Scheme unless his or her membership ends in accordance with regulation 11 of the Administration Regulations (ending of membership).

Contributions payable by active members

4.—(1) Subject to paragraph (9), each active member shall make contributions to the Scheme at the contribution rate from that member’s pensionable pay in each employment in which the member is an active member.

(2) Subject to paragraph (4), the contribution rate to be applied to a member’s pensionable pay in any financial year is calculated on the basis of the member’s pensionable pay in the previous financial year in accordance with the following table.

<i>Band</i>	<i>Range</i>	<i>Contribution Rate</i>
1	On earnings up to and including £18,000	5.5%
2	On earnings above £18,000 and up to £22,000	7.25%
3	On earnings above £22,000 and up to £30,000	8.5%
4	On earnings above £30,000 and up to £40,000	9.5%

<i>Band</i>	<i>Range</i>	<i>Contribution Rate</i>
5	On earnings above £40,000	12%

(3) On 1st April 2010, and each subsequent anniversary thereof, the figures in the second column of the table in paragraph (2) (“Range”) are increased as if they were pensions to which the Pensions (Increase) Act 1971(a) applied.

(4) Where a member is employed in any employment for part only of any financial year, the range (and the contribution rate) applicable to the member are those that would have applied had the member been so employed for the whole of that financial year.

(5) Where a member is a part-time employee, the member’s contributions shall be calculated by multiplying the contributions the member would have paid had the member been a full-time employee (calculated in accordance with paragraph (2)) by the proportion that the number of the member’s weekly hours bears to the number of weekly hours that the member would have worked had the member been a full-time employee.

(6) But a term-time worker is not a part-time employee for the purposes of this regulation.

(7) In this regulation, “term-time worker” means a person whose contract of employment provides for a regular pattern of periods of work and periods of no work so as to result in a recognisable cycle of work consisting of one year (but is not limited to persons working in educational establishments).

(8) The amount of an employee’s pensionable pay for the purposes of this regulation is calculated in accordance with regulation 5 (meaning of “pensionable pay”).

(9) In any event, an active member does not make any contributions after the day before the member’s 75th birthday.

(10) A person who is an active member in more than one employment must make contributions for each of those employments.

(11) A member’s appropriate administering authority may decide the intervals at which the contributions are made.

(12) For the purposes of this regulation any reduction in pensionable pay by reason of the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work shall be disregarded.

Meaning of “pensionable pay”

5.—(1) An employee’s pensionable pay is the total of—

- (a) all the salary, wages, fees and other payments paid to the member for the member’s own use in respect of the member’s employment; and
- (b) any other payment or benefit specified in the member’s contract of employment as being a pensionable emolument.

(2) But an employee’s pensionable pay does not include—

- (a) payments for non-contractual overtime;
- (b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- (c) any payment in consideration of loss of holidays;
- (d) any payment in lieu of notice to terminate the member’s contract of employment; or
- (e) any payment as an inducement not to terminate the member’s employment before the payment is made.

(3) No sum may be taken into account in calculating pensionable pay unless income tax liability has been determined on it.

(a) 1971 c.56.

Benefits

6.—(1) Membership of the Scheme only entitles the member to benefits under these Regulations if—

- (a) the member's total membership is at least two years; or
- (b) a transfer value is credited to the member.

(2) But paragraph (1) does not apply to benefits in respect of a member under regulation 23 (death grants: active members), regulation 24 (survivor benefits: active members), or regulation 28 (children's pensions: active members).

Periods of membership

7.—(1) These are the periods which count as periods of membership—

- (a) any period for which a member has paid (or is treated as having paid) contributions under regulation 4 (contributions payable by active members); and
- (b) any period added under regulations 12 (power of employing authority to increase total membership of active members) or 20 (early leavers: ill-health).

(2) Where a member who has left local government employment rejoins such employment before the member's normal retirement age, the periods mentioned in paragraph (1) are (unless the member chooses otherwise) aggregated with any such subsequent periods.

Calculation of length of periods of membership

8.—(1) In calculating the length of a period of membership, fractions of years of membership count.

(2) The numerator of such fractions is the number of complete days of membership and the denominator is 365.

(3) Membership in part-time service is counted as the appropriate fraction of the duration of membership.

(4) The numerator of that fraction is the number of contractual hours during the part-time service and its denominator is the number of contractual hours of that employment if it were on a whole-time basis.

(5) The amount of any benefit payable to a member as a result of membership is the member's total period of membership multiplied by the member's final pay and divided by 60.

Final pay: general

9.—(1) Subject to regulations 10 (final pay: reserve forces, maternity leave etc.) and 11 (final pay: fees), a member's final pay for an employment is the member's pay for as much of the final pay period as the member is entitled to count as an active member in local government employment.

(2) A member's final pay period is the year ending with the day on which the member stops being an active member.

(3) But a member may choose instead to treat as the member's final pay period either of the two preceding years ending with a day that is the anniversary of the last day the member was an active member.

(4) In the case of part-time employment, the final pay is the pay that would have been paid for a single comparable whole-time employment.

(5) Any reduction or suspension of a member's pensionable pay during the final pay period because of the member's absence from work owing to illness or injury is disregarded.

Final pay: reserve forces, maternity leave etc.

10.—(1) If a member’s final pay period includes reserve forces service leave, the member’s final pay is—

- (a) in a case where the member has continued to pay contributions in respect of it, the amount it would have been if the member’s reserve forces pay were pay received in the member’s former local government employment; or
- (b) otherwise, the amount it would have been if the member had continued to be employed in the member’s former employment during the period of that leave.

(2) For the purposes of these Regulations, a member’s final pay for any period of maternity, paternity or adoption absence during the final period in respect of which the member pays or is treated as paying contributions is the pay the member would have received had the member not been absent.

(3) If a member is absent from work for any other reason during the member’s final pay period, the member is only to be treated for these Regulations as having received the pensionable pay the member would otherwise have received if the member has continued to pay contributions in respect of it for the period the member is absent.

(4) If a member is only entitled to count part of the year specified in regulation 9(2) (final pay: general) as a period of active membership in relation to the employment which the member ceases to hold, the member’s final pay is the member’s pensionable pay during that part multiplied by 365 and divided by the number of days in that part.

(5) Final pay does not include any pension in payment.

Final pay: fees

11.—(1) Subject to paragraph (2), where a variable-time employee’s pensionable pay for the purposes of regulation 9(1) (final pay: general) consists of or includes fees, the member’s final pay is calculated as the sum of—

- (a) the average of all such fees for the three consecutive years ending with the final pay period; and
- (b) any sums falling within regulation 5(1) (meaning of “pensionable pay”), other than fees, for the final pay period.

(2) But a member’s employing authority may consent to the member having the member’s final pay calculated as the average of all such fees for any three consecutive years ending 31st March within the period of ten years ending with the last day the member was an active member.

Power of employing authority to increase total membership of active members

12.—(1) An employing authority may resolve to increase the total membership of an active member.

(2) A member’s total additional membership under this regulation (including additional membership in respect of different employments) must not exceed 10 years.

Power of employing authority to award additional pension

13.—(1) An employing authority may resolve to award a member additional pension of not more than £5000 a year payable from the same date as the member’s pension payable under any other provisions of these Regulations.

(2) Additional pension may be paid in addition to any increase of total membership resolved to be made under regulation 12 (power of employing authority to increase total membership of active members).

Election in respect of additional pension

14.—(1) A member may choose to pay additional contributions in order to be credited with additional pension, in respect of the member alone or in respect of the member and any survivor, of £250 a year or multiples thereof to a maximum of £5000.

(2) If the member chooses to take the additional pension referred to in paragraph (1) earlier or later than the member's normal retirement age, it is reduced or, as the case may be, increased.

(3) The amount of the additional contributions to be paid under paragraph (1), and the reduction or increase referred to in paragraph (2), is calculated in accordance with guidance issued by the Government Actuary.

Elections to pay AVCs

15.—(1) A member who has entered into an agreement to pay additional voluntary contributions ("AVCs") or to contribute to a shared cost AVC in addition to any other contributions the member may pay under these Regulations is entitled to additional benefits in accordance with one of the methods permissible under the Finance Act 2004(a).

(2) Where a member chooses to take some or all of the benefits referred to in paragraph (1) in the form of a lump sum, that sum forms part of the total amount referred to in regulation 21(2) (election for lump sum in lieu of pension).

(3) In this regulation, "a shared cost AVC" means an arrangement established and maintained by an employing authority for the purpose of enabling contributions to be paid by and for active members.

Retirement benefits

16.—(1) A member who has attained the Scheme's normal retirement age and ceases to be employed in local government pension scheme employment is entitled to immediate payment of retirement pension without reduction.

(2) The normal retirement age of the Scheme is 65.

Retirement after the normal retirement date

17.—(1) A member who remains in employment after the member's 65th birthday is entitled to a pension when the member retires from service.

(2) The member's pension rights accrued at that date, and any rights accruing between that date and the date of the member's retirement or the day before the member's 75th birthday, whichever is earlier, shall be enhanced in accordance with guidance issued by the Government Actuary.

(3) The pension is payable immediately on retirement.

(4) But it must begin to be paid not later than the day before the member's 75th birthday even if the member has not retired.

Flexible retirement

18.—(1) A member who has attained the age of 55 and who, with the member's employing authority's consent, reduces the hours the member works, or the grade in which the member is employed, may make a request in writing to the appropriate administering authority to receive all or part of the member's benefits under these Regulations, and the authority may pay those benefits to the member notwithstanding that the member has not retired from that employment.

(2) If the payment of benefits referred to in paragraph (1) takes effect before the member's 65th birthday, the benefits payable are reduced in accordance with guidance issued by the Government Actuary.

(a) 2004 c.12.

(3) But the employer may agree to waive, in whole or in part, any such reduction as is referred to in paragraph (2).

(4) In the case of a person who is a member on 31st March 2009, and who makes a request before 31st March 2010, paragraph (1) applies as if “the age of 50” were substituted for “the age of 55”.

(5) Where a member is receiving benefits under this regulation, the period of membership used to calculate those benefits is not taken into account in any subsequent calculation of such benefits to which the member is entitled under these Regulations.

Early leavers: business efficiency and redundancy

19.—(1) Where—

- (a) a member is dismissed by reason of redundancy; or
- (b) the member’s employing authority has decided that, on the grounds of business efficiency, it is in their interest that the member should leave their employment; and
- (c) in either case, the member has attained the age of 55,

the member is entitled to immediate payment of retirement pension without reduction.

(2) In the case of a person who is a member on 31st March 2009, and to whom paragraph (1) applies before 31st March 2010, that paragraph applies as if “the age of 50” were substituted for “the age of 55”.

(3) In the case of a person who was a member of the 1998 Scheme on 5th April 2006, paragraph (1) applies as if “the age of 50” were substituted for “the age of 55”.

Early leavers: ill-health

20.—(1) If an employing authority determines, in the case of a member who has at least two year’s total membership—

- (a) to terminate the member’s local government employment on the grounds that the member’s ill-health or infirmity of mind or body renders the member permanently incapable of discharging efficiently the duties of the member’s current employment; and
- (b) that the member has a reduced likelihood of obtaining gainful employment (whether in local government or otherwise) before the member’s normal retirement age,

they shall pay the member benefits under this regulation.

(2) If the authority determine that there is no reasonable prospect of the member obtaining gainful employment before the member’s normal retirement age, the member’s benefits are increased—

- (a) as if the date on which the member left local government employment were the member’s normal retirement age; and
- (b) by adding to the member’s total membership at that date the whole of the period between that date and the member’s actual normal retirement age.

(3) If the authority determine that there is a reasonable prospect of the member obtaining gainful employment before the member’s normal retirement age, the member’s benefits are increased—

- (a) as if the date on which the member left local government employment were the member’s normal retirement age; and
- (b) by adding to the member’s total membership at that date 25% of the period between that date and the member’s actual normal retirement age.

(4) In the case of a member in part-time service, the period to be added under paragraph (2)(b) or (3)(b), as the case may be, is calculated in accordance with regulation 8(3) (calculation of length of periods of membership) as if the member had remained in such part-time service until the member’s normal retirement age.

(5) But if, in the case of a person who is a member before 1st April 2009, the period to be added under paragraph (3)(b) is less than the period that would have been added had regulation 27 (amounts of ill-health pension and grant) of the 1998 Regulations applied, then the member's benefits are increased by adding the latter period.

(6) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in the independent registered medical practitioner's opinion the member is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body and, if so, as to the likelihood of the member being able to obtain other gainful employment within a reasonable time of leaving local government employment or, as the case may be, before reaching the member's normal retirement age.

(7) In this regulation, "qualified in occupational health medicine" means—

- (a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, "competent authority" has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualification) Order 2003(a); or
- (b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

(8) In this regulation, "gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

Election for lump sum in lieu of pension

21.—(1) A member in respect of whom a benefit crystallisation event within the meaning of Chapter 5 of Part IV of the Finance Act 2004 occurs on or after 1st April 2009 may choose in writing to the appropriate administering authority before any benefits become payable to commute the member's pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered.

(2) But the total amount of the member's commuted sum, including any sum received as benefits provided in the form of a lump sum in accordance with regulation 15 (elections to pay AVCs) shall not exceed 25% of the capital value the member's accrued rights.

(3) For the purposes of this regulation, a member's accrued rights include rights accrued in respect of any payments made by or for the member in accordance with the 1998 Regulations.

(4) The capital value of a member's accrued rights shall be calculated in accordance with guidance issued by the Government Actuary.

(5) And for the purposes of paragraph (1), a member's pension is the member's pension after any reduction pursuant to regulation 18 (flexible retirement) or 30 (choice of early payment of pension).

Limit on total amount of benefits

22.—(1) A member and any dependant of the member shall not be entitled, under any provision of these Regulations, to receive benefits the capital value of which exceeds the member's lifetime allowance increased, where applicable, by the member's primary protection or the member's enhanced protection except in accordance with guidance issued by the Government Actuary.

(2) In this regulation, "lifetime allowance", "primary protection" and "enhanced protection" are to be construed in accordance with section 218 of, and Schedule 36 to, the Finance Act 2004(b).

(a) S.I. 2003/1250.

(b) 2004 c.12.

(3) Any calculation of the capital value of a member's benefits for the purposes of this or any other of these Regulations is to be carried out in accordance with guidance issued by the Government Actuary.

(4) The appropriate administering authority is responsible for deducting from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.

Death grants: active members

23.—(1) If an active member dies, a death grant is payable.

(2) The appropriate administering authority at their discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or executors, or any person appearing to the authority to have been the member's relative or dependant at any time.

(3) The death grant is the member's final pay multiplied by 3.

(4) But in calculating death grant in respect of a part-time employee, actual pensionable pay in part-time employment is to be used.

(5) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the member's death, they must pay an amount equal to the shortfall to the member's executors.

Survivor benefits: active members

24.—(1) If an active member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension payable from the member's date of death.

(2) The pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) (early leavers: ill-health) applied, by the member's final pay and divided by 160.

(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

Meaning of "nominated cohabiting partner"

25.—(1) "Nominated cohabiting partner" means a person nominated by a member in accordance with the terms of this regulation.

(2) A member (A) may nominate another person (B) to receive benefits under the Scheme by giving to the member's administering authority a declaration signed by both A and B that the condition in paragraph (3) has been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(3) The condition is that—

- (a) A is able to marry, or form a civil partnership with, B;
- (b) A and B are living together as if they were husband and wife or as if they were civil partners;
- (c) neither A nor B is living with a third person as if they were husband and wife or as if they were civil partners; and
- (d) either B is financially dependent on A or A and B are financially interdependent.

(4) But a nomination has no effect if the condition in paragraph (3) has not been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(5) A nomination ceases to have effect if—

- (a) either A or B gives written notice of revocation to the administering authority;
- (b) A makes a subsequent nomination under this regulation;
- (c) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or as if they were civil partners; or

- (d) B dies.
- (6) B is A's surviving nominated partner if—
 - (a) the nomination has effect at the date of A's death; and
 - (b) B satisfies the administering authority that the condition in paragraph (3) was satisfied for a continuous period of at least 2 years immediately prior to A's death.
- (7) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.

Meaning of “eligible child”

26.—(1) The child of a deceased member is an eligible child if the child falls within the meaning of “dependant” for the purposes of Part 2 of Schedule 28 to the Finance Act 2004 as modified by regulation 34 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006(a).

(2) But a child who was born on or after the first anniversary of the date of the deceased's death is not an eligible child.

- (3) A person counts as a child only if—
 - (a) the person is aged under 17;
 - (b) since the person became 17, the person has been engaged continuously in full-time education or in training for a trade, profession or vocation; or
 - (c) the person is physically or mentally incapacitated and became so whilst a child within sub-paragraph (a) or (b).
- (4) If an appropriate administering authority wish—
 - (a) they may treat education or training as continuous despite a break; and
 - (b) they may suspend payment of any entitlement to benefits under regulations 28 (children's pensions: active members), 34 (children's pensions: deferred members) or 37 (children's pensions: pensioner members) during such a break.

Children's pensions

27.—(1) If a member dies leaving one or more eligible children, they are entitled to a children's pension.

(2) The pension is payable from the death.

(3) An eligible child ceases to be entitled to a pension when the child ceases to be a child within the meaning of regulation 26 (meaning of “eligible child”).

(4) The amount of that pension is calculated in accordance with regulation 28 (children's pensions: active members), 34 (children's pensions: deferred members) or 37 (children's pensions: pensioner members) as the case may be.

Children's pensions: active members

28.—(1) The amount of the pension of an eligible child of a deceased active member is calculated as follows.

- (2) If a survivor benefit is payable under regulation 24 (survivor benefits: active members)—
 - (a) where there is only one such child, the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) (early leavers: ill-health) applied, by the member's final pay, and dividing by 320; and

(a) S.I. 2006/572.

- (b) where there is more than one such child—
 - (i) the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by the member's final pay, and by dividing by 160; and
 - (ii) those children are jointly entitled in equal shares.
- (3) If no survivor benefit is payable under regulation 24 (survivor benefits: active members)—
 - (a) where there is only one such child, the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by the member's final pay, and the dividing by 240; and
 - (b) where there is more than one such child—
 - (i) the pension is calculated by multiplying the member's total membership, augmented as if regulation 20(2) applied, by the member's final pay, and dividing by 120; and
 - (ii) those children are jointly entitled in equal shares.

Calculation on leaving early

29.—(1) This regulation applies in the case of a member who leaves local government employment and is not entitled to immediate payment of retirement pension under any of regulations 16 (retirement benefits) to 20 (early leavers: ill-health).

(2) The member's entitlement to benefits that would, apart from any other provision of these Regulations, become payable on the member's attaining normal retirement age, is calculated in accordance with regulation 8 (calculation of length of periods of membership) as at the date of the member leaving such employment.

(3) But that entitlement is extinguished if an aggregation takes place under regulation 7(2) (periods of membership) or if a transfer out takes place under regulations 74 to 76 of the Administration Regulations.

Choice of early payment of pension

30.—(1) If a member leaves a local government employment before the member is entitled to the immediate payment of retirement benefits (apart from this regulation), once the member has attained the age of 55 the member may choose to receive payment of them immediately.

(2) A choice made by a member aged less than 60 is ineffective without the consent of the member's employment authority or former employing authority (but see paragraph (6)).

(3) If the member so chooses, the member is entitled to a pension payable immediately.

(4) The member's pension must be reduced by the amounts shown as appropriate in guidance issued by the Government Actuary.

(5) A member's employing authority may determine on compassionate grounds that the member's retirement pension and grant should be reduced under paragraph (4).

(6) In the case of a person who is an active member on 31st March 2009, and who makes an election before 31st March 2010, paragraph (1) applies as if "the age of 50" were substituted for "the age of 55".

Early payment of pension: ill-health

31.—(1) Subject to paragraph (2), if a member who has left a local government employment before the member is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body the member may request to receive payment of the retirement benefits immediately, whatever the member's age.

(2) If a member does not request immediate payment under this regulation, the member is entitled to receive a pension without reduction, payable from the member's normal retirement age.

Death grants: deferred members

32.—(1) If a deferred member dies, a death grant is payable.

(2) The administering authority at their discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or executors, or any person appearing to the authority to have been the member's relative or dependant at any time.

(3) The death grant is the member's retirement pension multiplied by 5.

(4) If the administering authority have not made payments under paragraph (1) equalling in aggregate the member's death grant before the expiry of two years beginning with the member's death, they must pay an amount equal to the shortfall to the member's executors.

Survivor benefits: deferred members

33.—(1) If a deferred member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.

(2) The pension is calculated by multiplying the member's total membership by the member's final pay and divided by 160.

(3) If there is more than one surviving spouse, they become jointly entitled in equal shares under paragraph (1).

Children's pensions: deferred members

34.—(1) The amount of the pension of an eligible child of a deceased deferred member is calculated as follows.

(2) If a survivor benefit is payable under regulation 33 (survivor benefits: deferred members)—

(a) where there is only one such child, the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29 (calculation on leaving early), by the member's final pay, and dividing by 320; and

(b) where there is more than one such child—

(i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by the member's final pay, and dividing by 160; and

(ii) those children are jointly entitled in equal shares.

(3) If no survivor benefit is payable under regulation 33—

(a) where there is only one such child, the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by the member's final pay, and dividing by 240; and

(b) where there is more than one such child—

(i) the pension is calculated by multiplying the member's total membership, calculated in accordance with regulation 29, by the member's final pay, and dividing by 120; and

(ii) those children are jointly entitled in equal shares.

Death grants: pensioner members

35.—(1) If a pensioner member dies before the member's 75th birthday, a death grant is payable.

(2) The administering authority at their discretion may make payments in respect of the death grant to or for the benefit of the member's nominee or executors, or any person appearing to the authority to have been the member's relative or dependant at any time.

(3) The death grant is the member's pension multiplied by 10, but the amount so calculated is reduced by the amounts of any retirement pension paid to the member.

Survivor benefits: pensioner members

36.—(1) If a pensioner member dies leaving a surviving spouse, nominated cohabiting partner or civil partner, that person is entitled to a pension.

(2) The pension is calculated by multiplying the member's total membership by the member's final pay and divided by 160.

(3) If there is more than one surviving spouse or civil partner, they become jointly entitled in equal shares under paragraph (1).

Children's pensions: pensioner members

37.—(1) The amount of the pension of an eligible child of a deceased pensioner member is calculated as follows.

(2) If a survivor benefit is payable under regulation 36 (survivor benefits: pensioners)—

(a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating the member's benefits under these Regulations by the member's final pay, and dividing by 320; and

(b) where there is more than one such child—

(i) the pension is calculated by multiplying the member's total membership used in calculating the member's benefits under these Regulations by the member's final pay, and dividing by 160; and

(ii) those children are jointly entitled in equal shares.

(3) If no survivor benefit is payable under regulation 36—

(a) where there is only one such child, the pension is calculated by multiplying the member's total membership used in calculating the member's benefits under these Regulations by the member's final pay, and dividing by 240; and

(b) where there is more than one such child—

(i) the pension is calculated by multiplying the member's total membership used in calculating the member's benefits under these Regulations by the member's final pay, and dividing by 120; and

(ii) those children are jointly entitled in equal shares.

Pension increases under the Pensions (Increase) Acts

38. Where a pension to which the Pensions (Increase) Act 1971 applies is payable out of an appropriate fund, any increase under that Act or the Pensions (Increase) Act 1974(a) must be paid from that fund.

Commutation: small pensions

39. A lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump sum death benefit within the meaning of section 168 of that Act may be paid in accordance with the rules relating to the payment of such benefits under that Act.

Commutation: exceptional ill-health

40.—(1) If, when a retirement pension first becomes payable to a member, the administering authority are satisfied that the member's life expectancy is less than one year, they may pay the member a lump sum equal to five times the amount by which the annual rate of the retirement pension exceeds the member's guaranteed minimum.

(a) 1974 c.9

(2) An administering authority cannot be satisfied as mentioned in paragraph (1) unless they have first obtained a certificate from a fully registered person within the meaning of the Medical Act 1983(a) to the effect that the member's life expectancy is less than one year.

(3) Such a payment discharges the authority's liability for that provision and for any lump sum death grant calculated by reference to that pension under the Scheme.

Guidance on future costs

41. Administering authorities and employing authorities shall have regard to guidance issued by the Scottish Ministers, before 31st March 2010, as to the manner in which the costs of the Scheme will be met after 31st March 2011.

A member of the Scottish Executive

St Andrew's House,
Edinburgh
[] 2008

(a) 1983 c.54.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out provisions relating to benefits, membership and contributions in the new Local Government Pension (Scotland) Scheme (“the Scheme”) which is to come into existence on 1st April 2009 and replace the Local Government Pension (Scotland) Scheme 1998 (“the 1998 Scheme”).

Regulation 2 contains definitions.

Regulation 3 sets out who is a member of the Scheme: broadly speaking, this is anyone who is, or could have been had it continued in existence, a member of the 1998 Scheme.

Regulation 4 contains a table of rates of contributions on pensionable pay, and makes provisions for part-time and term-time workers. “Pensionable pay” is defined in regulation 5.

Regulation 5 provides for a minimum membership of two years for entitlement to benefits in most cases, and regulations 7 and 8 explain how length of membership is calculated.

Regulations 9 to 12 provide for the calculation of final pay.

Regulations 13 and 14 respectively provide power for employing authorities to increase membership or award additional pension.

Regulations 15 and 16 respectively provide for voluntary additional payments to increase pension, and for AVCs.

Regulation 17 provides for the normal retirement age (65), regulation 18 for retirement after this age, and regulation 19 for flexible retirement.

Regulation 20 makes provision relating to redundancy and inefficiency, and regulation 20 makes provision relating to ill-health retirement.

Regulation 22 provides for commutation of pension, and regulation 23 places a limit on the total amount of benefits.

Regulations 24, 25 and 29 (active members), 33, 34 and 35 (deferred members) and 36, 37 and 38 (pensioner members) provide for death grants, survivor benefits and children’s pension for the respective classes of member. Regulation 26 contains a definition of “nominated cohabiting partner” and regulation 27 of “eligible child” for these purposes. Regulation 28 makes further provision about children’s pensions.

Regulations 30 to 32 make provision relating to early payment of pension.

Regulation 39 provides for payment of increases under the Pensions (Increase) Act 1971, regulation 40 for commutation of small pensions, and regulation 41 requires administering and employing authorities to have regard to guidance issued by the Secretary of State about future costs of the Scheme.