

2008 No.

PENSIONS

The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008

Made - - - - - 2008

Laid before the Scottish Parliament 2008

Coming into force in accordance with regulation 1

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 Regulations as appeared to them to be appropriate.

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008.

(2) These Regulations extend to Scotland only.

(3) These Regulations shall come into force as follows—

(a) [Regulation 7 on [a date before 1st April 2009]; and]

(b) the remainder on 1st April 2009.

(4) 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 Pension Scheme (Administration) (Scotland) Regulations 2008(c);

(a) 1972 c.11. 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).

(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 and 514.

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

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008(a);

“GAD” means the Government Actuary Department; and

“the Scheme” means the Local Government Pension Scheme (Scotland) 2009 constituted by the Benefits Regulations.

Revocation of 1998 Regulations

2.—(1) Except where these Regulations provide otherwise, the Regulations listed in Schedule 1 are revoked.

(2) Accordingly, no person may become a member of the 1998 Scheme after 31st March 2009 or accrue benefits in it in respect of any service after that date.

Membership accrued before 1st April 2009: active members

3.—(1) This regulation applies to a person who was an active member of the 1998 Scheme and becomes a member of the Scheme by virtue of regulation 3 (active members) of the Benefits Regulations.

(2) Notwithstanding the revocations effected by regulation 2, the regulations listed in Schedule 1 continue to have effect, subject to regulation 4, so far as is necessary so that—

- (a) the member’s total membership accrued in the 1998 Scheme in respect of, or calculated by reference to, the member’s service before 1st April 2009, and the pension rights accrued at that date, are preserved; and
- (b) the member’s benefits under the 1998 Scheme are payable immediately where benefits become payable without reduction under regulations 16 (retirement benefits), 17 (retirement after normal retirement date), 19 (early leavers: inefficiency and redundancy) and 20 (early leavers’ ill-health) of the Benefits Regulations, or with the appropriate actuarial reduction in line with guidance produced by GAD where benefits become payable under regulations 18 (flexible retirement) or 30 (choice of early payment of pension) of the Benefits Regulations.

(3) But the member’s pay, for the purposes of any calculation of benefits under paragraph (2), is calculated in accordance with regulations 9 (final pay: general) and 11 (final pay: fees) of the Benefits Regulations.

(4) And, for the purposes of regulations 24 (survivor benefits: active members), 33 (survivor benefits: deferred members) or 36 (survivor benefits: pensioner members) of the Benefits Regulations as they apply to nominated cohabiting partners or civil partners, only periods of membership after 5th April 1988 are to be taken into account.

Membership accrued before 1st April 2009: deferred members

4.—(1) This regulation applies to a person—

- (a) who was a deferred member of the 1998 Scheme;
- (b) who becomes a member of the Scheme by virtue of regulation 10 (joining the scheme) of the Administration Regulations; and
- (c) whose preserved benefits under the 1998 Scheme have not yet come into payment.

(2) The person may choose, by notice in writing to the appropriate administering authority within 12 months of becoming a member of the Scheme under paragraph (1)(b), to be treated as if regulation 3 applied.

(a) S.S.I. 2008/xxxxx.

Membership accrued before 1st April 2009: concurrent employments

5. Where a member to whom regulation 3 applies has membership to which regulation 15 (concurrent employments) of the Administration Regulations also applies, the calculation of any period for the purposes of the latter provision is carried out separately in respect of periods of employment before 1st April 2009 as if regulation 31A of the 1998 Scheme still applied and in respect of periods of employment after 31st March 2009 in accordance with regulation 15.

Survivor benefits

6.—(1) Subject to paragraph (2), any survivor benefits payable in respect of a person to whom regulation 3 or 4 applies are calculated as if the Benefits Regulations applied to all of the membership, whether accrued before or after 1st April 2009.

(2) The survivor benefits payable in respect of a deferred member to whom regulation 4 does not apply are calculated as if the total membership before 1st April 2009 was a separate period of membership to which the conditions in force at the time the person became a deferred member apply.

Deferred members: limit on death grant

7. Where a person to whom regulation 3 applies becomes a deferred member after 31st March 2009 and dies before the person's pension comes into payment, the sum of any death grants to which the person is entitled under any provision of the Scheme or of the 1998 Scheme, as continued in effect by regulation 3, shall be the person's retirement pension multiplied by five.

Members' contributions: information

8. The employing authority of a person to whom regulation 3(3) (active members) of the Benefits Regulations applies shall inform the person, before 1st April 2009 of the contribution rate applicable to the person in accordance with regulation 4(2) (contributions payable by active members) of those Regulations.

The 85 year rule

9.—(1) This regulation applies to a person—

- (a) to whom regulation 3 applies; and
- (b) in respect of whom the appropriate administering authority has decided to pay benefits following a request made by the person under regulation 30 (Choice of early payment of pension) of the Benefits Regulations.

(2) Schedule 2 (which makes transitional provision relating to the so-called "85 year rule") has effect in relation to such a person.

Appropriate funds

10. The pension funds which are appropriate pension funds for members of the 1998 Scheme who do not become members of the Scheme [(as to which see regulation 19 of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998(a))] shall continue to be the appropriate funds for those members.

Application of abatement policy in individual cases

11. Notwithstanding the revocation of regulation 110 of the 1998 Regulations, paragraph (5) of that regulation shall continue to apply to a person who was a member of the Local Government

(a) S.I. 1998/364.

SCHEDULE 1

Regulation 2

REGULATIONS REVOKED

The Local Government Pension Scheme Regulations 1998, except for the provisions listed below.

Regulation 12(2)(f), (8) and (9);

Regulation 54, as it applies to a member who has elected, before 1st April 2009, to make additional contributions to increase the member's total membership by an additional period.

Regulation 75, as it applies to the year ending 31st March 2009.

Regulation 82;

Regulation 87(2);

Regulation 122(6A) and (6B);

Regulation 123;

Regulation 128;

Regulations 131 to 133;

Regulation 134, 135 and 137;

Regulation 150;

Schedule 6

The Local Government Pension Scheme (Scotland) (Amendment) Regulations 2000**(a)**

The Local Government Pension Scheme (Scotland) (Pension Sharing on Divorce) (Scotland) Regulations 2001 (except regulation 2)**(b)**

The Local Government Pension Scheme (Scotland) Amendment Regulations 2001**(c)**

The Local Government Pension Scheme (Scotland) Amendment Regulations 2002**(d)**

The Local Government Pension Scheme (Scotland) Amendment Regulations 2005**(e)**

The Local Government Pension Scheme (Scotland) Amendment (No. 2) Regulations 2005**(f)**

The Local Government Pensions etc. (Civil Partnership) (Scotland) Amendment Regulations 2005**(g)**

The Local Government Pension Scheme (Scotland) Amendment Regulations 2006**(h)**

The Local Government Pension Scheme (Scotland) Amendment (No. 2) Regulations 2006**(i)**

The Local Government Pension Scheme (Scotland) Amendment (No. 3) Regulations 2006**(a)**

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- (a)** S.S.I. 2000/199.
 - (b)** S.S.I. 2001/23.
 - (c)** S.S.I. 2001/460.
 - (d)** S.S.I. 2002/311.
 - (e)** S.S.I. 2005/293.
 - (f)** S.S.I. 2005/315.
 - (g)** S.S.I. 2005/554.
 - (h)** S.S.I. 2006/123.
 - (i)** S.S.I. 2006/468.

CONSULTATION DRAFT

The Local Government Pensions etc. (Councillors and VisitScotland) (Scotland) Amendment Regulations 2007**(b)**

The Local Government Pension Scheme (Scotland) Amendment Regulations 2007**(c)**

(a) S.S.I. 2006/514.
(b) S.S.I. 2007/71.
(c) S.S.I. 2007/514.

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SCHEDULE 2

Regulation 9

THE 85 YEAR RULE: TRANSITIONAL PROVISIONS AND SAVINGS

1. Subject to paragraph 7, where a member—

- (a) makes a request to receive the immediate payment of retirement benefits under regulation 30(1) (Choice of early payment of pension) of the Benefits Regulations; and
- (b) satisfies the 85 year rule;

that part of the member's retirement pension and grant which is calculated by reference to any period of membership before the relevant date shall not be reduced in accordance with regulation 30(4) of the Benefits Regulations.

2. For the purposes of paragraph 1, the relevant date, for a member who was a member before 1st December 2006 is—

- (a) in the case of a member who will be aged 60 or more on 31st March 2020, the earlier of—
 - (i) 1st April 2020; and
 - (ii) the date on the day after the day on which the member leaves local government employment; or
- (b) in any other case, 1st April 2008.

3.—(1) For the purposes of this Schedule, a member satisfies the 85 year rule if the sum of—

- (a) the member's age in whole years on the date the member's local government service ends or the date the member makes a request under regulation 30(1) of the Benefits Regulations if later;
- (b) the member's total membership in whole years;
- (c) in a case where the member makes a request after the member's local government employment ends, the period beginning with the end of that employment and ending with the date the member makes a request; and
- (d) in the case of a person who was a member immediately before 1st April 1998, any qualifying period counted by virtue of regulation 123 of the 1998 Regulations which was awarded before 1st April 2008,

is 85 years or more.

(2) But, in calculating the total membership, no account is to be taken of any increase in membership awarded under regulation 12 (power of employing authority to increase total membership) of the Benefits Regulations.

4.—(1) This paragraph applies to a member to whom regulation 4 of these regulations (membership accrued before 1st April 2008: deferred members) or regulation 14 of the Administration Regulations (Re-employed and rejoining deferred members) applies.

(2) Where such a member does not choose, or does not so choose as respects all periods of the member's membership, to be treated as if regulation 3 of these Regulations applied, or to have the member's membership aggregated under regulation 14, as the case may be, then in applying paragraph 2 of this Schedule as respects any later membership, the member's total membership excludes unaggregated periods.

5.—(1) This paragraph applies to a member who was a member before 1st December 2006 who—

- (a) before 1st December 2006 elected to make additional contributions to the Scheme to increase the total membership under regulation 54(1) of the 1998 Regulations (payments to increase total membership); and
- (b) was assumed to retire from a local government employment on a date before the member’s 65th birthday (“the assumed date”) for the purposes of calculating the member’s additional contributions under regulation 54(5) of the 1998 Regulations.

(2) Where a member to whom this paragraph applies—

- (a) continues paying the additional contributions until the assumed date; and
- (b) retires on or after the assumed date,

the member shall not pay any additional contributions after that date and the whole of the additional period may be counted as part of the member’s total membership.

(3) An additional period counted as a period of total membership as a result of this paragraph shall be treated as a period of membership before 1st April 2008.

6.—(1) Paragraphs 1 to 5 apply to a person who was a member before 1st December 2006 and who—

- (a) leaves local government employment and ceases to be a member of the 1998 Scheme or the Scheme (whether before or after that date); and
- (b) resumes such employment before the relevant date for the purposes of paragraph 1.

(2) And any period of membership after that resumption is aggregated with the period of membership accrued in the member’s previous local government employment for the purposes of paragraph 1.

(3) But any increase in the member’s total membership under regulation 12 of the Benefits Regulations is not counted for the purpose of paragraph 3(c).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out transitional provisions relating to members of the Local Government Pension Scheme 1998 (“the 1998 Scheme”), which is to be replaced by the new Local Government Pension Scheme (Scotland) (“the Scheme”) with effect from 1st April 2009.

Their effect is to protect the benefits accrued by members of the 1998 Scheme before 1st April 2009, and to protect their rights.

Regulation 2 provides for the revocation of the Local Government Pension Scheme Regulations 1998 (“the 1998 Regulations”) and of a number of subsequent Regulations that amend the 1998 regulations or make provision dependent on them, which are set out in Schedule 1. It follows that, after 1st April 2009, no person may become a member of the previous Local Government Pension Scheme, or accrue benefits in it (regulation 2(2)).

Regulations 3 to 5 preserve the membership and benefits accrued in the previous Scheme for active and deferred members and for members in concurrent employment.

Regulation 6 provides for survivor benefits and regulation 7 for limits on death grants for deferred members.

Regulation 8 requires employing authorities to inform certain members of the contribution rates applicable to them.

Regulation 9, and Schedule 2, make provision relating to the so-called “85 year rule” about early retirement.

Regulation 10 identifies the appropriate funds for the new Scheme.

Regulation 11 saves provisions about abatement policy contained in the 1998 Regulations, [and regulation 12 deals with pension sharing on divorce].