SCOTTISH STATUTORY INSTRUMENTS

2007 No.

PENSIONS

The Local Government Pension Scheme (Scotland) Amendment Regulations 2007

Made - - - -	*2007*
Laid before the Scottish Parliament	*2007*
Coming into force - -	*2007*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 7 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 with (a) such associations of local authorities as appeared to them to be concerned; (b) the local authorities with whom consultation appeared to them to be desirable; and (c) 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 (Scotland) Amendment Regulations 2007 and shall come into force on 1st December 2007.

(2) These Regulations extend to Scotland only.

Amendment of the Local Government Pension Scheme (Scotland) Regulations 1998

2. The Local Government Pension Scheme (Scotland) Regulations 1998(**b**) are amended in accordance with regulations 3 to 18.

Further restrictions on eligibility

3. In regulation 5 (further restrictions on eligibility), for paragraph (9) substitute–

> "(9) A retained or volunteer firefighter employed by a relevant authority within the meaning of section 6 of the Fire (Scotland) Act 2005(**c**) on terms under which the retained or volunteer firefighter is or may be required to engage in fire-fighting does not entitle the retained or volunteer firefighter to be a member of the Scheme.".

(**a**) 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, 2002/311, 315 and 554, 2006/123, 468, 514 and 2007/71.
(**c**) 2005, asp 5.

Buy Back Facility for Civil Partners

4. After regulation 17 (optional contributions during absences), insert–

> "**Additional contributions - Civil Partners**
>
> **17A.** Civil partners are eligible to make additional contributions in accordance with Schedule 8.".

Limit on total amount of benefits

5. In regulation 18A (limit on total amount of benefits)–

(a) at the beginning of paragraph (1) insert "Except as provides in regulation 49(1),";

(b) in paragraph (3), after "member's benefits" insert ", for the purposes of this or any other regulation,".

Calculations

6. In regulation 19 (calculations) in paragraph (3A) at the end add "but the entitlement to the benefit shall not occur until the date on which a member's appropriate administering authority receives the information it requires to calculate the increase.".

Retirement after age 65

7. In regulation 24A (retirement after age 65)–

(a) in paragraph (1), omit "with the consent of his employing authority"; and

(b) after paragraph (2) insert–

> "(3) A member is not entitled to count any period of service on or after the day before his 75th birthday as a period of membership and is not an active member after that day.".

Amounts of ill-health pension and grant

8. In regulation 27 (amounts of ill-health pension and grant), in paragraph (3) omit "40 years or" and "whichever is the shorter".

Re-employed pensioners

9. In regulation 28 (re-employed pensioners)–

(a) in paragraph (1)–

 (i) omit "and" after "enhanced membership period"; and

 (ii) omit sub-paragraph (b); and

(b) after paragraph (1) insert–

> "(2) Where a member to whom benefits are paid in accordance with regulation 34(1A) continues to accrue membership after the date on which payment of such benefits takes effect ("the payment date"), his membership to the payment date shall only be taken into account after the payment date for the purposes of making the calculations referred to in sub-paragraphs (a) of paragraph (1).".

Death grant

10. In regulation 37 (death grants), in paragraph (1) after "If a member dies" insert "before his 75th birthday".

Commutation: small pensions

11. In regulation 48 (commutation: small pensions)–

(a) for paragraph (1) substitute–

"(1) 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."; and

(b) omit paragraph (3).

Commutation: exceptional ill-health

12. In regulation 49 (commutation: exceptional ill-health), in paragraph 1 for "by which the annual rate of the retirement pension exceeds his guaranteed minimum" substitute "of his annual rate of retirement pension, notwithstanding that such lump sum may exceed his lifetime allowance.".

Elections to pay AVCs

13. After paragraph (2) of regulation 59 (elections to pay AVCs) insert–

"(2A) An election may be made in respect of each employment in respect of which he is a member.".

Payment of AVCs

14. In regulation 60 (payment of AVCs), in paragraph (1) after the words "usual pay day" insert "and must be paid from his pay".

Death benefits

15. In regulation 62 (death benefits), at the end of paragraph (3) add "and which meets the conditions imposed under Part 2 of Schedule 28 to the Finance Act 2004.".

Employer's further payments

16. In regulation 79 (employer's further payments), in paragraph (5) for the words "or regulation 30 (other early leavers etc.)" substitute "regulation 30 (other early leavers etc.) or regulation 34 (requirements as to time of payment)".

Interpretation

17. In Schedule 1–

(a) after the definition of "reserve or auxiliary force" insert ""retained or volunteer firefighter"" has the meaning given in the Firefighters' Pension Scheme (Scotland) Order 2007(**a**)"; and

(b) in the definition of "Scheme managers", in paragraph (a) for "police or fire authority" substitute "relevant authority".

Additional contributions for Civil Partners

18. After Schedule 7 (Councillor members) insert, as Schedule 8, the Schedule to these Regulations.

(**a**) S.S.I. 2007/199.

Amendment of Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998

19. The Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998(**a**) are amended in accordance with regulations 20 to 22 of these Regulations.

20. *This regulation will insert into regulation 3(6)(b) (definition of investment) a reference to new sub-paragraph (da) in paragraph 5 of Schedule 3 to the Financial Services and Markets Act 2000 ("FSMA"). New sub-paragraph (da),(which is to be inserted by forthcoming amending English Regulations) will ensure the provisions of paragraph 5 of Schedule 3 of FSMA also cover reinsurers authorised under the Reinsurance Directive in another EEA State.*

21. In regulation 11A (requirements for increased limits)–

(a) after sub-paragraph (3) insert–

"(3A) Where there is a decision to use the increased limits under regulation 11(2A) in relation to row 11 of Schedule 1, Part I, the additional risks of the increased limit must be taken into account in addition to those factors set out in paragraph (3)."; and

(b) in paragraph (6)(a) for "(2) and (3)"substitute "(2), (3) and (3A)".

22. In Schedule 1 (limits on investments), in Part I, row 11 (all securities transferred (or agreed to be transferred) by the authority under stock lending arrangements)–

(a) in column (1) of the table (limits under regulation 11(2) for "25%", substitute "35%"; and

(b) in column (2) of the table (increased limits under regulation 11(2A)), insert "35%".

[ ]

St Andrew's House,
Edinburgh

2007

(**a**) S.I. 1998/2888 as amended by S.S.I. 2000/74, articles 256 to 259 of S.I. 2001/3649, 2003/138, and 2004/134.

SCHEDULE

Regulation 18

“SCHEDULE 8

Regulation 17A

Additional Contributions: Civil Partners

1

(1) A member is a “qualifying member” for the purposes of this Part if he or she is–

(a) a civil partner; and

(b) in pensionable employment.

(2) A qualifying member may by giving notice in writing to the Administering Authority before the end of the election period elect to pay additional contributions attributable to a period of his or her reckonable service which ended before 6th April 1988.

(3) If a qualifying member dies before the end of the election period without making an election under sub-paragraph (2), his or her surviving civil partner may by giving notice in writing to the Administering Authority within 3 months of the qualifying member's death elect to pay additional contributions attributable to a period of the qualifying member’s reckonable service which ended before 6th April 1988.

(4) The election period begins on the day on which a member first becomes a qualifying member (in respect of each civil partnership he or she forms) and ends on the earlier of the day on which–

(a) any election he or she makes under paragraph 1(2) has effect, and

(b) he or she has been a qualifying member for a continuous period of 6 months.

(5) A member who makes an election under this paragraph must specify in the notice the period in respect of which the election is made, which must be either the whole of the qualifying member’s reckonable service which ended before 6th April 1988 or such part of such service as consists of one or more whole years.

(6) Where an election is made under sub-paragraph (2), the qualifying member must state in the notice whether additional contributions are to be paid by Method 1 (monthly payments) or Method 2 (lump sum) and, if the former, must specify a percentage of his or her salary at which they are to be paid.

(7) Where a qualifying member’s pensionable employment is part-time, for the purpose of specifying (under sub paragraph (6)) a percentage rate at which additional contributions are to be paid or varying (under paragraph 4(2) that rate, sub paragraph (6) has effect as if the reference to the qualifying member's salary were to his or her full-time equivalent salary.

(8) Except as provided in paragraph 4(2), an election under this paragraph is irrevocable.

2

(1) This paragraph applies where–

(a) the qualifying member states under paragraph 1(6) (in accordance with an election made under paragraph 1(2) that the additional contributions are to be paid by Method 1, and

(b) the payment period exceeds a year.

(2) Where this paragraph applies, except as otherwise provided in Paragraph 4, the qualifying member must pay additional contributions to the Administering Authority by way of monthly payments from his or her salary at the percentage rate specified under paragraph 1(6) or, where the rate is varied under 4(2), at the specified higher rate for the duration of the payment period.

(3) Except as otherwise provided in Paragraph 4, the payment period (in years) is the period in respect of which the election is made specified under paragraph 1(5) (in years) multiplied by the multiplier specified in guidance issued by the Government Actuary.

(4) Where the payment period would (apart from this sub paragraph) end on a day other than the last day of a month, the payment period ends with the last day of the month in which it would otherwise end.

3

(1) Except where paragraph 2 applies, the member who makes an election under paragraph 1 must pay additional contributions to the Administering Authority by way of a lump sum calculated in accordance with the Method 2 formula in sub paragraph (2) within 3 months of receiving written notice of the amount of the lump sum.

(2) The Method 2 formula is A x B x C,

where–

A is the percentage specified in guidance issued by the Government Actuary;

B is the period (in years) specified under paragraph 1(5); and

C is the annual rate of the qualifying member's salary.

4 Common Provisions

(1) This paragraph applies where additional contributions are payable by monthly payments under paragraph 2 (Method 1).

(2) The election may at any time be varied by an election to pay the additional contributions at a specified higher rate.

(3) An election under sub-paragraph (2) must be made by giving written notice to the Administering Authority, and has effect from the first day of the month following that in which the notice is received by them.

(4) The payment period begins on the first day of the month following that in which it is notified to the person by the Administering Authority.

(5) If after the start of the payment period there is an interval of more than 30 days during which the person is not in pensionable employment–

(a) the interval is not part of the payment period; but

(b) the end of the payment period is postponed by the length of the interval.

(6) If after the start of the payment period the member becomes employed part-time in pensionable employment, the length of the payment period is increased by so much of the period of part-time employment as does not count as reckonable service.

(7) If the original election is varied by one made under sub-paragraph (2) ("the further election"), the length of the payment period is reduced to–

$$A - \frac{B}{C} \times D$$

where–

A is what the length of the payment period would have been if the increased rate had been specified in the original election;

B is the rate specified in the original election;

C is the increased rate; and

D is the period from the start of the payment period to the effective date of the further election.

(8) The contributions–

(a) are payable from the start of the payment period;

(b) continue to be payable while the member is in pensionable employment; and

(c) cease to be payable if the member dies or becomes entitled to retirement benefits before the end of the payment period.

5

(1) This paragraph–

(a) applies where additional contributions to which paragraph 4 applies cease to be payable before the end of the payment period; and

(b) has effect subject to paragraph 6.

(2) Where the member paying the contributions dies before attaining the age of 65, or (whether or not he or she later re-enters employment in reckonable service) becomes entitled to payment of retirement benefits by virtue of regulation 26(1)–

(a) contributions are to be treated as having been paid in respect of the whole of the period in respect of which the election was made; but

(b) part of the payment period falls after his or her 65th birthday, the actuarial equivalent of the contributions that would have been payable during that part is to be deducted from the appropriate terminal sum.

(3) Where the member dies, or becomes entitled to payment of retirement benefits, after attaining the age of 65–

(a) contributions are to be treated as having been paid in respect of the whole of the period in respect of which the election was made; but

(b) there is to be deducted from the appropriate terminal sum an amount of–

where–

$$A - \frac{B}{100} \text{ x C}$$

A is the annual rate at which his or her salary was last payable;

B is the rate at which the contributions were last payable; and

C is the multiplier ascertained from guidance issued by the Government Actuary.

(4) Where the member becomes entitled to payment of retirement benefits by virtue of regulation 26–

(a) he or she may, by giving written notice to the Administering Authority within 3 months after the end of his or her pensionable employment, elect to pay a lump sum which is the actuarial equivalent of the contributions that would have been payable during the remainder of the payment period;

(b) if he or she does so elect, on payment of the lump sum contributions are to be treated as having been paid in respect of the whole of the period in respect of which the original election was made; and

(c) if he or she does not so elect, contributions are to be treated as having been paid in respect of–

$$D \text{ x } \frac{E}{F}$$

where–

D is the period in respect of which the original election was made;

E is the period during which contributions were paid; and

F is the payment period.

6 Where–

(a) a deduction has fallen to be made under paragraph 5(2) or (3) or an election has been made under paragraph 5(4);

(b) there is then a retrospective increase in the member's salary; and

(c) the consequent recalculation of the amount of the deduction or lump sum and of the appropriate terminal sum results in a greater increase in the amount of the deduction or lump sum than in the terminal sum,

the member, or as the case may be his or her widow, widower, or surviving civil partner or a beneficiary nominated under regulation 37, may notify the Administering Authority in writing that the amount of the deduction made is not to be increased.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Pension Scheme (Scotland) Regulations 1998 ("the 1998 Regulations") and the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 1998 ("the Investment Regulations").

The changes to the 1998 Regulations are as follows–

Regulations 3 and 17 update references made by the Fire (Scotland) Act 2005. Regulations 3 to 18 also make minor amendments to ensure that the principal regulations comply with the requirements of the Finance Act 2004 and other legislation regulating registered pension schemes.

Regulation 4 inserts provision to enable civil partners to buy back pre 1988 service in accordance with the Schedule. Regulation 18 inserts the Schedule into the 1998 Regulations.

The changes to the Investment of Funds Regulations 1998 are as follows**:**

Regulation 20 amends regulation 3 in order to give effect to Directive 2005/68 EC on reinsurance ("the Reinsurance Directive"). That Directive removes a gap in EC legislation to ensure that insurers who solely carry out reinsurance are subject to regulatory provision equivalent to that of direct insurers. Regulation 21 inserts into regulation 3(6)(b) a reference to new sub-paragraph (da) in paragraph 5 of Schedule 3 to the Financial Services and Markets Act 2000 ("FSMA"). New sub-paragraph (da) ensures the provisions of paragraph 5 of Schedule 3 of FSMA also cover reinsurers authorised under the Reinsurance Directive in another EEA State.

Regulation 21(a) inserts a provision in regulation 11A(3A), to require an administering authority prior to making a decision to increase the limit on their investments in securities transferred by the authority under stock lending arrangements. Regulation 21(b) makes a consequential amendment to regulation 11A(6)(a) to provide that where, following a review, an administering authority has decided to continue to use the increased limit on their investments in securities transferred under stock lending arrangements.

Regulation 22 amends Part I of Schedule 1 to allow administering authorities to increase the limit on their investments in securities transferred by the authority under stock lending arrangements from 25% to 35% of the total of their pension fund investments.

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; neither does it have significant financial impact on any public bodies.