SCOTTISH STATUTORY INSTRUMENTS

2005 No.293

PENSIONS

The Local Government Pension Scheme (Scotland) Amendment Regulations 2005

Made - - - -	*31st May 2005*
Laid before the Scottish Parliament - - - -	*2nd June 2005*
Coming into force - -	*30th June 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(**1**) 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 and 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 make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) Amendment Regulations 2005.

(2) These Regulations shall come into force on 30th June 2005 but regulation 3 shall have effect from 8th December 2002.

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

2. The Local Government Pension Scheme (Scotland) Regulations 1998(**2**) (referred to in these Regulations as "the principal Regulations") are amended in accordance with regulations 3 to 47 below.

Paternity and adoption

3. The principal Regulations are amended in accordance with Schedule A to these Regulations.

(**1**) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 10. The functions of the Secretary of State were transferred to the Scottish Ministers 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).

(**2**) S.I. 1998/366, as amended by S.I. 1998/1129 and 1999/787 and S.S.I. 2000/199, 2001/23 and 460, 2002/311; and as modified for particular purposes by S.I. 1998/364.

General eligibility for membership: employees of Scheme employers etc.

4. In regulation 3(1), after "regulation 4" insert ", regulation 4A".

Employees of non-Scheme employers: community admission bodies

5. For regulation 4 substitute–

"**Employees of non-Scheme employers: community admission bodies**

4.—(1) Subject to the requirements of this regulation and regulation 4B, an administering authority may make an admission agreement with any community admission body.

(2) Community admission bodies are–

(a) a body which provides a public service in the United Kingdom otherwise than for the purpose of gain and which either–

(i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest, whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise, or

(ii) is approved by the Scottish Ministers for the purposes of admission to the Scheme;

(b) a body to the funds of which any Scheme employer contributes;

(c) a body representative–

(i) of local authorities;

(ii) of local authorities and officers of local authorities;

(iii) of officers of local authorities which is formed for the purpose of consultation as to the common interests of local authorities and the discussion of matters relating to local government; or

(iv) of Scheme employers; and

(d) a voluntary organisation engaged in the provision of services under–

(i) Part III of the National Health Service (Scotland) Act 1978(**3**);

(ii) Part III of the National Assistance Act 1948(**4**);

(iii) the Disabled Persons (Employment) Act 1958(**5**);

(iv) the Mental Health (Scotland) Act 1984(**6**) or the Mental Health (Care and Treatment) (Scotland) Act 2003(**7**); or

(v) section 14 of the Social Work (Scotland) Act 1968(**8**) (which places a duty on local authorities to provide domiciliary services and laundry facilities to certain households).

(3) Approval under paragraph (2)(a)(ii) may be subject to such conditions as the Scottish Ministers think fit and they may withdraw approval at any time if such conditions are not met.

(**3**) 1978 c. 29.
(**4**) 1948 c. 29.
(**5**) 1958 c. 33.
(**6**) 1984 c. 36.
(**7**) 2003 asp 13.
(**8**) 1968 c. 49.

(4) Where, at the date that the admission agreement is made with a body within paragraph (2)(b), the contributions paid to the body by any one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, it must be a term of the admission agreement that the Scheme employer who provides funding (and, if more than one, all of them) guarantees the liability of the body to pay all amounts due from it under the Regulations.

Employees of non-Scheme employers: transferee admission bodies

4A.—(1) Subject to the requirements of this regulation and regulation 4B, an administering authority may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing, or will provide–

(a) a service or assets in connection with the exercise of a function of a Scheme employer as a result of–

(i) the transfer of the service or assets by means of a contract or other arrangement; or

(ii) guidance provided under section 2 of the Local Government in Scotland Act 2003(**9**) (requiring a local authority to have regard to guidance provided by the Scottish Ministers on performance of its duties) or a statement of findings under section 3 of that Act (which allows the Accounts Commission for Scotland to take certain actions following a report on a local authority by the Controller of Audit); or

(b) a public service and which is approved by the Scottish Ministers for the purposes of admission to the Scheme.

(3) Only those employees of the transferee admission body who are employed in connection with the provision of the service or assets referred to in paragraph (2) are eligible to be members of the Scheme.

(4) In the case of an admission agreement with a transferee admission body under paragraph (2)(a) the Scheme employer, if it is not also the administering authority, must be a party to the admission agreement.

(5) Approval under paragraph (2)(b) may be subject to such conditions as the Scottish Ministers think fit and they may withdraw approval at any time if such conditions are not met.

(6) An admission agreement with a transferee admission body shall require that–

(a) in the case of a body under–

(i) paragraph (2)(a), the Scheme employer; or

(ii) paragraph (2)(b), the transferee admission body, to the satisfaction of the administering authority,

shall carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee admission body; and

(b) that where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.

(**9**) 2003 asp 1.

(7) The indemnity or bond must be with–

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(**10**) to accept deposits or to effect and carry out contracts of general insurance;

(b) an EEA firm of the kind mentioned in paragraph (5)(b) and (d) of Schedule 3 to that Act, which has permission under paragraph (15) of that Schedule (as a result of qualifying for authorisation under paragraph (12) of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or

(c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.

(8) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 2A.

(9) Where a transferee admission body undertakes to meet the relevant requirements of this regulation, and–

(a) in the case of a body under paragraph (2)(a), the Scheme employer undertakes to meet the relevant requirements of this regulation; or

(b) in the case of a body under paragraph (2)(b), the Scottish Ministers approve the body for admission to the Scheme and the conditions, if any, to which the approval is subject have been met,

an administering authority must admit to the Scheme the eligible employees of the transferee admission body specified by the body and where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

Requirements for admission agreements

4B.—(1) In regulations 4 and 4A an admission agreement is an agreement that all or any specified class of the admission body's employees may be members.

(2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.

(3) When an administering authority makes an admission agreement, it must promptly inform the Scottish Ministers of the date the agreement takes effect, the admission body's name and, in the case of an admission agreement with a transferee admission body under paragraph 4A(2)(a), the name of the relevant Scheme employer.

(4) An administering authority must notify the Commissioners of the Inland Revenue of the admission of an admission body within the time prescribed in regulations made under section 605 of the Taxes Act 1988(**11**) (which provides for regulations to be made regarding the provision of information) and provide such information as may be so prescribed.

(5) An administering authority and an admission body may make an admission agreement despite that the fact that they do not exercise their functions or provide services or assets in areas that overlap or adjoin each other.

(6) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing for determination to the Scottish Ministers.

(**10**) 2000 c. 8.
(**11**) 1988 c. 1. The current regulations are the Retirement Benefit Schemes (Information Powers) Regulations 1995, S.I. 1995/3103, as amended.

(7) An employee of an admission body may not be a member if he is a member of another occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993(**12**)) other than where the accrual of benefits under the occupational pension scheme would not affect approval of the Scheme as an approved scheme.

(8) These Regulations apply to employment with an admission body in which the employee is an active member in the same say as if the admission body were a Scheme employer.".

Further restriction on eligibility

6. In Regulation 5–

(a) for regulation 5(10) substitute–

"(10) A person who is a member and is an employee of a transferee admission body is treated as leaving a local government employment when he ceases to be employed in connection with the provision of the service or assets under regulation 4A(2) as a result of which employment he became eligible to join the Scheme."; and

(b) after paragraph (5)(10) insert–

"(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(**13**) (the "NHS Scheme") 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(**14**) (delegation etc. between local authorities and NHS bodies);

(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.".

Periods of membership: "total membership"

7. In regulation 8(2), for "regulations 9, 10 and 31" insert "regulations 9, 10, 28, 31A and Schedule 4".

Meaning of "pay"

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

Calculations

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

(**12**) 1993 c. 48.
(**13**) 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 (Scotland) Regulations 1995, S.I. 1995/365, as amended.
(**14**) 2002 asp 5.