SCOTTISH STATUTORY INSTRUMENTS

# 2000 No. 199

# PENSIONS

## The Local Government Pension Scheme (Scotland) Amendment Regulations 2000

*Made - - - -* *15th June 2000*
*Laid before the Scottish Parliament - - - -* *16th June 2000*

*Coming into force in accordance with regulation 1*

The Scottish Ministers, in exercise of the powers conferred upon them 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 Regulations as appeared to them to be appropriate, in accordance with section 7(5) of that Act, and not having considered consultation with any individual local authority desirable, hereby make the following Regulations:

**Citation, commencement, effect and extent**

**1.**—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) Amendment Regulations 2000.

(2) These Regulations shall come into force as follows:–

(a) except for regulation 40, on 7th July 2000, but subject to paragraph (3);

(b) regulation 40 on 1st September 2000.

(3) The following provisions shall have effect from the following dates:–

(a) regulations 3 to 7, 12, 16, 24, 25, 26, 35 and 47(b) and (c)from 1st April 1998;

(b) regulation 10(a) from 1st April 1999;

(c) regulations 9, 10(d), 22, 34, 46, 47(a) and 48 from 13th January 2000.

(4) These Regulations extend to Scotland only.

(**1**) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7). 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 (S.I.1999/1750), Schedule 1.

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

**2.** The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998(**2**), shall be amended in accordance with regulations 3 to 7.

### Membership before 1st April 1972

**3.** In regulation 8(1)–

(a) omit "who was then a married member"; and

(b) in sub-paragraph (b) before "made a relevant election" insert ", being eligible to do so,".

### Continuity of rights within regulation 12(1)

**4.** Omit paragraph (3) of regulation 15.

### Civil servants transferred to the Scottish Environment Protection Agency

**5.** In regulation 21(3), insert after sub-paragraph (a) as a new sub-paragraph:–

"(aa) After paragraph (1) add the following as a new paragraph:–

"(1A) If a member leaves a local government employment (or is treated for these Regulations as if he had done so) on or after age 50 he may elect to receive payment of his retirement benefits immediately."."

### Former members of NHS Superannuation Scheme for Scotland

**6.** In regulation 22(4), omit "but for no other purpose".

### Re-employment of members

**7.** In Schedule 2–

(a) In paragraph 1, before the definition of "active pensioner" insert–

""active deferred member" means any person who was a deferred member and an active member immediately before the commencement date and continues as an active member on that date by virtue of regulation 3;";

(b) in paragraph 4(1), at the beginning insert "An active deferred member,";

(c) in paragraph 5(1), for "a rejoining pensioner or" substitute "a rejoining pensioner, an active deferred member or a";

(d) in paragraph 8(1), after "a rejoining pensioner" insert ", an active deferred member"; and

(e) in paragraph 8(2), after "ceases to apply to" insert "an active deferred member or,".

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

**8.** The Local Government Pension Scheme (Scotland) Regulations 1998(**3**) shall be amended in accordance with regulations 9 to 47.

(**2**) S.I. 1998/364.
(**3**) S.I. 1998/366.

**Agreements to enable employees of non-Scheme employers to be members ("admission agreements")**

**9.** For regulation 4 substitute the following:–

"**4.**—(1) An administering authority may make an admission agreement with any admission body.

(2) An admission agreement is an agreement that all or any specified class of the admission body's employees may be members.

(3) These are admission bodies–

(a) a body which provides a public service in the United Kingdom otherwise than for the purposes 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 admission body are dependent on the operations of the Scheme employer or otherwise; or

(ii) is approved by the Scottish Ministers for the purpose 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; or

(iv) of Scheme employers;

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

(i) Part III of the National Health Service (Scotland) Act 1978(**4**);

(ii) Part III of the National Assistance Act 1948(**5**);

(iii) the Disabled Persons (Employment) Act 1958(**6**);

(iv) the Mental Health (Scotland) Act 1984(**7**); or

(v) section 14 of the Social Work (Scotland) Act 1968(**8**);

(e) a body which exercises the function referred to in a relevant arrangement.

(4) Approval under paragraph (3)(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.

(5) It must be a term of an admission agreement made with a non-associated admission body within paragraph (3)(b) that the Scheme employer who provides funding (and, if more than one, all of them) guarantees the liability of the admission body to pay all amounts due from it under the Regulations.

(6) In the case of an admission agreement with a transferee admission body–

(**4**) 1978 c. 29.
(**5**) 1948 c. 29.
(**6**) 1958 c. 33.
(**7**) 1984 c. 36.
(**8**) 1968 c. 49; section 14 was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 10, and the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 10(6).

(a) the transferor Scheme employer, if not also the administering authority, must be a party to the admission agreement;

(b) only those employees of the transferee admission body who are employed in connection with the function referred to in a relevant arrangement are eligible to be members of the Scheme;

(c) it shall require an indemnity or bond in an approved form and with an authorised insurer or a relevant institution; and

(d) provision shall be made for the matters set out in Schedule 2A.

(7) Where a transferor Scheme employer and a transferee admission body undertake to meet the requirements of paragraph (6), an administering authority must admit to the Scheme the eligible employees of the transferee admission body and, where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

(8) An admission agreement must terminate if the admission body ceases to be such a body.

(9) An admission agreement may make such other provision about its termination as the parties consider appropriate.

(10) When an administering authority make an admission agreement, they 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, the name of the relevant transferor Scheme employer.

(11) An administering authority must notify the Commissioners of Inland Revenue of the admission of an admission body within the time prescribed in regulations made under section 605 of the Taxes Act(**9**) and provide such information as may be so prescribed.

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

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

(14) 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(**10**)) other than where the accrual of benefits under that pension scheme would not affect approval of the Scheme as an approved scheme.

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

(16) In this regulation, regulation 5 and Schedule 2A (where applicable)–

(a) "authorised insurer" means–

(i) an insurance company authorised under section 3 or 4 of the Insurance Companies Act 1982(**11**) to carry on general business; or

(ii) an EC company which is lawfully carrying on general business, or providing insurance of an appropriate class within general business, in the United Kingdom,

(**9**) 1988 c. 1; section 605 was amended by section 105 of the Finance Act 1994 (c. 9). For the regulations, see S.I. 1995/3103.
(**10**) 1993 c. 41.
(**11**) 1982 c. 50; section 2, which contains definitions, was amended by S.I. 1994/1696, regulations 4 and 45 and Schedule 6.

and expressions used in this definition and the Insurance Companies Act 1982 have the same meaning as in that Act;

(b) "indemnity or bond in an approved form" means an indemnity or bond to meet a level of risk exposure arising on premature termination of a relevant arrangement actuarially assessed to the satisfaction of the administering authority and the transferor Scheme employer;

(c) "non-associated admission body" means a body described in–

(i) paragraph (3)(a)(ii); or

(ii) paragraph (3)(b) where, at the date that the admission agreement is made, the total contribution from any one or more Scheme employers to its funds equals less than 50% of funding contributed by third parties;

(d) "relevant arrangement" means a contract or other arrangement made with a transferor Scheme employer for the provision of, or making available of, services or assets, for the purposes of or in connection with the exercise of a function of that transferor Scheme employer;

(e) "relevant institution" means–

(i) an institution authorised under Part I of the Banking Act 1987(**12**) (regulation of deposit-taking business);

(ii) a person to whom the restriction on acceptance of deposits in section 3 of that Act does not apply because he is specified in Schedule 2 to that Act (Central banks etc.); or

(iii) a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits,

and "European authorised institution" has the same meaning as in the Banking Co-ordination (Second Council Directive) Regulations 1992(**13**);

(f) "transferee admission body" means an admission body described in paragraph (3)(e); and

(g) "transferor Scheme employer" means an authority or body which is a Scheme employer.".

**Further restrictions on eligibility**

**10.** In regulation 5–

(a) after paragraph (2) add as a new paragraph–

"(2A) A person who is not eligible for membership of a teachers scheme because of the provisions of regulation B5(5) of the Teachers' Superannuation (Scotland) Regulations 1992(**14**) (re-employed teachers) is not entitled to be a member.";

(b) in paragraph (8) for "(3)" substitute "(4)";

(c) omit paragraphs (3), (6) and (7); and

(d) add as a new paragraph–

"(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 function referred to in a relevant arrangement.".

(**12**) 1987 c. 22.
(**13**) S.I. 1992/3218.
(**14**) S.I. 1992/280; relevant amending instrument is S.I. 1997/676.