

2006 No. **

PENSIONS

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

Made - - - - - *xxxxx 2006*
Laid before Parliament *xxxxx 2006*
Coming into force *in accordance with regulation 1*

The Scottish Ministers, in exercise of the powers conferred by sections 7 and 12 of the Superannuation Act 1972(a) 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:

PART 1

General

Citation, commencement, interpretation and application

- 1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) Amendment (No.2) Regulations 2006.
- (2) These Regulations extend to Scotland only.
- (3) These Regulations shall come into force on 1st October 2006 but regulations 3, 9, 13, 17(3), 20, 22, 23, 29 and 32 shall have effect from 6th April 2006.

Amendment of Regulations

2. The Local Government Pension Scheme (Scotland) Regulations 1998(b) (“the principal Regulations”) shall be amended in accordance with regulations 3 to 6, 7(1) and 8 to 48 of these Regulations.

(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; the relevant amending instruments are SSI 2000/199, 2002/311, 2005/293, 2005/315, 2005/554 and 2006/123.

PART 2

The tax regime

Further restrictions on eligibility

3. In regulation 5 –

(a) after paragraph (2A) insert –

“(3A) A person may not become a member after the day before his 75th birthday.”; and

(b) omit paragraphs (4) and (5).

Periods of membership

4. In regulation 8 –

(a) omit paragraph (1A); and

(b) in paragraph (2) omit “and Schedule 4”.

High earners

5. After regulation 10, insert—

“**10A.**—(1) This regulation applies to a member who was subject to regulation 15(1) immediately before 6th April 2006 and whose pay (calculated in accordance with regulation 12) in the year ending 5th April 2006 exceeds £105,600.

(2) In such a case, his period of membership for calculating his entitlement to any benefits payable under these Regulations is obtained by aggregating his period of membership after that date with the period obtained by applying the formula set out in paragraph (3).

(3) That formula is M times 105,600 divided by P, where M is his period of membership after 5th April 1989 and before 6th April 2006 (excluding any membership credited by virtue of a transfer under regulation 121) and P is his pay as mentioned in paragraph (1).”

Members’ contributions

6. In regulation 11 –

(a) in paragraph (1), delete “(but see regulation 14)”; and

(b) in paragraph (7), for “Regulations 15 to 17” substitute “Regulations 16 and 17”.

Employer’s discretion to reduce member’s contribution rate

7.—(1) Omit regulation 14.

(2) Where, before its omission by paragraph (1), a member’s liability to make contributions to the Scheme has been reduced or, as the case may be, extinguished in accordance with regulation 14, his employing authority may recover any such contributions as would have otherwise have been made.

Inland Revenue limits on contributions

8. Omit regulation 15.

Limit on total amount of benefits

9. After regulation 18 insert—

“Limit on total amount of benefits

18A.—(1) A member and any dependant of his shall not be entitled, under any provision of these Regulations, to receive benefits the capital value of which exceeds his lifetime allowance, increased where applicable by his primary protection or 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(a).

(3) Any calculation of the capital value of a member’s benefits is to be carried out in accordance with guidance issued by the Government Actuary.

Deduction of tax

18B. The appropriate administering authority is responsible for deducting from any payments of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.”

Calculations

10.-(1) Regulation 19 is amended as follows.

(2) After paragraph (3) insert—

“(3A) A member in respect of whom a benefit crystallisation event occurs on or after 1st October 2006 may elect in writing to the appropriate administering authority before any benefits become payable to increase the retirement grant payable under paragraph (3) by commuting his pension, or a part thereof, at a rate of £12 for every £1 of annual pension entitlement surrendered.

(3B) But the total amount of the member’s retirement grant, including any sum received—

- (a) in accordance with an election under paragraph (3A);
 - (b) as benefits provided in the form of a lump sum in accordance with regulation 63; or
 - (c) as additional lump sum benefits in accordance with regulation 65
- shall not exceed 25% of the capital value of his accrued rights.

(3C) For the purposes of this regulation, a member’s accrued rights include rights accrued in respect of any payments made by him in accordance with Chapter IV of Part III (Additional Voluntary Contributions).

(3D) The capital value of a person’s accrued rights shall be calculated as shown in guidance issued by the Government Actuary.

(3E) Paragraph (3A) applies to a person to whom regulation 4 of the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998 (Deferred members and pensioners: general) applies.”.

(3) For paragraph (4A) substitute—

“(4A) Where a benefit crystallisation benefit has not occurred before the day after a member’s 65th birthday in respect of any benefit payable under the Scheme, that benefit shall be increased at such a rate as is shown as appropriate in guidance issued by the Government Actuary.”.

(a) 2004 c. 12; relevant provisions of schedule 36 are amended by the Finance Act 2005 (c. 7), Schedule 10, paragraphs 52 to 54 and modified by SI 2006/572.

(4) In paragraph (6) omit sub-paragraphs (c), (e) and (f).

Final pay

11. In regulation 20(1), omit the words “and Schedule 4”.

Revenue limits

12. Omit regulation 23.

Retirement after the normal retirement date

13. In regulation 24A –

(a) in paragraph (1), for “when he retires from service” substitute “in accordance with paragraph (2)”; and

(b) for paragraph (2) substitute—

“(2) The pension and retirement grant are payable immediately on retirement or, if earlier, on the day before the member’s 75th birthday.”.

Other early leavers: deferred retirement benefits and elections for early payment

14.—(1) In regulation 30(7), at the beginning insert “Subject to paragraph (7A)”.

(2) After regulation 30(7), insert—

“(7A) A member who continues to be employed by a Scheme employer listed in Schedule 2 is only entitled to receive a pension and grant without reduction payable from his NRD if his employer consents to his doing so.”.

Re-employed and rejoining deferred members

15. In regulation 31, omit paragraph (2).

Surrenders of pensions

16. Omit regulation 32.

Requirements as to time of payment

17.—(1) Regulation 34 is amended as follows.

(2) After paragraph (1) insert—

“(1A) But where, after 1st October 2006, a member who has attained the age of 50, with his employer’s consent, reduces the hours he works, or the grade in which he is employed, he may elect in writing to the appropriate administering authority and such benefits may, with his employer’s consent, be paid to him notwithstanding that he has not retired from that employment.

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

(1C) But the employer may choose to waive, in whole or in part, any such reduction.

(1D) Where the employer so chooses, it shall pay to the fund the cost incurred as a result of such waiver as calculated by the fund’s actuary.

(1E) Any benefits paid following an election under paragraph (1A) are not subject to abatement under regulation 110 in respect of any subsequent employment with the person who is his employer at the date of his election.”

(3) For paragraph (2), substitute “In any event, retirement benefits under this Chapter must begin to be paid no later than the day before the member’s 75th birthday even if he has not retired (and see regulation 35(3)).”.

Guaranteed minimum pensions etc.

18. In regulation 35, omit paragraphs (7), (8) and (9).

Surviving spouse’s long-term pension

19. In regulation 40(6), after “death” insert “or half his pension before any commutation under regulation 19(3A), whichever is the greater”.

Meaning of “eligible child”

20. In regulation 43—

(a) at the beginning of paragraph (2) insert “Subject to paragraph (2A)”; and

(b) after paragraph (2) insert—

“(2A) Notwithstanding paragraph (2)(b), a pension coming into payment on or after 6th April 2006 which would otherwise be payable by virtue of that paragraph shall only continue while the child is aged under 23.

(2B) Paragraph (2A) shall not apply where the member was a pensioner member on 5th April 2006 and the child was born on or before 5th April 2007.”.

Children’s long-term pensions

21. In regulation 45(7), at the end insert “or of his pension before any commutation under regulation 19(3A), whichever is the greater”.

Commutation: small pensions

22. For regulation 48 substitute –

“(1) Where a member has become entitled to a retirement pension and the capital value of that pension and of any benefits that might otherwise have become payable on that member’s death would be a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to the Finance Act 2004, the appropriate administering authority may pay to that member a lump sum representing such capital value.

(2) No payment may be made under paragraph (1) if the pension includes a guaranteed minimum unless the member to whom it is paid has reached state pensionable age or any pension in respect of the guaranteed minimum is otherwise payable.

(3) Where a member has died and the capital value of any long-term pension which is payable to any surviving spouse or civil partner or to or in respect of an eligible child or children would be a trivial commutation lump sum death benefit as defined in paragraph 20 of Schedule 29 to the Finance Act 2004, the appropriate administering authority may pay to the dependant or dependants a lump sum representing such capital value.

(4) The capital value of a pension must be calculated as shown in guidance issued by the Government Actuary.”

Commutation: exceptional ill-health

23.—(1) After regulation 49(1) insert—

“(1A) 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.”.

(2) In regulation 49(2), omit the words “(except the guaranteed minimum)”.

(3) Omit regulation 49(3).

Scope of Part III: limits on benefits

24. In regulation 50, omit paragraph (2).

Power of employing authority to increase total membership

25. In regulation 51—

(a) at the end of sub-paragraph (2)(a) insert “or”;

(b) omit sub-paragraph (2)(b); and

(c) after paragraph (10) insert—

“(11) An additional period arising from a resolution under this regulation on or after 1st October 2006 shall be treated as a period of membership after that date.”.

Payments to increase total membership

26. For regulation 54(2) substitute—

“(2) That period must not exceed 6 $\frac{2}{3}$ years.”.

Election for lump sum in lieu of pension

27. Omit regulation 58.

Retirement benefits

28. For regulation 63(6) substitute –

“(6) The accumulated value of the contributions invested under paragraph (1) may be used, in whole or in part, to provide benefits in the form of a lump sum, provided that the limit on the total amount of a member’s retirement grant and other lump sums set out in regulation 19(3B) is not exceeded.”

Accounts and audit

29.—(1) Regulation 75 is renumbered “75(1)”.

(2) After regulation 75(1) (as so renumbered in accordance with paragraph (1)) insert—

“(2) The input period for the purposes of section 238 of the Finance Act 2004 is the year ending 31st March 2007 and each year ending 31st March thereafter.”.

Employer’s further payments

30. In regulation 79(4)(a) omit “a determination under regulation 14 or”.

(a) 1983 c.54.

Over-provision: calculation and return of surplus AVC and SVAVC funds

31. Omit regulation 84.

Commencement of pensions

32. For regulation 92(2)(c) substitute—

“(c) otherwise, unless he elects to defer payment, with his NRD (but any such deferral shall not extend beyond the day before his 75th birthday).”

Treatment of other benefits

33. After regulation 95 insert—

“95A. Any payment of employment-related benefits made to a member by an administering authority other than in accordance with regulations made under section 7 of the Superannuation Act 1972 shall be treated as if it had been made under the Scheme.”.

First instance decisions

34. In regulation 96(6) —

- (a) at the end of sub-paragraph (b), insert “and”;
- (b) in sub-paragraph (c), for “membership; and” substitute “membership.”; and
- (c) omit sub-paragraph (d).

Interpretation

35. In Schedule 1—

(a) after the definition of “base rate” insert—

““benefit crystallisation event” shall be construed in accordance with section 216 of the Finance Act 2004;”,

- (b) omit the definitions of “Class A member”, “Class B member” and “Class C member”,
- (c) omit the definition of “continuity conditions”,
- (d) omit the definition of “revenue agreement”,
- (e) omit the definition of “revenue permitted maximum”,
- (f) in the definition of “unaggregated period” for “regulation 32(6)” substitute “regulation 31(6)”.

Excluded membership

36. In Schedule 3 –

- (a) omit paragraphs 1, 2, 4 and 5 of the Table; and
- (b) omit notes 3 to 5.

Revenue restrictions

37. Omit Schedule 4.

PART 3

The 85 year rule

Normal retirement

38. In regulation 24, omit paragraphs (4) and (6).

Other early leavers: deferred retirement benefits and elections for early payment

39. In regulation 30 –

(a) in paragraph (4), omit the words from the beginning of the paragraph up to and including “is less than 85 years,”; and

(b) in paragraph (7), omit the words from “or such earlier date” to the end.

Re-employed and rejoining deferred members

40. In regulation 31(5)(a), for “27(1) and (2) and 30(4)” substitute “and 28”.

Commencement of pensions

41. Omit regulation 92(2)(b).

Right to count credited period

42. In regulation 122—

(a) in paragraph (4), omit the words “or, if earlier” to the end of the paragraph; and

(b) after paragraph (6), insert—

“(6A) A credited period arising from a request to accept a transfer value under regulation 121 which is made by a person who was an active member immediately before 1st October 2006 shall be treated as a period of membership before that date.

“(6B) A credited period arising from a request to accept a transfer value under regulation 121 which is made by a person who becomes a member on or after 1st October 2006 shall be treated as a period of membership after that date.”

Rights as to service not matched by credited period

43. In regulation 123(2), omit sub-paragraph (b).

Credited periods for transferring members with mis-sold pension rights

44. In regulation 124, at the end of paragraph (3) add “(and regulation 122(6B) does not apply to a transfer value credited under this regulation)”.

PART 4

Miscellaneous

Effect of increases under this Chapter for older members

45. Omit regulation 53.

Effect of increases under this Chapter for older members

46. Omit regulation 56.

Election for pension in lieu of retirement grant

47. Omit regulation 57.

Scheme employers: Scottish Police Services Authority

48. At the end of Schedule 2 (Scheme employers) add –

“12. The Scottish Police Services Authority established under section 1(1) of the Police, Public Order and Criminal Justice (Scotland) [Act] 2006(a).”

Transitional provisions

49. The Schedule to these Regulations (transitional provisions) has effect.

Right to opt out

50.—(1) Where—

- (a) apart from this regulation, the amendments made by these Regulations would place any relevant beneficiary in a worse position than he would otherwise be, and
- (b) that relevant beneficiary so elects by notice in writing given to the appropriate administering authority within the period of six months beginning with 1st October 2006,

then the principal Regulations shall have effect in relation to him as if those amendments had never been made.

(2) For the purposes of paragraph (1), a relevant beneficiary is a person to whom any benefit is or may become payable being a benefit payable to or in respect of a person who—

- (a) ceased to hold any employment in respect of which he was a member (whether or not he had subsequently recommenced any such employment), or
- (b) dies while in such employment,

before 1st October 2006.

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Authorised to sign by the Scottish Ministers

St Andrew's House
Edinburgh
?? ?? 2006

(a) [The Bill has been passed but Royal Assent had not yet been granted at date of consultation. Reference to be completed.]

SCHEDULE

Regulation 49

TRANSITIONAL PROVISIONS

1. Where a member who was a member before 1st October 2006—

- (a) elects to receive the immediate payment of retirement benefits under regulation 30(1) of the principal Regulations; and
- (b) satisfies the 85 year rule;

that part of his 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 principal Regulations (as amended by regulation 39 of these Regulations).

2. For the purposes of paragraph 1, the relevant date 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. For the purposes of this Schedule, a member satisfies the 85 year rule if the sum of —

- (a) his age in whole years on the date his local government service ends or the date he elects under regulation 30(1) of the principal Regulations if later;
- (b) his total membership in whole years;
- (c) in a case where he elects after his local government employment ends, the period beginning with the end of that employment and ending with the date he elects; 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 which was awarded before 1st April 2008,

is 85 years or more.

4. Where a member who may elect under regulation 31(1) of the principal Regulations (re-employed and rejoining deferred members) does not do so or does not so elect as respects all periods of his membership, in applying paragraph 2 of this Schedule as respects any later membership, his total membership excludes unaggregated periods.

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

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

he shall not pay any additional contributions after that date and the whole of the additional period may be counted as part of his 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of amendments to the Local Government Pension Scheme (Scotland) constituted by the Local Government Pension Scheme (Scotland) Regulations, as amended (“the principal Regulations”).

Part 2 makes a number of amendments to the principal Regulations to address changes in the tax regime consequent on the Finance Act 2004.

Part 3 deals with the so-called “85 year rule”. This term refers to the current provisions of the Scheme which allow members to retire early and take their pension entitlements without actuarial reduction if the sum of their age and their length of service exceeds 85 years. Members over 60 can do so as of right; members over 50 but under 60 require their employer’s consent.

The Schedule make transitional provisions.