
SCOTTISH STATUTORY INSTRUMENTS

2015 No.

PUBLIC SERVICE PENSIONS

**The Local Government Pension Scheme (Scotland)
(Amendment No. 2) Regulations 2015**

<i>Made</i>	- - - -	2015
<i>Laid before the Scottish Parliament</i>		2015
<i>Coming into force</i>	- -	2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1 of the Public Service Pensions Act 2013(a) and section 7(1) of the Superannuation Act 1972(b) and all other powers enabling them to do so.

In accordance with section 21 of the Public Service Pensions Act 2013 and section 7(5) of the Superannuation Act 1972, the Scottish Ministers consulted the representatives of such persons as appeared to the Scottish Ministers likely to be affected by these Regulations.

PART 1

Preliminary Provisions

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Scotland) (Amendment No. 2) Regulations 2015 and come into force on 15th December 2015.

(2) These amendments have effect from 1st April 2015 other than—

- (a) amendment 7(a), which has effect from 6th April 2015; and
- (b) amendments 41 and 44 which have effect from 16th December 2014.

Interpretation

2. In these Regulations—

“the Main Regulations” means the Local Government Pension Scheme (Scotland) Regulations 2014(c);

“the Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014(d);

(a) 2013 c.25.
(b) c.11.
(c) S.S.I. 2014/164 as amended by S.S.I. 2015/87.
(d) S.S.I. 2014/233 as amended by S.S.I. 2015/87.

“the 1998 Regulations” means the Local Government Pension Scheme (Scotland) Regulations 1998(a); and

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

PART 2

Amendment of the Main Regulations

Amendment of the Main Regulations

3. The Main Regulations are amended in accordance with regulations 4 to 31.

Amendment of regulation 9

4. In regulation 9—

- (a) in paragraph (4) for “employing authority” substitute “Scheme employer”; and
- (b) in paragraph (10) for “employing authority” substitute “Scheme employer”.

Amendment of regulation 15

5. In regulation 15—

- (a) in paragraph (3)(a)(ii) after “forces” insert “service”;
- (b) in paragraph (4)(b) after “adoption leave” omit “, additional paternity leave”; and
- (c) in paragraph (4) at the end, for “to a shared cost AVC” substitute “under an SCAVC”.

Amendment of regulation 16

6. In regulation 16—

- (a) in paragraph (17)(a), omit “ additional paternity leave”; and
- (b) in paragraph (18)—
 - (i) for “regulations 11(1), (3), (4)(b) or (4) (c)” substitute “regulations 11((4)(b) or (4)(c))”; and
 - (ii) after “Scottish Ministers where” for “that” substitute “the”.

Amendment of regulation 17

7. In regulation 17—

- (a) omit paragraph (10); and
- (b) in paragraph (11A), for “additional voluntary contributions” substitute “AVC”.

Amendment of regulation 21

8. In regulation 21(7)—

- (a) after “(Survivor benefits: partners of active members),” insert “and”; and
- (b) after “the three years “insert “(or the period of membership in that employment, if less than three years)”.

(a) S.I. 1998/366.
(b) S.S.I. 2008/230.

Amendment of regulation 22

9. In regulation 22—

- (a) for the words in paragraph (4)(g), substitute “a payment under regulation 33 has been made”;
- (b) in paragraph (4)(h) for “Fund” substitute “fund”;
- (c) in paragraph (6A)—
 - (i) after “unless” insert “within”;
 - (ii) in subparagraph (a) before “12 months” omit “within”;
- (d) in paragraph (6B)—
 - (i) after “unless” insert “within”;
 - (ii) in subparagraph (a) before “12 months” omit “within”; and
- (e) after paragraph (7) insert—

“(8) The option under paragraphs (6A) and (6B) to elect to retain the deferred member’s pension account does not apply to a member who is the subject of a transfer—

 - (a) to which the TUPE Regulations apply; or
 - (b) which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and (3) of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.”.

Amendment of regulation 29

10. In regulation 29—

- (a) in paragraph (1) for “employer” substitute “employee”; and
- (b) in paragraph (13) for “employing authority” where occurring substitute “Scheme employer”.

Amendment of regulation 31

11. In regulation 31(9), for “of the determination that the member is permanently incapable under that regulation” substitute “the member makes an application under that regulation or, if later, the date the IRMP certifies the member first met the conditions in regulation 36(3)(a) and (b)”.

Amendment of regulation 37

12. In regulation 37—

- (a) in paragraph (1) for “(5) to (7)” substitute “(5) and (6)”;
- (b) in paragraph (2) for “(5) to (7)” substitute “(5) and (6)”; and
- (c) in paragraph (3) for “from which benefits are awarded” substitute “the member made a request under regulation 36 or, if later, the date the IRMP certifies the member first met the conditions in regulation 36(3)(a) and (b)”.

Amendment of regulation 39

13. In regulation 39—

- (a) in sub-paragraph (4)(a)(iii), after “regulation 16 (additional pension contributions)” insert “except where the member elects to purchase additional pension to cover the amount of pension that would otherwise have accrued but for an absence from work with no pensionable pay in consequence of a trade dispute, or an absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave”; and

- (b) in sub-paragraph (4)(a)(vi) for “Transitional Provisions and Savings Regulations 2014” substitute “Transitional Regulations”.

Amendment of regulation 40

14. In regulation 40(4)(a)(iii), (5)(a)(iii), (9)(a)(iii) and (10)(a)(iii) after “regulation 16 (additional pension contributions)” insert “except where the member elects to purchase additional pension to cover the amount of pension that would otherwise have accrued but for an absence from work with no pensionable pay in consequence of a trade dispute, or an absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave”.

Amendment of regulation 42

15. In regulation 42(4)(c) after “regulation 16 (additional pension contributions)” insert “except where the member elects to purchase additional pension to cover the amount of pension that would otherwise have accrued but for an absence from work with no pensionable pay in consequence of a trade dispute, or an absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave”.

Amendment of regulation 43

16. In regulation 43(4)(c), (5)(c), (9)(c) and (10)(c) after “regulation 16 (additional pension contributions)” insert “except where the member elects to purchase additional pension to cover the amount of pension that would otherwise have accrued but for an absence from work with no pensionable pay in consequence of a trade dispute, or an absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave”.

Amendment of regulation 45

17. In regulation 45(4)(d), after “regulation 16 (additional pension contributions)” insert “except where the member elects to purchase additional pension to cover the amount of pension that would otherwise have accrued but for an absence from work with no pensionable pay in consequence of a trade dispute, or an absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave”.

Amendment of regulation 46

18. In regulation 46(4)(e), (5)(e), (9)(e) and (10)(e), after “regulation 16 (additional pension contributions)” insert “except where the member elects to purchase additional pension to cover the amount of pension that would otherwise have accrued but for an absence from work with no pensionable pay in consequence of a trade dispute, or an absence from work with permission with no pensionable pay otherwise than because of illness or injury, child related leave or reserve forces service leave”.

Amendment of regulation 48

19. In regulation 48, for the words in paragraph (1), substitute “No person is entitled under any provision of these Regulations to receive benefits the capital value of which exceeds that person’s lifetime allowance, except in accordance with actuarial guidance issued by the Scottish Ministers, and any benefits to which a person is entitled are restricted accordingly.”.

Amendment of regulation 58

20. In regulation 58(1)(aa) for “29(5)” substitute “29(13)”.

Amendment of regulation 62

21. In regulation 62—

(a) for paragraph (1) substitute—

“(1) Subject to paragraph (2A), if a person—

- (a) ceases to be a Scheme employer (including ceasing to be an admission body participating in the Scheme); or
- (b) is or was a Scheme employer, but irrespective of whether that employer employs active members contributing to one or more other funds, no longer has an active member contributing towards a fund (“a relevant fund”) which has liabilities in respect of benefits in respect of current and former employees of that employer, that person becomes “an exiting employer” in relation to the relevant fund for the purposes of this regulation and is liable to pay an exit payment.”; and

(b) after paragraph (2) insert—

“(2A) An administering authority may by written notice (“a suspension notice”) to an exiting employer suspend that employer’s liability to pay an exit payment for a period of up to 3 years starting from the date when that employer would otherwise become an exiting employer, if the condition in paragraph (2B) is met.

(2B) The condition mentioned in paragraph (2A) is that in the reasonable opinion of the administering authority the employer is likely to have one or more active members contributing to the fund within the period specified in the suspension notice.

(2C) If an administering authority serves a suspension notice on an employer, unless that suspension notice is withdrawn, paragraph (2) does not apply in respect of that employer, but the employer must continue to make such contributions towards the liabilities of the fund in respect of benefits in respect of the employer’s current and former employees as the administering authority reasonably requires.”.

Amendment of regulation 65

22. In regulation 65(4)(a) after “12” insert “, ”.

Amendment of regulation 72

23. In regulation 72(6)(b) for “employing authority” substitute “Scheme employer”.

Amendment of regulation 74

24. In regulation 74(5) for “employing authority” substitute “Scheme employer”.

Amendment of regulation 77

25. In regulation 77—

- (a) in paragraph (2) for “employing authority” substitute “Scheme employer”; and
- (b) in paragraph (8), for “listed” substitute “sisted”.

Amendment of regulation 83

26. In regulation 83(1), for “must” substitute “may”.

Amendment of regulation 93

27. In regulation 93—

- (a) in paragraph (4A) for “employing authority” substitute “Scheme employer”;

- (b) for the words in sub-paragraph (7)(a) substitute “to which the TUPE Regulations apply; or”; and
- (c) in paragraph (9), before “Scottish Ministers” insert “the”.

Amendment of regulation 94

28. In regulation 94(1) for “Chapter 4 or 5 of Part 4” substitute “Chapter 1 and 2 of Part 4ZA”.

Amendment of regulation 102

29. In regulation 102(3)(b), for “ a returning officer” substitute “an acting returning officer”.

Amendment of Schedule 1

30. In Schedule 1—

- (a) under the heading “child-related leave” omit item “(e)”;
- (b) under the heading “eligible child” omit the definition for “employment”, and omit the definition for “enactment”;
- (c) for the heading “pensions board” substitute “pension board”;
- (d) in the appropriate place, insert a new definition as follows:—

““employment” for the purposes of these Regulations only shall include holding an office, with necessary modifications to these Regulations, if any, in respect of a person holding an office;”;
- (e) in the appropriate place, insert a new definition as follows:—

““enactment” has the same meaning as in section 126(1) of the Scotland Act 1998(a);”;
- (f) in the appropriate place, insert a new definition as follows:—

““the Transitional Regulations” means the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014(b);”;

and
- (g) in the appropriate place, insert a new definition as follows:

““the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(c);”.

Amendment of Schedule 4

31. In schedule 4, for “employing authority” where occurring substitute “Scheme employer”.

Amendment of Schedule 5

32. In Schedule 5—

- (a) omit paragraph 6A;
- (b) omit paragraph (6B);
- (c) after paragraph (6B) insert new paragraph “6C” as follows—

“**6C.** After regulation 22(8) insert—

“(9) In the case of a deferred member who has been a councillor member, an election under paragraph (6A) or (6B) may only aggregate councillor membership with former councillor membership and, as the case may be, membership which is

(a) 1998 c.46.
(b) S.S.I. 2014/233.
(c) S.I. 2006/246.

not councillor membership with former membership which is not councillor membership.””;

- (d) omit paragraph 8; and
- (e) for paragraph 9(a) substitute—
 - “(a) for paragraph (1) substitute—

“(1) Where a councillor member ceases to be a member of the member’s local authority on the grounds of ill-health or infirmity of mind or body before reaching normal pension age, the member is entitled to and must take early payment of a retirement pension if that member satisfies the condition in paragraph (3) of this regulation.”; and”.

PART 3

Amendment of the Transitional Regulations

Amendment of the Transitional Regulations

33. The Transitional Regulations are amended in accordance with regulations 34 to 38.

Amendment of regulation 3

34. In regulation 3, after “preserved” insert “with the exception that a member who ceased active membership before 1 December 2006 and who aggregates that earlier membership, not having a continuous break in active membership of public service pension schemes of more than 5 years, shall have a normal pension age of 65 in relation to that earlier membership”.

Amendment of regulation 10

35. In regulation 10 after paragraph (10), insert—

“(11) In the case of a deferred member who has been a councillor member, the member may only aggregate councillor membership with former councillor membership and, as the case may be, membership which is not councillor membership with former membership which is not councillor membership.”.

Amendment of regulation 17

36. In regulation 17—

- (a) in paragraph (2) for “paragraphs (9) to (13)” substitute “paragraphs (9) to (15)”, and after “member’s” insert “total”;
- (b) in paragraph (4) for “paragraphs (9) to (13)” substitute “paragraphs (9) to (15)”; and
- (c) after paragraph (13), insert —

“(14) Where—

- (a) a deceased Scheme member was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004(a); and
- (b) at the time of the member’s death, she was married to a woman and that marriage subsisted before the time when the certificate was issued; and
- (c) the marriage took place after the member’s active membership ceased,

the Scheme member’s female survivor is to be treated for the purpose of these Regulations as if the certificate had not been issued.

(a) 2004 c.7

(15) Where—

- (a) a deceased Scheme member was a man by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
 - (b) at the time of the member's death, he was married to a man and that marriage subsisted before the time when the certificate was issued; and
 - (c) the marriage took place after the member's active membership ceased,
- the Scheme member's male survivor is to be treated for the purpose of these Regulations as if the certificate had not been issued.”.

Insertion of new regulation 25A

37. After regulation 25 insert—

“Employer contributions for historic liabilities

25A.—(1) This regulation applies to an employer who—

- (a) is or was a Scheme employer or admission body in the 2015 Scheme or its equivalent under any of the Earlier Schemes;
- (b) has outstanding liabilities to a fund (“the relevant fund”) in relation to any person entitled to benefits under the 2015 Scheme or any of the Earlier Schemes;
- (c) irrespective of whether that employer employs active members contributing to one or more other funds, does not employ any active members contributing to the relevant fund;
- (d) has not paid into the relevant fund an exit payment under regulation 62 of the 2014 Regulations (special circumstances where revised actuarial valuations and certificates must be obtained) or an equivalent payment under any of the Earlier Regulations.

(2) Where this regulation applies, an administering authority may require the employer to pay such contributions as an actuary certifies must be paid to meet the outstanding liabilities to the relevant fund.

(3) Payments under paragraph (2) must be paid over such period of time as the administering authority considers reasonable.

(4) When an employer has paid the contributions referred to in paragraph (2), no further payments are due from that employer in respect of those liabilities to the relevant fund relating to the benefits in respect of any current or former employees of that employer.”.

Amendment of regulation 26

38. In regulation 26(1) for “Certificate of Protection” substitute “certificate of protection”.

PART 4

Amendment of the 1998 Regulations

Amendment of the 1998 Regulations

39. The 1998 Regulations are amended in accordance with regulation 40 to 42.

Amendment of regulation 30

40. In regulation 30(8) for “employing authority or former employing authority” substitute “administering authority”.

Insertion of new regulations in 1998 Regulations

41. After regulation 41, insert—

“Marriage of a same sex couple

41A.—(1) Subject to regulation 41C, in this Scheme—

- (a) a reference to civil partnership is to be read as including a reference to marriage of a same sex couple;
- (b) a reference to civil partners is to be read as including a reference to a married same sex couple; and
- (c) a reference to a person who is in a civil partnership is to be read as including a reference to a person who is married to a person of the same sex.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, or a reference to a person whose civil partnership has ended) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

Living together as a same sex couple

41B.—(1) In this Scheme—

- (a) a reference to persons who are not in a civil partnership but are living together as civil partners is to be read as including a reference to a same sex couple who are not married but are living together as a married couple;, and
- (b) a reference to a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

Continuation of marriage where Scheme member acquires new legal gender

41C.—(1) Where—

- (a) a deceased Scheme member was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004(a); and
- (b) at the time of the member’s death, she was married to a woman and that marriage subsisted before the time when the certificate was issued,

the Scheme member’s widow is to be treated for the purpose of these Regulations as if the certificate had not been issued.

(2) Where—

- (a) a deceased Scheme member was a man by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
- (b) at the time of the member’s death, he was married to a man and that marriage subsisted before the time when the certificate was issued,

(a) 2004 c.7

the Scheme member's widower is to be treated for the purpose of these Regulations as if the certificate had not been issued.”.

Amendment of regulation 96

42. In regulation 96(9) for “Scheme employer” substitute “administering authority”.

PART 5

Amendment of the 2008 Regulations

Amendment of the 2008 Regulations

43. The 2008 Regulations are amended in accordance with regulation 44.

Insertion of new regulations in 2008 Regulations

44. After regulation 24, insert—

“Marriage of a same sex couple

24A.—(1) Subject to regulation 24C, in this Scheme—

- (a) a reference to civil partnership is to be read as including a reference to marriage of a same sex couple;
- (b) a reference to civil partners is to be read as including a reference to a married same sex couple; and
- (c) a reference to a person who is in a civil partnership is to be read as including a reference to a person who is married to a person of the same sex.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, or a reference to a person whose civil partnership has ended) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

Living together as a same sex couple

24B.—(1) In this Scheme—

- (a) a reference to persons who are not in a civil partnership but are living together as civil partners is to be read as including a reference to a same sex couple who are not married but are living together as a married couple; and
- (b) a reference to a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

Continuation of marriage where Scheme member acquires new legal gender

24C.—(1) Where—

- (a) a deceased Scheme member was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004^(a); and
- (b) at the time of the member's death, she was married to a woman and that marriage subsisted before the time when the certificate was issued,

the Scheme member's widow is to be treated for the purpose of these Regulations as if the certificate had not been issued.

(2) Where—

- (a) a deceased Scheme member was a man by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
- (b) at the time of the member's death, he was married to a man and that marriage subsisted before the time when the certificate was issued,

the Scheme member's widower is to be treated for the purpose of these Regulations as if the certificate had not been issued.”.

A member of the Scottish Government

St Andrew's House,
Edinburgh

2015

^(a) 2004 c.7

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments to the main regulations which constitute the Local Government Pension Scheme in Scotland, namely the Local Government Pension Scheme (Scotland) Regulations 2014 and to the transitional and savings provisions in relation to that scheme contained in the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014. They also make amendments to the Local Government Pension Scheme (Scotland) Regulations 1998 and the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 to allow for survivor benefits to be payable in relation to survivors of same sex marriages under old schemes which are carried over into the 2015 Scheme.