

2009 No. 187

PENSIONS

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009

Made - - - - 14th May 2009

Laid before the Scottish Parliament 15th May 2009

Coming into force in accordance with regulation 1(2)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 7, 12 and 24 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 such associations of local authorities as appeared to them to be concerned, such local authorities with whom consultation appeared to them to be desirable, and such representatives of other persons likely to be affected by the proposed regulations as appeared to them to be appropriate.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2009.

(2) Subject to paragraph (3), these Regulations come into force on 8th June 2009 and have effect from 1st April 2009(b).

(3) Regulation 5(b) and (d) comes into force on 1st April 2010.

Amendment of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

2. The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998(c) are amended in accordance with regulations 3 to 28.

3. In regulation 2 (general interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the 1987 Regulations” insert—

““the Administration Regulations” means the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008(d);”;

(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) Retrospective effect is permitted by section 12(1) of the Superannuation Act 1972.

(c) S.I. 1998/192, amended by S.I. 1998/364 and 366 and S.S.I. 2000/77, 2005/554 and 2006/609.

(d) S.S.I. 2008/228.

- (ii) after the definition of “assumed member” insert–
 - ““the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008(a);”;
 - (iii) in paragraph (a) of the definition of “LGPS employer”, after “LGPS Regulations” insert “or the Administration Regulations (whichever is applicable)”;
 - (iv) in the definition of “LGPS member”, after “LGPS Regulations” insert “or the Administration Regulations (whichever is applicable)”;
 - (v) in the definition of “pensionable remuneration”, at the end insert “or regulation 5 of the Benefits Regulations”;
 - (vi) in the definition of “the Scheme”, at the end insert “or the Administration Regulations (whichever is applicable)”;
 - (b) in paragraph (3), after “the LGPS Regulations” insert “, the Administration Regulations or the Benefit Regulations (whichever is applicable)”;
 - (c) in paragraph (4)–
 - (i) after “the LGPS Regulations” insert “, the Administration Regulations or the Benefit Regulations”;
 - (ii) after “corresponding provision of” insert “the LGPS Regulations,”.
- 4. In regulation 5 (interpretation of part III)–**
- (a) in paragraph (1)–
 - (i) in paragraph (a) of the definition of “effective service”, after “LGPS Regulations” insert “or the Benefits Regulations”;
 - (ii) in paragraph (b) of the definition of “occupational pension”, after “LGPS Regulations” insert “or the Administration Regulations”; and
 - (iii) for the definition of “relevant English or Welsh employer”, substitute–
 - ““relevant English or Welsh employer” means a scheme employer within the meaning of the Local Government Pension Scheme (Administration) Regulations 2008(b);”;
 - (b) in paragraph (3), after “regulation 130(1) of the LGPS Regulations (separate employments under one employer)” insert “or regulation 8(1) of the Administration Regulations (separate employments etc.)”; and
 - (c) in paragraph (4), after “regulation 130(2) (returning officers etc.) of the LGPS Regulations” insert “or regulation 8(2) and (3) of the Administration Regulations”.
- 5. In regulation 6 (persons who are eligible to benefit: LGPS members and assumed members)–**
- (a) in paragraph (1)(b)(i), after “regulation 25(1)(b) of the LGPS Regulations (redundancy etc.)” insert “or regulation 19(1) of the Benefits Regulations (early leavers: business efficiency and redundancy)”;
 - (b) for paragraph (1)(d), substitute–
 - “subject to paragraph (4), on the material date he has attained the age of 55, but not the age of 65;”;
 - (c) for paragraph 1(e)(ii), substitute–
 - “(ii) any periods of–
 - (a) superannuable membership (as defined in regulation 9 of the LGPS Regulations) and any increase in membership under regulation 13 of the Transitional Regulations;

(a) S.S.I. 2008/230.

(b) S.I. 2008/239.

- (b) membership (as defined in regulation 7 of the Benefits Regulations) and any increase in total membership under regulation 12 of the Benefits Regulations,”; and
 - (d) after paragraph (3), insert–
 - “(4) In the case of a person who was a member of the occupational pension scheme constituted by the LGPS Regulations on 5th April 2006, paragraph (1)(d) applies as if “the age of 50” was substituted for “the age of 55”.”.
6. In regulation 8 (power to award credited period for compensation purposes)–
- (a) in paragraph (1), after “regulation 51 of the LGPS Regulations” insert “or regulation 12 or 13 of the Benefits Regulations”;
 - (b) for paragraph (1)(c), substitute–
 - “(c) the aggregate of–
 - (i) his effective membership;
 - (ii) any periods which count as periods of superannuable membership (as defined in regulation 9 of the LGPS Regulations) and any increase in membership under regulation 13 of the Transitional Regulations (or, if he is an assumed member, would count or, as the case may be, would apply or be awarded apart from a relevant disqualification and on the relevant assumptions); and
 - (iii) any periods which count as periods of membership (as defined in regulation 7 of the Benefits Regulations) and any increase in total membership under regulation 12 of the Benefits Regulations (or, if he is an assumed member, would count or, as the case may be, would apply or be awarded apart from a relevant disqualification and on the relevant assumptions); or”;
 - (c) in paragraph (7)(b)(i), for “of the” to the end substitute “of the LGPS Regulations or regulation 12 of the Benefits Regulations”.
7. In regulation 9 (lump sum compensation)–
- (a) in paragraph (2)–
 - (i) in sub-paragraph (a), after “regulation 25 of the LGPS Regulations (early retirement on redundancy, or in the interests of efficiency or on the cessation of a joint appointment)” insert “or regulation 19 of the Benefits Regulations (early leavers: business efficiency and redundancy)”;
 - (ii) in sub-paragraph (b) omit from “and on the further assumption” to “they have done so”; and
 - (iii) for “equal to the amount” to the end, substitute “calculated by multiplying his final pay by the appropriate multiplier”; and
 - (b) after paragraph (2) insert–
 - “(3) The appropriate multiplier is–

$$\frac{3 \times \text{the person's credited period}}{80} .”.$$

8. For regulation 10(2) (annual compensation; general provisions) substitute–
- “(2) If–
 - (a) he is entitled, on ceasing to hold his former employment, by virtue of regulation 25 of the LGPS Regulations (early retirement on redundancy, or in the interests of efficiency or on the cessation of a joint appointment) or regulation 19 of the Benefits Regulations (early leavers: business efficiency and redundancy); or

(b) but for a relevant disqualification, he would be so entitled on the relevant assumptions,
he is, from the day following the material date, entitled to receive annual compensation calculated by multiplying his final pay by the appropriate multiplier.

(3) The appropriate multiplier is–

$$\frac{\textit{the person's credited period}}{80} .”$$

- 9.** In regulation 11 (limit on annual compensation where entitlement to occupational pension)–
- (a) in paragraph (1)(c)(ii), after “regulation 25 of the LGPS Regulations” insert “or regulation 19 of the Benefits Regulations (early leavers: business efficiency and redundancy)”; and
 - (b) in paragraph (2)(a), after “Part II of the LGPS Regulations” insert “or regulation 6 of the Benefits Regulations (benefits)”.
- 10.** In regulation 16(7) (reduction of annual compensation during new employment), at the end insert “or regulation 65 of the Administration Regulations (application of abatement policy to individual cases)”.
- 11.** In regulation 17 (cessation of new employment)–
- (a) in paragraph (3), after “Part II of the LGPS Regulations” insert “or regulation 6 of the Benefits Regulations (benefits)”; and
 - (b) for paragraph (4), substitute–
“(4) For the purposes of paragraph (1), the effective service of a person includes–
 - (a) reckonable service within the meaning of the LGPS Regulations which, but for this paragraph, would be excluded by virtue of regulation 8(4) of the LGPS Regulations (exclusion of periods in respect of which transfer values paid); and
 - (b) total membership within the meaning of the Benefits Regulations which, but for this paragraph, would be excluded by virtue of regulation 12(2) of the Administration Regulations (periods of membership).”.
- 12.** In regulation 18(4) (reduction of annual compensation on cessation of new employment), for “regulations 19 and 53 of the LGPS Regulations” substitute “regulation 19 of the LGPS Regulations or regulation 8(5) of the Benefit Regulations”.
- 13.** In regulation 20 (entitlement to surviving spouse’s or civil partner’s short-term and long-term compensation)–
- (a) in paragraph (1)(a), after “regulations 39 to 42 of the LGPS Regulations (surviving spouses’ or civil partners’ pensions)” insert “or regulations 24, 33 and 36 of the Benefits Regulations”; and
 - (b) in paragraph (3), after “under the LGPS Regulations” insert “or the Benefits Regulations”.
- 14.** In regulation 21(2) (amount of surviving spouse’s or civil partner’s short-term and long-term compensation) for sub-paragraph (b) substitute–
“(b) in a case where at the date of death the deceased was in a new employment in which he was a LGPS member, if that annual compensation were reduced in accordance with regulation 18 (reduction of annual compensation on cessation of new employment) on the assumption that the effective service referred to in regulation 18(5)(b)(ii) were the service which the deceased would have been entitled to count as–

- (i) reckonable service on the relevant assumptions if at the date of death the deceased had been such a person as is mentioned in regulation 26(1) of the LGPS Regulations (ill-health); or
- (ii) total membership on the relevant assumptions if he had been, at the time of his death, a person such as is mentioned in regulation 20 of the Benefits Regulations (early leavers: ill-health).”.

15. In regulation 24(1)(a) (entitlement to children’s long-term compensation), after “regulation 45 of the LGPS Regulations” insert “or a children’s pension under regulation 28, 34 or 37 of the Benefits Regulations”.

16. For regulation 25(3)(b) (amount of children’s long-term compensation) substitute–

“(b) in a case where at the time of the deceased’s death, the deceased was in a new employment in which he was a LGPS member, if that annual compensation were reduced in accordance with regulation 18 (reduction of annual compensation on cessation of new employment), on the assumption that the effective service referred to in regulation 18(5)(b)(ii) were the service he would be entitled to count as–

- (i) reckonable service on the relevant assumptions if he had been, at the time of his death, a person such as is mentioned in regulation 26(1) of the LGPS Regulations (ill-health); or
- (ii) total membership on the relevant assumptions if he had been, at the time of his death, a person such as is mentioned in regulation 20 of the Benefits Regulations (early leavers: ill-health).”.

17. In regulation 29(1) (payment of compensation), after “the LGPS Regulations” insert “or the Benefits Regulations”.

18. In regulation 31 (paying authority – general)–

- (a) in paragraph (3), after “the LGPS Regulations” insert “or the Administration Regulations”; and
- (b) in paragraph (5), after “the LGPS Regulations” insert “or the Administration Regulations”.

19. In regulation 34(2)(b) (persons to whom this part applies), for “regulation B4B(6) of the LGPS Regulations” substitute “regulation B4B(6) of the 1987 Regulations”.

20. In regulation 35(1) (determination to pay and computation of compensation)–

- (a) for “66 weeks’ remuneration” substitute “104 weeks’ remuneration”; and
- (b) for “regulation 51 of the Local Government Pension Scheme (Scotland) Regulations 1998(c)” substitute “regulation 51 of the LGPS Regulations or regulation 12 of the Benefits Regulations”.

21. In regulation 38(1)(b) (interpretation of Part V), after “by virtue of” insert “regulation 4 or 5 of the Administration Regulations,”.

22. In regulation 41(1) (allowances for pensioners)–

(a) for sub-paragraph (b) substitute–

“(b) on so ceasing regulation 39 does not apply, but he becomes entitled–

- (i) under Part II of the LGPS Regulations to receive payments in respect of an annual retirement pension and regulation 22 of those Regulations (different relevant period for calculating pensionable remuneration where a material reduction has been certified) does not apply; or
- (ii) under the Benefits Regulations to receive payments in respect of an annual retirement pension and regulation 43 of the Administration Regulations

(permanent reductions in pay: certificates of protection of pension benefits) does not apply; and”;

- (b) in sub-paragraph (c), after “the LGPS Regulations” insert “or as defined by regulation 9(2) of the Benefits Regulations (final pay: general)”.

23. In regulation 44(4) and (5) (application of Part V in respect of injury or disease before commencement date), for “Benefits Regulations” substitute “Local Government Superannuation (Scotland) (Benefits) Regulations 1954 and 1955(a)”.

24. In regulation 45(3)(d) (meaning of “service” in Part VI)–

- (a) after “regulation 6 of the LGPS Regulations (application for membership)” insert “or regulation 3 of the Administration Regulations (general eligibility for membership)”;

- (b) for “regulation 6(5) or 7 of those Regulations” substitute regulation 6(5) or 7 of the LGPS Regulations or regulations 10 or 11 of the Administration Regulations”.

25. In regulation 46(5) (death in service gratuities), after “regulations 20 to 22 of the LGPS Regulations” insert “or regulations 9 to 11 of the Benefit Regulations or regulation 43 of the Administration Regulations”.

26. After regulation 49 (schemes in connection with the exercise of powers) insert–

“PART VI(A)

GRATUITIES AS RESPECTS EARLY LEAVERS ON GROUNDS OF ILL HEALTH

Interpretation

49A. In this Part the expressions–

- (i) “employing authority”;
- (ii) “total membership”; and
- (iii) “pensionable pay”;

have the same meaning as in regulation 2 of the Benefits Regulations.

Ill-health gratuity

49B.—(1) Where, in the case of an active member who has at least two years total membership, an employing authority–

- (a) determines to terminate the member’s employment on the grounds of the member’s ill-health or infirmity of mind or body; and
- (b) does not determine, under regulation 20(1)(a) of the Benefits Regulations, to terminate the member’s local government employment on the grounds that the member’s ill-health or infirmity of mind or body renders the member permanently incapable of discharging efficiently the duties of the member’s current employment,

the employing authority may make the member a discretionary grant (“an ill-health gratuity”).

(2) An ill-health gratuity may consist only of a lump sum calculated in accordance with paragraph (3).

(3) Subject to paragraph (4), the amount is an amount equal to one week’s pay for every whole year of employment with that employing authority.

(4) The amount of ill-health gratuity may not exceed a sum equal to 30 weeks’ pay.

(a) S.I. 1954/1059 and 1955/1226.

(5) In this regulation, the amount of one week's pay is the amount equal to the annual rate of the member's pensionable pay on the day before the member's employment is terminated divided by 52."

27. In regulation 51A(1) (policy statement), for "Parts II, III and IV" substitute "Parts II, III, IV and VI(A)".

28. In regulation 51(2), for "Benefits Regulations", in both cases where they occur, substitute "Local Government Superannuation (Benefits) (Scotland) Regulations 1954 and 1955(a)".

Amendment of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008

29. In the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008(b)–

- (a) omit regulation 20(1)(b) (early leavers: ill-health); and
- (b) in regulation 31(2) (early payment of pension: ill-health), omit “, or for at least three years, whichever is the sooner”.

Amendment of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008

30. The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008(c) are amended in accordance with regulations 31 to 33.

31. In regulation 35(6)(a) (employers' contributions) for "regulation 16" substitute "regulation 15".

32. After regulation 38 (payment by employing authorities to appropriate administering authorities), insert–

“Additional costs arising from employing authority's level of performance

38A.—(1) This regulation applies where, in the opinion of the appropriate administering authority, it has incurred additional costs which should be recovered from an employing authority because of that employing authority's level of performance in carrying out its functions under these Regulations or the Benefits Regulations.

(2) The administering authority may give written notice to the employing authority stating–

- (a) the administering authority's reasons for forming the opinion mentioned in paragraph (1);
- (b) the authority's opinion that the employing authority's contribution under regulation 38(1)(d) (payment by employing authorities to appropriate administering authorities) should include an amount specified in the notice in respect of the additional costs attributable to that authority's level of performance;
- (c) the basis on which the specific amount is calculated; and
- (d) where the administering authority has prepared a pension administration strategy under regulation 60A (pension administration strategy), the provisions of the strategy which are relevant to the decision to give the notice and to the matters in sub-paragraph (a), (b) or (c)."

(a) S.I. 1954/1059 and 1955/1226.

(b) S.S.I. 2008/230.

(c) S.S.I. 2008/228.

33. After regulation 60 (exchange of information by authorities), insert–

“Pension administration strategy

60A.—(1) An administering authority may prepare a written statement of the authority’s policies in relation to such of the matters mentioned in paragraph (2) as it considers appropriate (“its pension administration strategy”) and, where it does so, paragraphs (3) to (7) apply.

(2) The matters are–

- (a) procedures for liaison and communication with employing authorities in relation to which it is the administering authority (“its employing authorities”);
- (b) the establishment of levels of performance which the administering authority and its employing authorities are expected to achieve in carrying out their Scheme functions by–
 - (i) the setting of performance targets;
 - (ii) the making of agreements about levels of performance and associated matters;
 - or
 - (iii) such other means as the administering authority considers appropriate;
- (c) procedures which aim to secure that the administering authority and its employing authorities comply with statutory requirements in respect of those functions and with any agreement about levels of performance;
- (d) procedures for improving the communication by the administering authority and its employing authorities to each other of information relating to those functions;
- (e) the circumstances in which the administering authority may consider giving written notice to any of its employing authorities under regulation 38A (additional costs arising from employing authority’s level of performance) on account of that authority’s unsatisfactory performance in carrying out its Scheme functions when measured against levels of performance established under sub-paragraph (b);
- (f) the publication by the administering authority of annual reports dealing with–
 - (i) the extent to which that authority and its employing authorities have achieved the levels of performance established under sub-paragraph (b); and
 - (ii) such other matters arising from its pension administration strategy as it considers appropriate; and
- (g) such other matters as appear to the administering authority, after consulting its employing authorities and such other persons as it considers appropriate, to be suitable for inclusion in that strategy.

(3) An administering authority must–

- (a) keep its pension administration strategy under review; and
- (b) make such revisions as are appropriate following a material change in its policies in relation to any of the matters contained in the strategy.

(4) In preparing or reviewing and making revisions to its pension administration strategy, an administering authority must consult its employing authorities and such other persons as it considers appropriate.

(5) An administering authority must publish–

- (a) its pension administration strategy; and
- (b) where revisions are made to it, the strategy as revised.

(6) When an administering authority publishes its pension administration strategy, or that strategy as revised, it must send a copy of it to each of its employing authorities and to the Scottish Ministers.

(7) An administering authority and its employing authorities must have regard to the current version of any pension administration strategy when carrying out their Scheme functions.

(8) In this regulation references to the functions of an administering authority include, where applicable, its functions as an employing authority.”.

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

34. In the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008^(a)–

- (a) in regulation 4(2) (membership accrued before 1st April 2009: rejoining deferred members), omit “within 12 months of becoming a member of the Scheme under paragraph (1)(b)”; and
- (b) in paragraph 4(2) of Schedule 2 (the 85 year rule: transitional provisions and savings) for “regulation 14” substitute “regulation 13”.

St Andrew’s House,
Edinburgh
14th May 2009

JOHN SWINNEY
A member of the Scottish Executive

^(a) S.S.I. 2008/229.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (“the Injury Benefit Regulations”). Regulations 3 to 6, 9 to 19, 21 to 25 and 28 are consequential to the Local Government Pension Scheme 2009 constituted by the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (“the Administration Regulations”) and the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (“the Benefits Regulations”) or make other minor amendments.

Regulations 7 and 8 also amend regulations 9 and 10 of the Injury Benefit Regulations to ensure that any lump sums and annual compensation arising from the award of compensatory added years under regulation 8 of those Regulations are calculated at $\frac{3}{80}$ and $\frac{1}{80}$ (respectively) of the person’s final pay.

Regulation 20 amends regulation 35 of the Injury Benefit Regulations to increase the compensation payable to employees who cease to be employed by reason of redundancy or business efficiency from 66 weeks’ pay to 104 weeks’ pay.

Regulation 26 inserts a new Part VI(A) into the Injury Benefit Regulations to provide for the discretionary payment of ill-health gratuities by employing authorities to employees whose employment is terminated on the grounds of ill-health but where the employing authority does not consider that the employee is rendered permanently incapable of discharging the duties of his or her current employment (regulation 20 of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 provides for the payment of certain benefits in cases where the employing authority terminates employment on the grounds that the employee is rendered permanently incapable of discharging efficiently the duties of his or her current employment).

An ill-health gratuity may consist only of a one-off lump sum, which is calculated on the basis of one week’s pay for each year’s service and limited to a maximum of 30 weeks’ pay. Regulation 27 amends regulation 51A(1) of the Injury Benefit Regulations to require employers to include in their policy statement the policy they intend to apply to their exercise of the discretionary in health gratuity.

Regulation 29 amends the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (“the Benefits Regulations”). Paragraph (a) amends regulation 20(1) of the Benefits Regulations to remove the requirement that a member must have a reduced likelihood of obtaining gainful employment before his or her normal retirement age before the member can receive benefits under that regulation.

Regulations 31 to 33 amend the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (“the Administration Regulations”). Regulations 32 and 33 insert new regulations 38A and 60A which allow administering authorities to have a “Pensions Administration Strategy” which allows them to agree levels of performance that employing authorities should strive to achieve in carrying out their functions under the Administration Regulations and the Benefits Regulations.

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