

**1982 No. 385 (S.50)****PENSIONS****The Local Government Superannuation (Scotland) Amendment Regulations 1982**

<i>Made - - - -</i>	<i>10th March 1982</i>
<i>Laid before Parliament</i>	<i>25th March 1982</i>
<i>Coming into Operation</i>	<i>15th April 1982</i>

In exercise of the powers conferred on me by sections 7 and 12 of the Superannuation Act 1972 (a), and of all other powers enabling me in that behalf, after consultation with such associations of local authorities as appeared to me to be concerned and such representatives of other persons likely to be affected by the regulations as appeared to me to be appropriate in accordance with section 7(5) of that Act, I hereby make the following regulations:—

*Title and commencement*

1.—(1) These regulations may be cited as the Local Government Superannuation (Scotland) Amendment Regulations 1982 and the Local Government Superannuation (Scotland) Regulations 1974 to 1981 (b) (in these regulations referred to as “the principal regulations”) and these regulations may be cited together as the Local Government Superannuation (Scotland) Regulations 1974 to 1982.

(2) These regulations shall come into operation on and have effect from 15th April 1982 except regulations 3, 4, 5(1)(b) and (e), 8 and 9 which shall have effect from 31st March 1977.

*Interpretation*

2. In these regulations, unless the context otherwise requires, words and expressions to which meanings are assigned by the principal regulations have the same respective meanings.

*Definitions*

3.—(1) In regulation A3(1) of the principal regulations after the definition of “regular fireman” there shall be inserted the following definitions—

“ “relevant absence” and “relevant contribution period” have the meanings assigned to them by regulation C1A;”.

(2) In the said regulation A3(1) after the definition of “statutory scheme” there shall be inserted the following definition—

“ “trade dispute” has the meaning assigned to it by regulation C1A;”.

(a) 1972 c.11.

(b) S.I. 1974/812, 1975/638, 1978/425, 1378, 1794, 1926, 1980/198, 342, 1885, 1981/1892.

*Absence due to trade dispute*

4. After regulation C1 of the principal regulations there shall be added the following regulation—

*“Absence due to trade dispute*

**C1A.**—(1) This regulation applies to a person who has been absent from duty, otherwise than on leave of absence, for a period of one or more days during and in consequence of a trade dispute, and who immediately before the period of absence or, where two or more periods of absence occurred in consequence of a single trade dispute, the first of those periods, was a pensionable employee.

(2) For the purposes of paragraph (1)—

- (a) a person whose contract of employment is terminated in consequence of a trade dispute is, notwithstanding the termination, to be treated as having been absent from duty after the termination if, not later than the day after the end of the trade dispute, he again becomes a pensionable employee of the same scheduled body; and
- (b) it is immaterial whether or not the person was participating in or financing or otherwise directly interested in the trade dispute or whether or not the employing authority were a party to the trade dispute.

(3) Subject to paragraphs (4), (5) and (7), if notice in writing is given for the purpose by either a person to whom this regulation applies or the personal representatives of such a person who has died without giving such notice, the amount specified in paragraph (6) is payable in respect of a relevant contribution period to the authority to whom notice was given; and the authority shall pay to the appropriate superannuation fund any sum they receive by way of full or part payment of that amount.

(4) Where all or part of more than one relevant contribution period is included in a relevant absence or relevant absences which occurred in consequence of a single trade dispute, notice given for the purpose of paragraph (3) in respect of any one of those periods is of no effect unless notice is given in respect of all those periods.

(5) Notice for the purpose of paragraph (3) must be given within the period of 3 months, or in the case of personal representatives the period of 12 months, beginning—

- (a) on the day after the last day of the relevant contribution period or, where paragraph (4) applies, of the last day of the relevant contribution periods, in respect of which it is given, or
- (b) on the date of coming into operation of the Local Government Superannuation (Scotland) Amendment Regulations 1982,

whichever is the later, or such longer period as the authority may allow, to the authority who are, or as the case may be, were the last employing authority in relation to the person by or in respect of whom the notice is given.

(6) The amount mentioned in paragraph (3) is an amount equal to 16% of the difference between—

- (a) the person's remuneration (if any) for the relevant contribution period, and
- (b) the remuneration he would have received for that period if it had not included any relevant absence or part of a relevant absence.

(7) Notwithstanding anything in regulation C4, but without prejudice to the power of the appropriate administering authority under that regulation to deduct from any payment by way of benefits under these regulations any sum remaining due on account of an amount payable under this regulation—

- (a) an employing authority shall not accept from a pensionable employee, or deduct from his remuneration, and
- (b) an administering authority shall not recover from a pensionable employee,

in any period of 12 months ending with 5th April, by way of full or part payment of so much of any amount payable under this regulation as is attributable to any relevant absence during that period, any sum which, when aggregated with any such amounts as are mentioned in Schedule 4, would exceed 15% of his remuneration for that period.

(8) In this regulation, unless the context otherwise requires—

“relevant absence” means a period for which a pensionable employee was absent from duty as mentioned in paragraph (1) excluding any part of such period as would result in his reckonable service exceeding 45 years, disregarding reckonable service before attaining the age of 60 years beyond a total of 40 years;

“relevant contribution period” means a period which—

- (a) is co-extensive with one of the intervals at which a person to whom this regulation applies was required under regulation C1(1) to contribute to the appropriate superannuation fund, and
- (b) includes all or part of a relevant absence;

“remuneration” does not include any guarantee payment under Part II of the Employment Protection (Consolidation) Act 1978 (a); and

“trade dispute” has the meaning assigned to it by section 29 of the Trade Union and Labour Relations Act 1974 (b).”.

#### *Leave of absence from duty*

5.—(1) In regulation C2 of the principal regulations—

- (a) at the beginning there shall be added the figure “—(1)”;
- (b) after the words “without remuneration”, there shall be added the words “shall not make any contribution under regulation C1 but”;
- (c) at the beginning of paragraph (b) there shall be added the words “subject to paragraph (2),”;
- (d) in paragraph (b) for the words “the day before the date on which he went on leave of absence”, in the first place where they occur, there shall be substituted the words “the day on which he returns to duty or the day on which he ceases to be employed by that authority, whichever is the earlier”; and
- (e) after the words “superannuation fund” there shall be added the words “of amounts equal to the contributions he would have been required to make under regulation C1”.

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(a) 1978 c.44.

(b) 1974 c.52.

(2) After paragraph (1) of regulation C2 of the principal regulations there shall be added the following paragraph—

“(2) Where the leave of absence was given to enable the employee to discharge any liability to serve on any jury in Scotland before any court there, civil or criminal, competent to try causes by jury and such absence for such reason continues after the expiration of the period specified in paragraph (1)(a), the employee shall be deemed to have given such a notice as is mentioned in paragraph (1)(b).”.

*Deduction from remuneration of employee’s contributions etc., and recovery thereof*

6. The following regulation shall be substituted for regulation C4 of the principal regulations—

“C4. An employing authority may deduct from the remuneration payable by them to a pensionable employee the contributions payable by him under regulation C1 or C2 to the appropriate superannuation fund, any amount payable by him under regulation C2A(3) or (4) to that fund and any amount payable by him under regulation C1A; and, if and so far as deductions are not made from the remuneration of a pensionable employee, the appropriate administering authority may recover any such contributions or amount in any court of competent jurisdiction or may deduct any sum remaining due on account thereof from any payment by way of benefits under these regulations.”.

*Return of employee’s contributions in certain cases*

7. In regulation C8(8)(e) of the principal regulations after the word “payments” there shall be added the words “or under regulation C1A”.

*Reckonable service*

8.—(1) In regulation D1(1) of the principal regulations—

- (a) for the words “paragraph (2)” there shall be substituted the words “paragraphs (1A), (1B) and (2)”; and
- (b) in paragraph (a) for the words “the contributions required by these regulations” there shall be substituted the words “contributions under regulation C1 or C2”.

(2) After regulation D1(1) of the principal regulations there shall be added the following regulations—

“(1A) A period of absence from duty without remuneration, otherwise than on leave of absence, may not be reckoned as reckonable service unless—

- (a) that period was a relevant absence, and
- (b) the amount specified in regulation C1A(6) has been paid in respect of every relevant contribution period all or part of which was included in that relevant absence.

(1B) Where the amount specified in regulation C1A(6) has been paid in respect of a relevant contribution period, so much of any relevant absence as was included in that period may be reckoned as reckonable service whether or not a contract of employment continued to subsist during the relevant absence or any part of it.”.

*Pensionable remuneration*

9.—(1) In regulation E1(2)(b)(i) of the principal regulations—

- (a) after the word “contributions”, where it occurs for the first time, there shall be added the words “under regulation C1 or C2 or payments under regulation C1A”;
- (b) for the word “contributions”, where it occurs for the second time, there shall be substituted the words “such contributions or payments or both”.

(2) The following regulations shall be substituted for regulation E1(3)(a) of the principal regulations—

“(3)(a) an employee whose remuneration was, during the 13 years immediately preceding the day following the end of the year specified in sub-paragraph (2)(a), reduced or discontinued by reason of his absence from duty owing to illness or injury shall be deemed to have received the remuneration which he would have received but for the reduction or discontinuance;

(aa) an employee—

- (i) whose remuneration was, during the period mentioned in sub-paragraph (a), reduced or discontinued during absence from duty, otherwise than by reason of illness or injury, but who made contributions in accordance with regulation C2 or a payment under regulation C1A,

or

- (ii) who, during that period, on reduction or discontinuance of his remuneration contributed under section 6(5) of the Act of 1937,

shall be deemed to have received for any period in respect of which he made such contributions or payment the remuneration which he would have received but for the reduction or discontinuance;”.

*Certificates as to reduction in remuneration*

10. In regulation L10(3) of the principal regulations for the figure “10” there shall be substituted the figure “13”.

*Amount to be paid for added years*

11. After paragraph 1 of Schedule 6 to the principal regulations there shall be added the following paragraphs—

“2.—(1) For the purposes of paragraph 1, in relation to any additional contribution falling to be paid by a pensionable employee under regulation D10(4) his remuneration for the time being shall be, subject to sub-paragraph (2), the remuneration received by him for the interval (being an interval determined under regulation D10(4)), at the end of which the additional contribution falls to be paid.

(2) For the purposes of sub-paragraph (1), a pensionable employee shall be taken to have received for any period for which, while a contract of employment subsisted, he was absent from duty with reduced remuneration or without remuneration, otherwise than by reason of illness or injury, the remuneration that he would have received but for his absence from duty.”.

*Amount to be paid for additional period*

12. After paragraph 5 of Schedule 8 to the principal regulations there shall be added the following paragraph—

“5A.—(1) For the purposes of paragraph 4, in relation to any additional contribution falling to be paid by a pensionable employee under regulation D13(2) his remuneration for the time being shall be, subject to sub-paragraph (2), the remuneration received by him for the interval (being an interval determined under regulation D13(2)) at the end of which the additional contribution falls to be paid.

(2) For the purposes of sub-paragraph (1), a pensionable employee shall be taken to have received for any period for which, while a contract of employment subsisted, he was absent from duty with reduced remuneration or without remuneration, otherwise than by reason of illness or injury, the remuneration that he would have received but for his absence from duty.”.

*Method and calculation of payment by employees to avoid reduction under regulation E3(5) or (6) of retiring allowance*

13. After paragraph 3 of Part III of Schedule 22 to the principal regulations there shall be added the following paragraph—

“4.—(1) For the purposes of paragraph 3, in relation to any additional contribution falling to be paid by a pensionable employee under paragraph 1 his remuneration for the time being is, subject to sub-paragraph (2), the remuneration received by him for the interval (being an interval determined under paragraph 2) at the end of which the additional contribution falls to be paid.

(2) For the purposes of sub-paragraph (1), a pensionable employee shall be taken to have received for any period for which, while a contract of employment subsisted, he was absent from duty with reduced remuneration or without remuneration, otherwise than by reason of illness or injury, the remuneration that he would have received but for his absence from duty.”.

*Right to opt out*

14.—(1) No provision of these regulations shall apply to any person to whom at any time before the date of coming into operation of these regulations any benefit (including a return of contributions and any pension payable to a widow or any dependant by virtue of a surrender) was or is being paid or became or may become payable if—

- (a) he is placed by that provision in a worse position than he would have been if it had not applied in relation to that benefit; and
- (b) that provision relates to a benefit paid or payable in respect of a person who—
  - (i) ceased before the said date of coming into operation to hold an employment in respect of which he was a pensionable employee,  
or
  - (ii) died before that date while still in such an employment; and
- (c) the first-mentioned person, by notice in writing given to the appropriate administering authority within 3 months after the said date of coming into operation, elects that that provision shall not apply to him.

(2) The provisions of Part H of the principal regulations (Determination of Questions and Appeals) shall apply in relation to rights and liabilities under these regulations as they apply in relation to rights and liabilities under the principal regulations.

*George Younger,*  
One of Her Majesty's Principal  
Secretaries of State.

New St. Andrew's House,  
Edinburgh.  
10th March 1982.

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#### EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These regulations further amend the Local Government Superannuation (Scotland) Regulations 1974 ("the principal regulations"). The main changes are—

- (a) where a period of absence due to industrial action would otherwise have resulted in a loss of reckonable service, or of both reckonable service and pensionable remuneration, a pensionable employee may gain the right to reckon the period as reckonable service, and to have notional remuneration during the period treated as pensionable remuneration, on making payment at a specified rate (16% of notional remuneration) greater than that of his normal contributions (Regulations 3, 4, 6, 7, 8 and 9);
- (b) other periods of unpaid absence without leave are not reckonable as reckonable service (Regulation 8(2));
- (c) the period for giving notice for the purpose of making contributions after the first 30 days of absence on leave without pay, or on reduced pay, is extended and the rate of contribution clarified, and notice is deemed to have been given where the leave was for jury service (Regulation 5);
- (d) inconsistencies between periods specified in the principal regulations for certain interrelated purposes are corrected (Regulations 9(2) and 10); and
- (e) in provisions of the principal regulations requiring periodical payments made for various purposes to be calculated by reference to "remuneration for the time being", the meaning of that expression is clarified and it is extended to include notional remuneration during periods of absence (Regulations 11, 12 and 13).

Under powers conferred by Section 12 of the Superannuation Act 1972 the provisions of the Regulations relating to industrial action are brought into force with effect from 31st March 1977. Certain related provisions on unpaid leave and reckoning of service (Regulations 5(1)(b) and (e) and 9) are amended with effect from the same date but anyone who has retired in the interim period can opt out of having them applied to his detriment (Regulation 14(1)).

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