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## STATUTORY INSTRUMENTS

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# 1987 No. 1850

## The Local Government Superannuation (Scotland) Regulations 1987

### PART L

#### INJURY ALLOWANCES ETC.

#### Interpretation

**L1.** In this Part, unless the context otherwise requires—

“benefits” means any allowance or lump sum payable under this Part;

“relevant body” has the meaning given by regulation L7; and

“relevant employment” has the meaning given by regulation L2(2).

#### Persons to whom Part L applies

**L2.**—(1) Subject to paragraph (4), this Part applies to a person employed in a relevant employment if he—

(a) sustains an injury, or

(b) contracts a disease,

as a result of anything he was required to do in carrying out his work.

(2) “Relevant employment” is employment, otherwise than as a teacher, with a body specified in Part I of Schedule 3 or in Part II of that Schedule or the predecessor of such a body, and for the purposes of this Part a police cadet appointed under section 8 of the Police (Scotland) Act 1967<sup>(1)</sup> shall be deemed to be in employment with the police authority who maintain the police force with which he is undergoing training.

(3) A person is to be treated for the purpose of paragraph (1) as having sustained an injury as mentioned in that paragraph if—

(a) he sustains the injury while travelling by vehicle as a passenger with the express or implied permission of his employer to or from his place of work, and

(b) at the time of the injury the vehicle was being operated, otherwise than in the course of a public transport service, by or on behalf of his employer or pursuant to arrangements made by his employer.

(4) This Part does not apply where the injury or disease is one in respect of which the person is entitled to an injury award under a scheme made in accordance with section 26 of the Fire Services Act 1947<sup>(2)</sup> or is entitled to injury benefits under Regulations made in accordance with section 27 of the Police (Scotland) Act 1967.

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(1) 1967 c. 77

(2) 1947 c. 41

**Loss of employment through permanent incapacity**

**L3.**—(1) If, as a result of an incapacity which is likely to be permanent caused by the injury or disease, a person to whom this Part applies ceases to be employed in a relevant employment (whether or not it is the same employment as that in which the injury or disease was sustained or contracted), he shall be entitled to an annual allowance.

(2) The allowance is to be paid by the relevant body and is to be of such amount as the body may from time to time determine.

(3) The relevant body may suspend or discontinue the allowance if the person becomes capable of working again.

(4) The allowance shall not exceed 85 per cent of the person's annual rate of remuneration in respect of the employment when he ceased to be employed.

(5) In ascertaining for the purposes of paragraph (4) a person's annual rate of remuneration in respect of the employment when he ceased to be employed—

- (a) the annual rate of any fluctuating element of his remuneration is to be estimated by reference to an average taken over a representative period;
- (b) the annual rate of any benefit in kind included in his remuneration is to be the estimated annual value of the benefit in kind at the date on which he ceased to be employed;
- (c) if at that date he had no remuneration or his remuneration was reduced because of absence from duty, the annual rate is to be taken to be the annual rate which would have applied if he had not been absent;
- (d) if at that date he was entitled to an allowance under regulation L4 by reason of a reduction in his remuneration, whether as a result of the same or of some other injury or disease, the annual rate is to be taken to be the annual rate which would have applied if his remuneration had not been reduced;
- (e) if his remuneration is retrospectively altered as a result of a pay award, the annual rate of his remuneration is to be based on the retrospective pay award; and
- (f) if his remuneration is not calculated by reference to an annual rate but by reference to some other rate, the annual rate is to be derived from the applicable rate at the date on which he ceased to be employed.

(6) In determining the amount of the allowance the relevant body is to have regard to all the circumstances of the case, including the matters specified in regulation L8.

**Reduction in remuneration**

**L4.**—(1) If as a result of the injury or disease to a person to whom this Part applies that person suffers a reduction in his remuneration while he is employed in relevant employment (whether or not it is the same employment as that in which the injury or disease was sustained or contracted) and regulation L3 does not apply, he shall be entitled to an allowance while the reduction continues.

(2) A person's remuneration is to be treated for the purposes of paragraph (1) as reduced if at any time it is lower than it would have been but for the injury or disease.

(3) The allowance is to be paid by the relevant body and is to be of such amount as the body may from time to time determine.

(4) The amount of the allowance, together with the person's remuneration in the relevant employment, is not in any year to exceed the remuneration he would have been paid if he had not sustained or contracted the injury or disease.

(5) In determining the amount of an allowance under this regulation the relevant body is to have regard to all the circumstances of the case, including the matters specified in regulation L8.

### **Allowances for pensioners**

**L5.**—(1) If on ceasing to be employed in a relevant employment a person becomes entitled under regulation E2 to receive payments in respect of an annual retirement pension and—

- (a) immediately before ceasing to be so employed he was entitled to an allowance under regulation L4, and
- (b) on ceasing to be so employed he does not become entitled to an allowance under regulation L3, and
- (c) regulation E22(4) does not apply,

the relevant body may pay him an allowance under this regulation.

(2) An allowance under this regulation—

- (a) is not in any year to exceed the amount by which the annual rate of the retirement pension falls short of what it would have been if the amount of the allowance paid under regulation L4 during the relevant period (within the meaning of regulation E22(2)) had been part of his remuneration in the relevant employment, and
- (b) continues for such period as the relevant body may determine.

### **Death benefits**

**L6.**—(1) If a person to whom this Part applies dies as a result of the injury or disease—

- (a) if he leaves a widow who qualifies under paragraph (2), she shall be entitled to an annual allowance or lump sum, and
- (b) if he leaves a dependant, the dependant shall be eligible for an annual allowance or lump sum.

(2) A widow qualifies for an annual allowance or lump sum unless—

- (a) her marriage to the person in question took place after he ceased to be employed in relevant employment and he was not subsequently employed in such employment; or
- (b) at the date of death she was judicially separated or cohabiting with another man.

(3) The allowance or lump sum is to be paid by the relevant body and is to be of such amount as the body may from time to time determine or, as the case may be, may determine.

(4) In determining the amount of any allowance or lump sum the relevant body is to have regard to all the circumstances of the case, including the matters specified in regulation L8.

(5) An allowance to a widow shall cease if she remarries or cohabits with another man, but if she again becomes a widow or the marriage is dissolved or she no longer cohabits with a man the relevant body may restore the allowance for such period as they may determine.

(6) An allowance to a dependant shall continue for such period as the relevant body may determine.

(7) This regulation shall apply with necessary modifications to a widower who at the date of his wife's death is permanently incapacitated by reason of ill-health or infirmity of mind or body and wholly or mainly dependent on her.

### **The relevant body**

**L7.**—(1) The relevant body for the purposes of this Part is—

- (a) the body by whom the person in question was employed immediately before he first qualifies for any benefit under this Part; or

- (b) if he dies without qualifying for any benefit under this Part, the body which last employed him in a relevant employment before his death; or
  - (c) if the body specified in sub-paragraph (a) or (b) has ceased to exist, the body to which he would have been transferred if he had continued in the employment in question.
- (2) Any question arising under paragraph (1)(c) as to the identity of the body to which the person would have been transferred shall be determined by the Secretary of State.

### **Rights and payments to be taken into account in determining amount of benefit**

**L8.** In determining the amount of any benefit under this Part the relevant body is to have regard to—

- (a) any right to benefit under Chapter IV or Chapter V of Part II of the Social Security Act 1975 or corresponding provisions of earlier enactments;
- (b) any other statutory right to benefit or compensation;
- (c) any right to receive superannuation benefit (whether payable under an enactment or otherwise) out of any fund to which any body which employed him in relevant employment has made any contributions in respect of him or out of any fund to which assets of any such fund were transferred; and
- (d) any damages recovered, and any sum received by virtue of a contract of insurance.

### **Retrospective effect**

**L9.**—(1) Subject to the following provisions of this regulation, this Part applies even if the injury or disease was sustained or contracted before 21st December 1987.

(2) Regulation L3, L4, L5 or L6, as the case may be, does not apply if the relevant event occurred before 31st March 1972 but, subject to the following provisions of this regulation, does apply if the relevant event occurred on or after that date and before 21st December 1987.

(3) For regulations L3 and L5 the relevant event is the cessation of the employment, for regulation L4 it is the reduction of remuneration and for regulation L6 it is the death of the employee.

(4) If adequate provision has already been made for the person in question under regulation 7 of the Benefits Regulations or the 1974 Regulations, this Part does not apply to him.

(5) If regulation L3, L4, L5 or L6 applies in any case by virtue of paragraph (2) and paragraph (4) does not apply, the relevant body shall decide what benefit, if any, is to be granted in accordance with the applicable regulation for any past or future period but in making that decision they shall take into account any allowance to which the person is or was entitled under regulation 7 of the Benefits Regulations.

(6) For the purpose of this Part any injury benefit payable under Part S of the 1974 Regulations shall be treated as if it had been paid under this Part.

### **Finance**

**L10.** Benefits under this Part are not to be met out of any superannuation fund.

### **Appeals**

**L11.** Regulation N8(3)(b) shall not apply to this Part.

### **Notice of decisions**

**L12.** The relevant body shall give notice in writing of any decision relating to any benefit under this Part to the person affected and shall inform him about his right of appeal under regulation N8 and the time in which it must be exercised.