
STATUTORY INSTRUMENTS

1996 No. 414 (S.30)

PENSIONS

**The Local Government Superannuation
(Scotland) Amendment Regulations 1996**

<i>Made</i>	- - - -	<i>18th February 1996</i>
<i>Laid before Parliament</i>		<i>8th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(1) and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate in accordance with section 7(5) of that Act, and not having considered consultation with any individual local authority desirable, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Local Government Superannuation (Scotland) Amendment Regulations 1996.

(2) These Regulations shall come into force on 1st April 1996, but—

- (a) regulations 2 to 4 and 17 shall have effect from 17th May 1990;
- (b) regulations 12 to 15 and 18 shall have effect from 28th December 1994; and
- (c) regulations 5 to 11 shall have effect from 2nd May 1995.

Amendment of the Local Government Superannuation (Scotland) Regulations 1987

2. The Local Government Superannuation (Scotland) Regulations 1987(2) (referred to in these Regulations as “the principal Regulations”) shall be amended in accordance with regulations 3 to 15 below.

(1) 1972 c. 11; section 7(3) was extended by the Pensions (Increase) Act 1974 (c. 9), section 2(2); section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 10.
(2) S.I.1987/1850; amended by S.I.1988/625, 1989/422, 802 and 967, 1990/422 and 1284, 1991/78, 1992/1220, 1597 and 3025, 1993/1593, 2013 and 3044, 1994/531 and 1995/214, 750 and 3294.

Entitlement to retirement pension and retiring allowance

3. Regulation E2 shall be amended—

- (a) in paragraph (6)—
 - (i) by substituting for the words “to (11)” the words “and (10)”; and
 - (ii) by substituting for sub-paragraph (c) to the end the following sub-paragraph:—
 - “(c) in the case of a person who has attained the age of 60 years, has ceased to be employed in local government employment and has duly elected to receive payment from the relevant date, from that date.”;
- (b) by inserting after paragraph (6) the following paragraphs:—
 - “(6A) An election under paragraph (6)(c) shall be made by notice in writing to the employing authority given within the period of three months beginning with the relevant date.
 - “(6B) In paragraphs (6)(c) and (6A) “relevant date” in relation to any person means—
 - (a) the date on which he attains the age of 60 years, or
 - (b) if later, the date of his ceasing to be employed in local government employment.”;
- (c) in paragraph (7) by omitting the words “Subject to paragraph (11),”; and
- (d) by deleting paragraph (11).

Amount of retirement pension and retiring allowance

4. Regulation E3(15) shall be amended—

- (a) in sub-paragraph (b) by inserting at the end the words “before 1st April 1996”; and
- (b) by inserting after sub-paragraph (b) the following sub-paragraph:—
 - “or
 - (c) in the case of a man, to less than the annual rate obtained by multiplying one eightieth of his pensionable remuneration by the length in years of the whole period of his service in contracted-out employment on or after 17th May 1990 and before 1st April 1996”.

Entitlement to widow’s short-term and long-term pensions

5. Regulation E5 shall be amended—

- (a) in paragraph (1) by inserting after sub-paragraph (a) the following sub-paragraph:—
 - “(aa) would have been so entitled but for the commutation of such payments for a lump sum in accordance with regulation E11A, or”; and
- (b) in paragraph (4) by inserting after the words “paragraph (1)(a)” the word “, (aa)”.

Amount of widow’s short-term and long-term pensions

6. Regulation E6 shall be amended—

- (a) in paragraph (1) by inserting—
 - (i) in sub-paragraph (a) after the word “applies” the words “, and the provisions of sub-paragraph (d) of this paragraph do not apply,”; and
 - (ii) after sub-paragraph (c) the following sub-paragraph:—

“or

- (d) where all or part of her husband’s retirement pension was commuted for a lump sum in accordance with regulation E11A, a rate equal to the annual rate of the retirement pension to which her husband would have been entitled immediately before the date of his death but for such commutation.”; and
- (b) in paragraph (2) by inserting—
 - (i) in sub-paragraph (a) after the word “applies” the words “, and the provisions of sub-paragraph (g) of this paragraph do not apply”; and
 - (ii) after sub-paragraph (f) the following sub-paragraph:—
 - “and
 - (g) where all or part of her husband’s retirement pension was commuted for a lump sum in accordance with regulation E11A, half the annual rate of the retirement pension to which her husband would have been entitled immediately before the date of his death but for such commutation.”.

Entitlement to children’s short-term and long-term pensions

- 7. Regulation E8 shall be amended—
 - (a) in paragraph (1) by inserting after sub-paragraph (a) the following sub-paragraph:—
 - “(aa) would have been so entitled but for the commutation of such payments for a lump sum in accordance with regulation E11A, or”; and
 - (b) in paragraph (4) by inserting after the words “paragraph (1)(a)” the words “or (aa)”.

Amounts of children’s short-term and long-term pensions

- 8. Regulation E9(4)(c) shall be amended—
 - (a) by inserting after the words “in respect of a retirement pension” the words “, or would have been so entitled but for the commutation of such retirement pension for a lump sum in accordance with regulation E11A,”;
 - (b) by inserting after head (ii) the following head—
 - “(iii) the commutation of all or part of such retirement pension for a lump sum under regulation E11A, and”; and
 - (c) by renumbering existing head (iii) as “(iv)”.

Death gratuity

- 9. Regulation E11 shall be amended—
 - (a) in paragraph (1) by inserting after the words “to (11)” the words “and regulation E11A(5)”;
 - (b) in paragraph (3) by substituting for the words “paragraphs (4) to (11)” the words “paragraphs (4A) to (11)”;
 - (c) by substituting for paragraph (4) the following paragraph:—
 - “(4) Where paragraph (1)(a) applies the death gratuity shall be an amount equal to twice the deceased’s pensionable remuneration, less, in a case where a surviving spouse’s long-term pension is payable under regulation E5, the appropriate amount to be deducted under paragraph (9).”.

Commutation of pension for reason of ill-health

10. After regulation E11 there shall be inserted the following regulation:—

“Commutation of pension for reason of ill-health

E11A.—(1) This paragraph applies where the appropriate administering authority, acting on medical advice, is satisfied that, at the time when a retirement pension first becomes payable to a former pensionable employee (“the recipient”), he is in serious ill-health, with a life expectancy of less than one year.

(2) In a case to which paragraph (1) applies, the appropriate administering authority may commute so much of the retirement pension as exceeds or would exceed the guaranteed minimum pension for a lump sum payable to the recipient of such amount as shall be calculated in accordance with paragraph (3).

(3) The lump sum payable under paragraph (2) is the amount obtained by multiplying the commuted amount of the recipient’s annual retirement pension, rounded up to the nearest one pound, by a factor of 5.

(4) Payment of a lump sum under paragraph (2) shall discharge the appropriate administering authority’s liability to pay a death gratuity under regulation E11.

(5) The appropriate administering authority shall deduct from any payment under this regulation any tax to which they may become chargeable under section 599 of the Income and Corporation Taxes Act 1988(3) (charge to tax: commutation of entire pension in special circumstances).”

Interest on late payment

11. Regulation E35 shall be amended—

(a) in paragraph (1)—

(i) by deleting the word “or” where it appears at the end of sub-paragraph (b);

(ii) by inserting the following sub-paragraph after sub-paragraph (c):—

“or

(d) an ill-health lump sum payment payable under regulation E11A,”;

(iii) by deleting the word “or” where it appears immediately after the words “the allowance” and by inserting a comma there; and

(iv) by inserting after the word “gratuity” where it appears for a second time the words “or payment”; and

(b) in paragraph (2) by inserting at the end the following sub-paragraph:—

“(h) in the case of an ill-health lump sum payable under regulation E11A, the date on which a retirement pension first becomes payable.”

Certain persons who become subject to certain other superannuation schemes

12. In regulation J13—

(a) in paragraph (3)(b) for the words “to whom regulation J14 applies” there shall be substituted the words “who has given notice under regulation J14(4)(b)”; and

(b) paragraph (4) shall be deleted.

(3) 1988 c. 1; section 599 was amended by the Finance Act 1989 (c. 26), Schedule 6, paragraphs 11 and 18, the Finance (No.2) Act 1992 (c. 48), Schedule 9, paragraph 16, the Finance Act 1993 (c. 34), section 107 and the Finance Act 1995 (c. 4), section 59.

Transfer of rights of persons to whom regulation J13 applies

13. For regulation J14 and the heading thereto there shall be substituted the following:—

“Transfer of pension rights

J14.—(1) In this regulation, unless the context otherwise requires—

“the 1993 Act” means the Pension Schemes Act 1993(4);

“appropriate part of the fund” means the part determined in accordance with paragraph (8);

“contracted-out” has the meaning given by section 7 of the 1993 Act(5);

“eligible employer” means a scheduled body or a body which has entered into an admission agreement;

“pensionable service” has the meaning given by section 70(2) and (3) of the 1993 Act;

“relevant beneficiaries” means the pensionable employees to whom this regulation applies and other persons who under these Regulations are or may become entitled to benefit through such pensionable employees;

“the scheme managers” means the scheme managers of the transferee scheme;

“the transfer date” means in the case of—

- (a) a person within paragraph (2)(a)(i), the date of transfer of the undertaking;
- (b) a person within paragraph (2)(a)(ii), the date his employer ceases to be an eligible employer; and
- (c) a person within paragraph (2)(b), the date on which he becomes subject to an approved non-local government scheme;

“transferee scheme” means the approved non-local government scheme to which a person transfers his pension rights under this regulation;

“undertaking” has the same meaning as in the Transfer of Undertakings (Protection of Employment) Regulations 1981(6).

(2) This paragraph applies—

(a) to a person who ceases to be a pensionable employee because—

- (i) the undertaking in which he is employed is transferred to a body which is not an eligible employer; or
- (ii) the body by which he is employed ceases to be an eligible employer for whatever reason,

and in respect of whom the body employing him after the transfer date can make other provision under an approved non-local government scheme; and

(b) to a person to whom regulation J13 applies.

(3) A person within paragraph (2)(a) shall be treated for the purposes of these Regulations as having ceased to hold his employment on the transfer date.

(4) Where—

- (a) a person to whom paragraph (2) applies has not reached state pensionable age on the transfer date, and

(4) 1993 c. 48.

(5) Section 7 was amended by the Pensions Act 1995 (c. 26), section 136(1) and Schedule 5, paragraph 22.

(6) S.I.1981/1794; regulation 2(1) was relevantly amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 33(2).

- (b) before the transfer date or, with the consent of his employing authority, the appropriate administering authority and the scheme managers, within 3 months after the transfer date, he has given written notice to the appropriate administering authority and, if different, to his employing authority that he wishes to transfer his pension rights under these Regulations to the transferee scheme, and
- (c) the scheme managers, the appropriate administering authority and, if different, his employing authority have each given their consent before the transfer date or, where appropriate, within 3 months of the transfer date,

the appropriate administering authority shall set aside and pay to the scheme managers the appropriate part of the superannuation fund whether in cash or in assets or both (“the transfer payment”) for the benefit of the relevant beneficiaries, subject to the provisions of paragraph (9).

(5) The appropriate administering authority shall not give their consent under paragraph (4)(c) unless the person transferring his pension rights will acquire pension rights under the transferee scheme at least equivalent to those which he would have obtained if a transfer value had been paid to the scheme managers under regulation J2.

(6) The appropriate administering authority shall provide the person transferring his pension rights with sufficient information in writing to check that the condition in paragraph (5) is satisfied.

(7) Notwithstanding anything in the Acts of 1937 to 1953 and the regulations made thereunder, the former regulations, any local Act scheme or any provision of the 1974 Regulations or these Regulations, where a payment or transfer of assets is to be or has been made under this regulation, no other payment or transfer of assets shall be made out of the superannuation fund on account of service or employment to which the payment or transfer of assets under this regulation relates.

- (a) (8) The appropriate part of the fund shall be the amount of the value at the transfer date of the actual and potential liabilities of the appropriate superannuation fund accrued at the transfer date in respect of the relevant beneficiaries as determined by the actuary to the appropriate superannuation fund on the basis of actuarial assumptions specified by the actuary, adjusted as the actuary shall think fit to take into account—
 - (i) any period between the transfer date and the date of actual payment of the transfer payment; and
 - (ii) any other matters as the actuary at his sole discretion shall think fit.
 - (b) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund or, if there is more than one employing authority involved, each shall bear such part of the costs as the actuary of the appropriate superannuation fund determines.
- (9) Where a transfer payment in respect of a person is made under paragraph (4), then—
- (a) if the payment is to a transferee scheme which is contracted-out and the transferee scheme undertakes to accept liability for the guaranteed minimum pension, no deduction shall be made from the transfer payment;
 - (b) in any other case, there shall be deducted from the transfer payment the amount of any transfer premium which may be paid under section 55(3) of the 1993 Act⁽⁷⁾ or contributions equivalent premium which may be paid pursuant to section 55(2) of the 1993 Act and such amount shall be used either in paying such a transfer premium or contributions equivalent premium or, at the discretion of the

(7) Section 55 was amended by the Pensions Act 1995, Schedule 5, paragraph 50.

appropriate administering authority, in preserving the liability for the guaranteed minimum in the appropriate superannuation fund; and

- (c) in every case, the appropriate administering authority shall certify to the scheme managers the amount included in the transfer payment which represents the person's contributions and interest on them and may require the scheme managers to undertake to treat only such amounts as employee's contributions in the transferee scheme.

J14A. Where under regulation B6—

- (a) a body has made an admission agreement (“the first admission agreement”) with an administering authority (“the first administering authority”) and that first admission agreement ceases to have effect; and
- (b) thereupon an admission agreement (“the second admission agreement”) between that body and a different administering authority (“the second administering authority”) takes effect,

regulation J14 shall apply to the exclusion of Part Q as if—

- (i) a person employed by that body when the first admission agreement ceased to have effect and the second admission agreement took effect were a person within paragraph (2)(a) of regulation J14;
- (ii) the superannuation fund maintained by the second administering authority were the transferee scheme;
- (iii) the second administering authority were the scheme managers; and
- (iv) the date the second admission agreement takes effect were the transfer date.

J14B. Where—

- (a) an undertaking (within the meaning of regulation J14(1)) is transferred from an employing authority (“the first employer”) to a body (“the second employer”) which thereupon enters into an admission agreement with an administering authority (“the new administering authority”) in respect of one or more persons (“the transferring employees”) who were pensionable employees in relation to their employment with the first employer and who remain pensionable employees in relation to their employment with the second employer;
- (b) the new administering authority is different from the body which maintains the superannuation fund to which the first employer contributed in respect of the transferring employees immediately before the transfer; and
- (c) in his employment with the second employer each transferring employee is entitled to reckon any reckonable service which he was entitled to reckon in his employment with the first employer,

regulation J14 shall apply to the exclusion of Part Q as if—

- (i) a transferring employee were a person within paragraph (2)(a) of regulation J14;
- (ii) the superannuation fund maintained by the new administering authority were the transferee scheme;
- (iii) the new administering authority were the scheme managers; and
- (iv) the date the admission agreement with the new administering authority takes effect were the transfer date.”.

14. In paragraph 1 of Schedule 16(8) for the words “, J3(1) or J14” there shall be substituted the words “or J J3(1)”.

15. Schedule 18 shall be deleted.

Right to opt out of effect of amendments made by regulations 3 to 11

16.—(1) This regulation shall apply in the case of any person (“a relevant beneficiary”) to whom any benefit (including a return of contributions and any pension payable to a widow, widower or any dependant by virtue of a surrender) is or may become payable, being a benefit (“a relevant benefit”) payable to, or in respect of, a person who before the date on which the relevant regulation of these Regulations has effect—

- (a) ceased to hold an employment in respect of which he was a pensionable employee (whether or not he has subsequently recommenced any such employment); or
- (b) died while in such employment.

(2) If, in relation to a relevant benefit, a relevant beneficiary—

- (a) would be placed by any amendment made by regulations 3 to 11 of these Regulations in a worse position than he would have been in if that amendment had not been made, and
- (b) so elects, by notice in writing given to the appropriate administering authority within the six month period beginning with the date on which these Regulations come into force,

then, in the case of that beneficiary and in relation to that benefit, the principal Regulations shall have effect, subject to paragraph (3), as if these Regulations had not been made.

(3) If such an election as is mentioned in paragraph (2) is made in relation to a benefit which is or may become payable in respect of a person who is employed in local government employment, or if that person subsequently recommences service in such an employment, then—

- (a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued—
 - (i) by virtue of periods of service rendered before the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the date on which the relevant regulation of these Regulations has effect); or
 - (ii) by virtue of contributions paid in respect of any such periods of service; and
- (b) in determining entitlement to, or the amount of, the benefit to that extent, he shall (without prejudice to the application of this paragraph) be treated as if he had never recommenced service in such employment at any time after the cessation referred to in sub-paragraph (a);

and the principal Regulations shall apply accordingly.

Transitional provisions for elections under regulation E2(6) or (7)(a) of principal Regulations

17. Where by virtue of the amendments made by regulation 3 above a man has, on or after 17th May 1990 and before these Regulations come into force, become entitled to make an election under regulation E2(6) or (7)(a) of the principal Regulations—

- (a) he may give notice of such election within six months of the date when these Regulations come into force, notwithstanding the time limits for election expressed in regulation E2(6) or (7)(a) of the principal Regulations; and

- (b) the election may be expressed to have effect as if the notice had been given on the first day on which he became entitled to give notice of the election, and any election so expressed shall have effect accordingly.

Transitional provisions for transfer of pension rights

18.—(1) Subject to paragraph (2), the amendments made by regulations 12 to 15 of these Regulations shall not affect any transfers made under the principal Regulations before the date on which these Regulations come into force.

(2) Where—

- (a) by virtue of the amendments made by regulations 12 to 15 of these Regulations a person has, on or after 28th December 1994 and before these Regulations come into force, become entitled to give notice under regulation J13 or J14 of the principal Regulations as amended by these Regulations;
- (b) he gives such notice within 3 months of the date on which these Regulations come into force; and
- (c) those bodies referred to as his employing authority, the appropriate administering authority and the scheme managers in regulation J14 of the principal Regulations as amended by these Regulations consent to such notice having effect,

the notice shall have effect as if given on the first day on which he became entitled to give notice.

St Andrew's House,
Edinburgh
18th February 1996

James Douglas-Hamilton
Minister of State, Scottish Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of amendments to the Local Government Superannuation (Scotland) Regulations 1987 (“the principal Regulations”). Certain provisions have retrospective effect, as authorised by section 12 of the Superannuation Act 1972: regulations 2 to 4 and 17 from 17th May 1990; regulations 12 to 15 and 18 from 28th December 1994; and regulations 5 to 11 from 2nd May 1995.

Regulation 3 removes a provision which prevented a man electing to receive an actuarially reduced pension at age 60 if that pension were less than his guaranteed minimum pension (which is payable from age 65). Regulation 17 allows a man who was unable to make such an election before the removal of the provision, and who would otherwise be time barred, to make an election within 6 months of these Regulations coming into force. Regulation 3 also alters the position of women retiring at 60 with less than 25 years' service so that they will no longer be obliged to take their pension at that age but, like men, may elect to do so.

Regulation 4 removes an inequality whereby the pension of a man retiring at age 60 with less than 25 years' service is subject to an actuarial reduction for the whole of the period of his service whereas in the case of a woman, as a consequence of a requirement of the Social Security Pensions Act 1975 (c. 60), it cannot be reduced to less than the amount of her pension in respect of her service since 6th April 1978. The amendment provides that a man's pension should enjoy the same protection as that of a woman in respect of his service on or after 17th May 1990. The amendment further provides that the protection for both men and women lasts only until 1st April 1996.

Regulation 9 amends the principal Regulations to provide that where a scheme member dies the amount of the death gratuity shall be equal to twice pensionable remuneration, less, in certain cases, where a surviving spouse's long-term pension is payable under regulation E5, an amount equal to two-eightieths of pensionable remuneration multiplied by the length in years of any reckonable service before 1st April 1972.

Regulation 10 amends the principal Regulations to allow an administering authority, at the time a retirement pension is first payable to a former pensionable employee, to commute for a lump sum that element of the retirement pension which exceeds or would exceed the guaranteed minimum pension. The guaranteed minimum pension or a sum equal thereto will continue to be payable, where appropriate. This power applies only if the administering authority is satisfied, acting on medical advice, that the former employee is seriously ill with a life expectancy of less than one year.

Regulations 5 to 8 make amendments consequential upon regulation 10.

Regulation 11 provides that interest will be payable by the administering authority if the lump sum is not paid within one month of the due date, being the date on which a retirement pension first becomes payable.

Regulation 16 confers a right on a person, in certain circumstances, to opt that regulations 3 to 11 shall not apply.

Regulation 12 makes two amendments to regulation J13 of the principal Regulations which regulates the legal position of certain persons who have been members of the Local Government Superannuation Scheme (“the Scheme”) but choose to become subject to another pension scheme. The first amendment is to clarify the connection between regulations J13 and J14. The second amendment removes the requirement for the other superannuation scheme to be a contracted-out scheme within the meaning of the Social Security Pensions Act 1975.

Regulation 13 substitutes a new regulation J14. The former regulation J14 dealt only with persons who under regulation J13 chose to become subject to another pension scheme. The new regulation deals also with transfer of pension rights from the Scheme to a different pension scheme in circumstances where persons are no longer eligible to remain in the Scheme either because the undertaking in which they are employed has been transferred to a body which is not a scheduled or admitted body or because the body by which they are employed ceases to be a scheduled or admitted body.

The new regulation J14 applies to transfers of one or more persons at the same time. The calculation of the transfer value is a matter to be determined by the actuary to the appropriate Scheme superannuation fund. This replaces the formula in Schedule 16 to the principal Regulations and, in respect of transfers of more than 100 persons, the formula previously found in Schedule 18 to the principal Regulations. Schedule 18 is deleted by regulation 15.

Regulation 13 also inserts two new regulations as regulations J14A and J14B. The effect of these is to apply the provisions of regulation J14 in two further circumstances where a transfer between superannuation funds occurs. The first case is where an admitted body ceases to have an admission agreement with one administering authority and enters into an admission agreement with a different administering authority. The second is where an undertaking is transferred by a scheduled body and the body carrying on that undertaking enters into an admission agreement with a different administering authority from the administering authority which maintained the superannuation fund to which the scheduled body contributed in respect of the employees transferred with the undertaking.

Regulation 14 makes an amendment consequential on regulation 13.

Regulation 18 makes saving provision for any transfers that have taken place between 28th December 1994 and the coming into force of these Regulations. It also makes certain transitional provisions in relation to that period.