
STATUTORY INSTRUMENTS

1997 No. 1435 (S. 112)

**LOCAL GOVERNMENT, SCOTLAND
PENSIONS**

**The Local Government Superannuation
(Scotland) Amendment (No. 3) Regulations 1997**

<i>Made</i>	- - - -	<i>3rd June 1997</i>
<i>Laid before Parliament</i>		<i>9th June 1997</i>
<i>Coming into force</i>	- -	<i>30th June 1997</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, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government Superannuation (Scotland) Amendment (No.3) Regulations 1997 and shall come into force on 30th June 1997, but shall have effect from 1st September 1996.

(2) In these Regulations “the principal Regulations” means the Local Government Superannuation (Scotland) Regulations 1987(2) and, unless the context otherwise requires, any expression which is also used in the principal Regulations has the same meaning as in those Regulations.

Special provision for persons formerly members or eligible to be members of the National Health Service Superannuation Scheme for Scotland

2. After regulation G5 of the principal Regulations there shall be inserted the following new regulation:—

(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, 1995/214, 750, 2865 and 3294, 1996/414 and 1241 and 1997/674, 1143 and 1373.

“Persons formerly members or eligible to be members of the National Health Service Superannuation Scheme for Scotland

G6.—(1) This regulation applies to a person who—

- (a) was employed by a health board and was a member, or eligible to be a member, of the National Health Service Superannuation Scheme for Scotland; and
- (b) transferred from that employment to employment by the governing body of a university or designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992 or by the board of management of a college of further education within the meaning of Part I of that Act as a consequence of a transfer to the governing body or board of management on 1st September 1996, or in the case of a transfer to the governing body of the Robert Gordon University on 1st December 1996, of the undertaking in which he was employed, to which transfer the Transfer of Undertakings (Protection of Employment) Regulations 1981⁽³⁾ apply, and upon being transferred became a pensionable or admitted employee.

(2) In their application to a person to whom this regulation applies and for the purpose only of determining entitlement to, or calculating the amount of, any benefit payable in respect of his relevant local government employment and transferred service, these Regulations shall have effect subject to deletion of regulation E3(2) and (14) and Schedule 11.

(3) In relation to a person to whom this regulation applies, the provisions contained in Schedule 16B shall have effect.

(4) In this regulation and in Schedule 16B—

“the National Health Service Superannuation Scheme for Scotland” means the scheme the rules of which are set out in the National Health Service Regulations;

“the National Health Service Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995⁽⁴⁾

“relevant local government employment” means a continuous period of employment of a person to whom this regulation applies as a pensionable or admitted employee comprising—

- (a) the period, immediately following transfer to employment by a governing body or board of management in terms of paragraph (1)(b), of employment by that governing body or board of management during which he was continuously engaged in the work of the undertaking in which he was previously employed or in the work of another undertaking transferred to that governing body or board of management as mentioned in paragraph (1)(b); and
- (b) any further periods, immediately following the period described in subparagraph (a) and each other, of employment by another governing body or board of management of the kind specified in paragraph (1)(b) during which he was continuously engaged in the work of an undertaking transferred to that governing body or board of management as mentioned in paragraph (1)(b);

“transferred service” means, where on the transfer referred to in paragraph (1)(b) a transfer value has been accepted in respect of a person’s accrued rights from the National Health Service Superannuation Scheme for Scotland, the period of reckonable service which he is entitled to count under regulation J9(1)(a).”.

(3) S.I. 1981/1794; a relevant amendment to the definition of “undertaking” was made by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 33.

(4) S.I. 1995/365.

Provisions in relation to a person to whom regulation G6 applies

3. The principal Regulations shall be amended by inserting after Schedule 16A the Schedule set out in the Schedule to these Regulations.

Calculation of transfer value

4.—(1) Where a person to whom regulation G6 of the principal Regulations (as added by these Regulations) applies gives written notice to the fund authority within 3 months of becoming a pensionable employee as described in regulation G6(1)(b) or of being given relevant bulk transfer information and option forms, whichever is the later, that he wishes them to accept a transfer value, calculated under bulk transfer terms, in respect of all his accrued rights from the National Health Service Superannuation Scheme for Scotland, the transfer value in respect of those rights shall be calculated in accordance with paragraph (2) and the provisions of paragraph (3) shall apply in relation to that person.

(2) The transfer value shall be such amount as shall be agreed between the Government Actuary and the actuary to the appropriate superannuation fund and shall be adjusted to take account of any period between the date the person becomes a pensionable employee and the date of actual payment of the transfer value as those actuaries shall agree.

(3) In the event of the actuaries being unable to agree either the amount or the period mentioned in paragraph (2), the question shall be referred to an actuary appointed by the Secretary of State to make a determination which shall be final.

(4) The period which shall be counted under regulation J9(1)(a) of the principal Regulations in relation to the person shall, instead of being calculated in accordance with paragraph 2(1) of Schedule 17 to those Regulations, be equal to the actual length of his pensionable service under the National Health Service Superannuation Scheme for Scotland and the provisions of regulation J9(1)(a) shall be modified accordingly in relation to him.

(5) Paragraph (4) shall also apply in relation to a person to whom regulation G6 of the principal Regulations applies and who gives written notice to the fund authority under regulation J8(1) that he wishes them to accept an individual transfer value in respect of all his accrued rights from the National Health Service Superannuation Scheme for Scotland.

St Andrew's House,
Edinburgh
3rd June 1997

Brian Wilson
Minister of State, Scottish Office

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SCHEDULE

Regulation 3

“SCHEDULE 16B

Regulation G6

PROVISIONS IN RELATION TO PERSONS FORMERLY MEMBERS OF THE NATIONAL HEALTH SERVICE SUPERANNUATION SCHEME FOR SCOTLAND

1. The following provisions of this Schedule shall have effect in relation to a person to whom regulation G6 applies.

2. In reckoning any period as qualifying service for the purposes of—

- (a) regulation C12(1) (return of employee’s contribution in certain cases),
- (b) regulation E2(1) (entitlement to retirement pension and retiring allowance),
- (c) regulation E3(12) (entitlement to additional period under Schedule 10 in cases of early retirement on grounds of ill-health),
- (d) regulation E4(1) (ill-health lump sum retiring allowance),
- (e) regulation E6(2)(b) (amount of widow’s long-term pension) and
- (f) paragraph 4(1) and (2) of Part I of Schedule 16 (transfer values: pre 1988 service),

such a person is entitled to count as a period to which regulations D2, D3(6), D8A, D10, D11(1) and (3) and E29 apply any service which for the purposes of the National Health Service Regulations he was entitled to count in relation to the employment in which he was an officer (within the meaning of those Regulations) for the purpose of determining whether he was entitled to a benefit under those Regulations, but for no other purpose.

3. Even in a case where a transfer value is not accepted by the fund authority under regulation J8 in relation to a person to whom regulation G6 applies, the additional period in relation to him referred to in regulation E3(12) shall be a period calculated as mentioned in paragraph 2 of Schedule 10, but on the assumption that his relevant reckonable service includes the period which he would have been entitled to count as a period of reckonable service under regulation J9(1)(a) if a transfer value had been so accepted.

4.—(1) If a person ceases to hold relevant local government employment and—

- (a) (i) his reckonable service and any qualifying service when added together amount to not less than two years, or
- (ii) a transfer value from the trustees or managers of a personal pension scheme or self-employed pension arrangement has been and remains credited to the appropriate pension fund in relation to him; and
- (b) he has attained the age of 50,

he is entitled, in respect of his relevant local government employment and transferred service—

- (i) to a retirement pension (calculated in accordance with regulation E3 and reduced in accordance with sub-paragraph (2) below) and
- (ii) a retiring allowance (so calculated and so reduced),

which are payable to him, on his so requesting the administering authority in writing, immediately on his ceasing to hold that employment.

(2) Subject to regulation E1, for the purposes of sub-paragraph (1) above a person’s retirement pension and retiring allowance are reduced by the appropriate percentage for the person’s pension advancement period.

(3) A person shall not be entitled to a retirement pension under this paragraph if the administering authority determine, having taken advice from their actuary, that the retirement pension, as reduced in

accordance with sub-paragraph (2), would be insufficient to meet the liability to provide a guaranteed minimum pension.

(4) In sub-paragraph (2)–

“the person’s pension advancement period” means the period remaining from the date from which the benefits become payable to the date of the person’s 60th birthday; and

“the appropriate percentage” means the percentage shown in tables produced from time to time by the Government Actuary for the purpose of calculating the reduction in a person’s pension under sub-paragraph (2).

5. A person who has entered into a contract under the National Health Service Regulations to purchase an additional period of membership under those Regulations shall be entitled, for so long as he is in relevant local government employment, to continue to make additional periodic payments as if they were made pursuant to an election made under regulation C5 or C6 of these Regulations and in respect of the same additional period of membership and in the same amount as required under the National Health Service Regulations, and Schedules 4 and 5 shall not apply.

6. A person who has elected under the National Health Service Regulations to pay contributions to an additional voluntary contributions scheme may continue, for so long as he is in relevant local government employment, to contribute to that scheme and on the same terms as if the payment of contributions were made under regulation C9A of these Regulations and by notice under paragraph 1(1) of Schedule 7A.

7. The provisions of Schedule 7A, where applicable, shall have effect in relation to contributions payable under an additional voluntary contributions scheme referred to in paragraph 5 as if references in that Schedule to contributions under regulation C9A and notice under paragraph 1(1) (except the reference in paragraph 9 to a new election under regulation C9A by notice under paragraph 1 in relation to his new employment) were references to contributions to that additional voluntary contributions scheme and notice given to contribute to that scheme.

8.—(1) A person shall be entitled to treat his relevant health board employment as if it had been a period of pensionable employment for the purposes of calculating his pensionable remuneration.

(2) In sub-paragraph (1) above “relevant health board employment” in relation to a person means his employment by a health board immediately before his transfer to the employment of the governing body of a university or designated institution or of the board of management of a college of further education, as described in regulation G6(1)(b), by virtue of which he was a member of the National Health Service Superannuation Scheme for Scotland.

9. In relation to a person to whom regulation G6 applies regulation J8(1) shall have effect as if for the words “within 12 months of entering local government employment” there were substituted the words “within 12 months of the coming into force of the Local Government Superannuation (Scotland) Amendment (No.3) Regulations 1997.””

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the Local Government Superannuation (Scotland) Scheme constituted under the Local Government Superannuation (Scotland) Regulations 1987 (“the principal Regulations”). They deal with transfer on 1st September or 1st December 1996 to local government employment from the National Health Service of persons who are engaged, in a non-teaching capacity, in the training of nursing staff and who were, or were eligible to be, in pensionable employment under the National Health Service Superannuation Scheme (Scotland) Regulations 1995 at the date of transfer. The Regulations have retrospective effect, as authorised by section 12(1) of the Superannuation Act 1972.

Regulations 2 and 3 add new regulation G6 and Schedule 16B to the principal Regulations. They protect the pensions position of eligible staff leaving the National Health Service Superannuation Scheme (“the NHSSS”) and joining, or transferring accrued rights to, the Local Government Superannuation Scheme (“the LGSS”) on 1st September 1996, or in the case of staff moving to The Robert Gordon University, on 1st December 1996.

The main amendments provide that—

- (a) members of the NHSSS (or those eligible to be members) joining the LGSS will retain the right to retire at age 60 with no actuarial reduction to pension derived from their relevant local government employment and transferred service even where they have less than 25 years actual membership of the LGSS. (“Relevant local government employment” is defined in regulation G6(4) broadly to cover continuous pensionable employment in the institution to which the person transferred or in another institution, in either of which the person is continuously engaged in the work of an undertaking transferred to that institution as mentioned in regulation G6(1)(b));
- (b) periods which under the NHSSS could be counted for the purpose only of determining entitlement to benefit will count for the same purpose under the LGSS;
- (c) where a person opts to preserve his accrued NHSSS service he will nonetheless be entitled to treat such service as reckonable service for the purpose of early retirement on grounds of ill-health;
- (d) members of the NHSSS (or those eligible to be members) joining the LGSS will retain the right to take actuarially reduced pensions in respect of relevant local government employment (and any service transferred from the NHSSS) on leaving that employment aged 50 or over. The factors used in calculating the pensions will be determined by the Government Actuary’s Department;
- (e) contracts for purchase of added years of service under the NHSSS and the in-house additional voluntary contributions scheme for members of the NHSSS will, for so long as the persons concerned are in relevant local government employment, be continued at no disadvantage to the individuals;
- (f) where a person gets to preserve his accrued NHSSS service he will nonetheless be entitled to treat such service as a period of pensionable employment under the LGSS for the purpose of calculating his pensionable remuneration.

Regulation 4 makes provision for calculating transfer values to the LGSS from the NHSSS in respect of members whose employment transfers. Where a transfer value in respect of accrued NHSSS service has been requested by an eligible person within the appropriate time limits (whether in bulk

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or individual terms), the transfer value will be calculated so as to provide year for year service credit in the LGSS.