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STATUTORY INSTRUMENTS

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**1997 No. 3048 (S.192)**

**PENSIONS**

**The Local Government Superannuation  
(Scotland) Amendment (No.4) Regulations 1997**

*Made* - - - - *15th December 1997*  
*22nd December*  
*Laid before Parliament* *1997*  
*Coming into force* - - *12th January 1998*

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 (No.4) Regulations 1997.

(2) These Regulations shall come into force as follows:—

- (a) all regulations, except regulations 4 to 10 and 31(a) to (e) and (g), shall come into force on 12th January 1998, but—
  - (i) regulations 3 and 32 shall have effect from 31st December 1992 for the purpose of giving effect to paragraph 7 of Schedule 1A to the principal Regulations, as inserted by regulation 32;
  - (ii) regulations 13, 14, 23, 24, 30 and 37 shall have effect from 6th April 1997, and
  - (iii) regulations 15 and 20 shall have effect from 6th April 1995;
- (b) regulation 7 shall come into force on 1st March 1998;
- (c) regulations 4 to 6, 8 to 10 and 31(a) to (e) and (g) shall come into force on 1st April 1998.

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(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.

## **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 37 below.

### **Interpretation**

3. After regulation A2(1) there shall be inserted—

“(1A) Schedule 1A shall have effect for the purpose of making further provision as to the meaning of “remuneration”.”.

### **Pensionable employees**

4. At the beginning of Part B there shall be inserted—

#### **“Pensionable employees**

**B1.**—(1) As from 1st April 1998, a person is a pensionable employee if—

(a) he is an eligible employee as defined in regulation B2, and

(b) he either—

(i) was a pensionable employee before that date, or

(ii) has made, or is deemed to have made, an application under regulation B4, and has not given any relevant notification under regulation B4A(1) or, if he has given such a notification, has subsequently made an election under regulation B4B(1) to become a pensionable employee.”.

### **Eligible employees**

5. In regulation B2—

(a) for the heading there shall be substituted “Eligible employees”;

(b) in paragraphs (1) (except sub-paragraphs (h) and (i)) and (3) for the words “pensionable employees” and “pensionable employee” wherever they occur there shall be substituted “eligible employees” and “eligible employee” respectively;

(c) in paragraph (1)(a), (e) and (f) after the word “whole-time” there shall be inserted the words “or part-time”;

(d) paragraph (2) shall be deleted;

(e) in paragraph (3) the words “or (2)” shall be omitted; and

(f) after paragraph (4) there shall be added—

“(5) For the purposes of these Regulations—

(a) an employee is a variable-time employee if in accordance with his terms of office or contract of employment he is to be treated as such for the purposes of these Regulations and either—

(i) his remuneration is calculated by reference to his obligations in his employment (rather than necessarily by reference to the number of hours he has worked), or

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(2) 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, 1373 and 1435.

- (ii) he holds an office or employment the functions of which are only exercisable on an occasional basis;
  - (b) an employee is a whole-time employee if his contractual hours are not less than the number of hours which, in accordance with his terms of employment, is the number of contractual hours for a person employed in that employment on a whole-time basis; and
  - (c) an employee is a part-time employee if he is neither a whole-time employee nor a variable-time employee.
- (6) In these Regulations—
- “the contractual hours” means—
- (i) the number of hours the employing authority are entitled to require the employee to work in each of the contractual weeks, or
  - (ii) if there is any cyclical variation in those hours, the average of those hours over the cycle, or
  - (iii) if there is any variation in those hours which is not cyclical, the average of those hours over the weeks in such period (not exceeding 12 months) as the employing authority consider appropriate, being a period for which, assuming that there will be no unpaid leave of absence, a wage or salary is payable to the employee; and
- “the contractual weeks” means the number of weeks in every period of 12 months for which (on that assumption) a wage or salary is payable to the employee.
- (7) Any person who immediately before 1st April 1998 was a pensionable employee, or had the right to make an election to become a pensionable employee, shall not be prevented from being an eligible employee by reason only of the coming into force of paragraph (5).”.

### **Other eligible employees**

6. Regulation B3 shall be deleted.

### **Opting into pensionable employment**

7. Before regulation B4A there shall be inserted—

#### **“Opting into pensionable employment**

**B4.**—(1) Subject to paragraphs (2) to (6), an eligible employee (including a person who is about to take up employment in which he will be an eligible employee) who was not a pensionable employee immediately before 1st April 1998 shall, if he wishes to become a pensionable employee, apply to do so by notice given in writing to his employer or future employer.

(2) Subject to paragraph (3), a person commencing employment on or after 1st April 1998 who is entitled to make an application under paragraph (1) is deemed to have made an application to become a pensionable employee unless, before commencing his employment, he notifies his employer in writing that he does not wish to become a pensionable employee.

(3) Paragraph (2) does not apply to a person whose employment is of a casual nature.

(4) Where a person who has ceased to be employed in an employment in which he was a pensionable employee at the time of cessation commences a new employment in which he is an eligible employee, he is deemed to have made an application to become a pensionable

employee unless, before commencing his new employment, he notified his employer in writing that he did not wish to be a pensionable employee.

(5) An application under this regulation may be withdrawn at any time before the applicant becomes a pensionable employee.

(6) If an eligible employee is in two or more employments under a single scheduled body, an application under paragraph (1) in respect of any one of them is of no effect unless applications are made in respect of all of them.

### **Effective date of becoming a pensionable employee**

**B4ZA.**—(1) An eligible employee who has or is deemed to have applied under regulation B4 shall become a pensionable employee on the appropriate day.

(2) In this regulation, “the appropriate day” means—

- (a) in the case of a person who has applied under regulation B4(1) at least one month before the date on which he commences his employment (or such lesser period before that date as his employer allows), the date on which he commences his employment or such later date as he has specified in his application;
- (b) in any other case where an application is made under that regulation, the first day of the first payment period following the application;
- (c) in the case of a person who is deemed to have applied under regulation B4(2) the date on which he commenced his employment.

(3) In paragraph (2)(b), “payment period” means a period of service to which the employee’s payment of wages or salary relates.”.

### **Opting out of pensionable employment**

**8.** In regulation B4A—

- (a) in paragraph (2) there shall be inserted at the beginning the words “Subject to paragraphs (7) and (8),”;
- (b) paragraph (4) shall be deleted;
- (c) at the end there shall be added—

“(7) Where a person gives notification under paragraph (1) within one month after first becoming a pensionable employee, he shall be treated as never having been a pensionable employee.

(8) Where—

- (a) a person to whom the Local Government Superannuation (Reserve Forces) (Scotland) Regulations 1992(3) apply has given notification under paragraph (1) before ceasing his former employment or beginning his leave of absence in order to perform his relevant service (within the meaning of those Regulations), and
- (b) he is still a pensionable employee immediately before he commences his relevant service,

then, subject to paragraph (9), the notification shall be of no effect.

(9) A person may elect that paragraph (8) is not to apply, by notice given in writing to the appropriate administering authority before the end of the period of 12 months beginning with the end of his relevant service (or within such longer period as they may

allow), and they shall take all practicable steps to secure that a person entitled to make such an election is notified of his entitlement.

(10) Any contributions paid by a person with respect to a period during which, by virtue of a notification under paragraph (1), he is not a pensionable employee shall be returned to him.

(11) If an eligible employee is in two or more employments under a single scheduled body, a notification under paragraph (1) in respect of any one of them is of no effect unless notifications are given in respect of all of them.”.

### **Rejoining pensionable employment**

9. At the end of regulation B4B there shall be added—

“(9) If an eligible employee is in two or more employments under a single scheduled body, an election under paragraph (1) in respect of any of them is of no effect unless elections are made in respect of all of them.”.

### **Power to admit employees of other bodies**

10. In regulation B6 in paragraphs (2) and (5) for the words “a pensionable employee” there shall be substituted the words “an eligible employee”.

### **Purchase by part-time employees of additional periods of reckonable service**

11. After regulation C6A there shall be inserted—

#### **“Purchase by part-time employees of additional periods of reckonable service**

**C6B.**—(1) Subject to the following provisions of this regulation, where a person makes an election under regulation C6 in relation to a part-time employment to make additional contributions—

- (a) the period he may reckon as an additional period of reckonable service under regulation D5 is the appropriate fraction of the period he would be entitled to reckon in respect of that period if he were a whole-time employee (“the notional whole-time period”);
- (b) the maximum which applies in his case by virtue of regulation C6(2) is the appropriate fraction of the maximum which would apply in his case if he were a whole-time employee; and
- (c) the amount to be paid by him in accordance with Part II of Schedule 5 shall be calculated in the same manner as if he were a whole-time employee purchasing the notional whole-time period, but taking his remuneration as his actual remuneration for the time being (and not the remuneration he would have been paid for a single comparable whole-time employment).

(2) In paragraph (1) “appropriate fraction”, in relation to an employee, means the fraction of which the numerator is the number of his contractual hours and the denominator is the number of contractual hours of a single comparable whole-time employment.

(3) Where any person has made an election under regulation C6, if—

- (a) his employment ceases to be part-time and becomes whole-time employment;
- (b) his employment ceases to be whole-time and becomes part-time employment; or
- (c) his contractual hours in the part-time employment alter,

his additional contributions shall continue to be payable at the same percentage of his pay but the additional period counted by reason of contributions paid after the change shall be calculated as if the change had occurred immediately before the election.

(4) The previous provisions of this regulation do not apply to an election made by a person under regulation C6 before 12th January 1998 but, if he so elects by notice in writing to the appropriate administering authority, then—

- (a) payments made by him on and after the date when the election takes effect shall be made by reference to his actual remuneration for the time being; and
- (b) the period of reckonable service which he is entitled to count by virtue of them shall be calculated on the same basis as if the previous provisions of this regulation had always applied in respect of his election.

(5) A person may not make an election under paragraph (4) after attaining the age of 64 years.”.

### **Reckonable service**

12. In regulation D1(2) after sub-paragraph (a) there shall be inserted—

- “(aa) any period during which he is absent from duty by reason of illness or injury (whether or not he has paid such contributions for it)”.

### **Guaranteed minimum pension for certain pensionable employees and their widows**

13. In regulation E1—

- (a) in paragraph (3) after the word “and” where it first appears there shall be inserted the words “, in relation to service before 6th April 1997,”; and
- (b) in paragraph (4) for the words from “in the tax years” to the end there shall be substituted the words “for the period beginning with the tax year 1988-89 and ending with the tax year 1996-97, be increased in accordance with the requirements of section 109 of the Pension Schemes Act 1993(4)”.

### **Revaluation of guaranteed minimum in certain cases**

14. For regulation E1A there shall be substituted—

“E1A.—(1) This regulation applies where—

- (a) a person has ceased to be a pensionable employee; and
- (b) the guaranteed minimum in relation to his pension is appropriately secured (within the meaning of section 19 of the Pension Schemes Act 1993).

(2) The earnings factors of such a person shall be determined for the purposes of section 14(2) of that Act—

- (a) by reference to the last order under section 21 of the Social Security Pensions Act 1975(5) or section 148 of the Social Security Administration Act 1992(6) to come into force before the end of the tax year in which he ceased to be a pensionable employee; and

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(4) 1993 c. 48.

(5) 1975 c. 60; section 21 was repealed by the Social Security (Consequential Provisions) Act 1992 (c. 6), section 3(1) and Schedule 1.

(6) 1992 c. 5.

(b) without reference to the last such order to come into force before the end of the final relevant year.

(3) The weekly equivalent mentioned in section 14(2) of the Pension Schemes Act 1993 shall be increased by at least the prescribed percentage for each relevant year after the end of the tax year in which he ceased to be a pensionable employee and in accordance with such additional requirements as may be prescribed for the purposes of section 16(3)(7) of that Act.

(4) In this regulation—

“relevant year” and “final relevant year” have the meanings given respectively in sections 14(8)(8) and 16(5) of that Act;

“prescribed percentage” has the meaning given in regulation 62 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(9).”.

### **Entitlement to preserved benefits on transfer to a new authority under the Local Government etc. (Scotland) Act 1994 or on dissolution of a development corporation**

15. After regulation E2 there shall be inserted—

#### **“Entitlement to preserved benefits on transfer to a new authority under the Local Government etc. (Scotland) Act 1994 or on dissolution of a development corporation**

**E2A.**—(1) Where a person has suffered a reduction of remuneration within the meaning of regulation E24—

(a) (i) on transferring from an existing local authority to a new authority under or by virtue of an order under section 8 of the Local Government etc. (Scotland) Act 1994(10) or that section as extended by section 97 or 137 of that Act, or

(ii) on ceasing to be employed by a development corporation established under the New Towns (Scotland) Act 1968(11) and obtaining employment with a new authority, all as a consequence of the dissolution (or proposed dissolution) of that corporation; or

(b) after such transfer or change of employment and before 30th June 1997, which reduction is attributable to any provision of, or made under, the said Act of 1994, and is in respect of that reduction entitled to be issued with a certificate under regulation E24, he may instead, unless at the date of transfer he fulfils the conditions of regulation E2(1) (a) or (b), elect to take preserved benefits in relation to his employment with the existing local authority.

(2) An election for the purposes of paragraph (1) shall be made by giving notice in writing to the appropriate administering authority and the employing authority within 12 months after the date of the reduction in remuneration or 6 months after 12th January 1998 whichever is the later.

(3) Where such an election is validly made, the person shall—

(a) notwithstanding any provision of the Local Government etc. (Scotland) Act 1994 regarding persons transferred, be treated for the purposes of these Regulations,

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(7) 1993 c. 48; section 16(3) was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 28.

(8) Section 14(8) was amended by the Pensions Act 1995, Schedule 5, paragraph 27.

(9) S.I. 1996/1172.

(10) 1994 c. 39.

(11) 1968 c. 16.

other than regulations C12, E16 and E17, as having ceased to hold his employment with the existing local authority and as having entered a new local government employment at the date of transfer; and

- (b) not be entitled to issue of a certificate under regulation E24 and any such certificate already issued shall cease to have effect.

(4) In paragraph (1)

“existing local authority” has the same meaning as in section 9 of the Local Government etc. (Scotland) Act 1994 except that—

- (a) in relation to persons transferring to a water and sewerage authority, it includes an island council and the Central Scotland Water Development Board established under section 3 of the Water (Scotland) Act 1967<sup>(12)</sup>; and
- (b) in relation to persons transferring to the Scottish Children’s Reporter Administration, it includes an islands council;

“new authority” means—

- (a) any of the following established under the Local Government etc. (Scotland) Act 1994—
- (i) a council established under section 2;
  - (ii) a water and sewerage authority established under section 62(1); or
  - (iii) the Scottish Children’s Reporter Administration established under section 128; or
- (b) a joint board the constituent authorities of which are all councils established under the said section 2.”.

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

**16.** In regulation E9(3) for paragraphs (a) to (e) there shall be substituted—

- “(a) if there is one eligible child and a surviving spouse’s pension under regulation E5 is for the time being payable, one quarter of the deceased person’s retirement pension;
- (b) if there is one eligible child and no such surviving spouse’s pension is payable, one third of the retirement pension;
- (c) if there are two or more eligible children and a surviving spouse’s pension under regulation E5 is for the time being payable, one half of the retirement pension; and
- (d) if there are two or more eligible children and no such surviving spouse’s pension is payable, two thirds of the retirement pension.”.

### **Death gratuity**

**17.** In regulation E11—

- (a) in paragraph (1) for the words “his executors are entitled to receive a lump sum death gratuity” there shall be substituted the words “there shall be paid a lump sum death gratuity in accordance with regulation E11ZA”; and
- (b) for paragraph (4) there shall be substituted—

“(4) Where paragraph 1(a) applies the amount of the death gratuity is the greater of—

(a) twice the deceased’s pensionable remuneration; or

- (b) three eightieths of his pensionable remuneration multiplied by the length in years of his reckonable service
- 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).”.

### **Nomination of beneficiary of death gratuity**

- 18.** After regulation E11 there shall be inserted—

#### **“Nomination of beneficiary of death gratuity**

**E11ZA.**—(1) Subject to paragraph (6), the administering authority shall have power, at their discretion, to pay or apply the whole or any part of the lump sum death gratuity payable under regulation E11 to or for the benefit of all or any of the surviving spouse, children, dependants, relatives, executors or nominated beneficiaries of the deceased in such shares as the administering authority shall in their absolute discretion decide.

(2) The administering authority may, but without being in any way bound to do so, have regard to any nomination made by the deceased.

(3) A nomination shall be made by notice in writing to the administering authority in such form as the administering authority may from time to time require and shall be revocable in the same manner.

(4) A nomination shall be revoked by any subsequent nomination which complies with the requirements referred to in paragraph (3).

(5) If not previously revoked, a nomination shall cease to have effect on the marriage of the person who made the nomination.

(6) If or to the extent that the lump sum death gratuity has not been paid by the expiry of the period of two years following the person's death, it shall be paid by the administering authority to his executors.

(7) For the purposes of this regulation—

(a) “nominated beneficiary” means an individual or an unincorporated or incorporated body nominated by the deceased in any nomination made by him in respect of the lump sum death gratuity which was in force at the time of his death; and

(b) “relative” means any living individual who is—

(i) a parent of the deceased or the spouse or surviving spouse of any such person;

(ii) the child or remoter issue of such parent or the spouse or surviving spouse of any such person; or

(iii) a former spouse of the deceased.”.

### **Pensionable remuneration**

- 19.** In regulation E22—

(a) in paragraph (8)—

(i) in sub-paragraph (a) for the words “regulations D4 or D5” there shall be substituted the words “regulation D4 or D5, including that regulation as read with regulation C6B”;

(ii) in sub-paragraph (b) the words “E11(4) or” shall be omitted; and

- (b) in paragraph 11(b) after the words “more than 5 years” there shall be inserted the words “ending with the last day of the relevant period”.

### **Certificates as to reduction in remuneration**

**20.** In regulation E24(1A) there shall be added at the end—

“; or

- (d) at any time during the period beginning with 6th April 1995 and ending with 1st April 1997 and as a consequence of the dissolution (or proposed dissolution) of a development corporation established under the New Towns (Scotland) Act 1968<sup>(13)</sup> he ceased to be employed by such a corporation and obtained employment at a reduced remuneration with either a body constituted under section 2, 62(1) or 128 of the Local Government etc. (Scotland) Act 1994<sup>(14)</sup> or a joint board the constituent authorities of which are all councils constituted under section 2 of that Act.”.

### **Interest on late payment of certain benefits**

**21.** For regulation E35 there shall be substituted—

“**E35.**—(1) Where all or part of—

- (a) any benefit under Part E;  
 (b) a return of contributions under regulation C8 of the 1974 Regulations or under regulation C12; or  
 (c) a return of contributions which have been made in error,

is not paid within the relevant period after the due date, the appropriate administering authority shall pay the person to whom the benefit or return of contributions is payable interest on the amount remaining unpaid, calculated at one per cent above base rate on a day to day basis from the due date to the date of payment, and compounded with three monthly rests.

(2) For the purposes of this regulation the due date is—

- (a) in the case of the first instalment of a retirement pension which becomes payable by virtue of an election under regulation E2(6)(c) or (7)(a), one month after the date on which the notice was duly given;  
 (b) in the case of an instalment of a retirement pension or other pension which becomes payable by virtue of payments or contributions (other than an increase in contributions made following a decision under regulation N1, N10 or N12) made after the date on which the first instalment of the remainder of the pension became payable, one month after those payments or contributions were paid;  
 (c) in the case of a retirement pension or other pension or instalment of a retirement pension or other pension which becomes payable by virtue of contributions made following such a decision, the date on which that pension or instalment would have become payable had those contributions been made on the first date which would otherwise have applied;  
 (d) in all other cases in which a retirement pension or other pension or instalment of a retirement pension or other pension becomes payable, the date on which that pension or instalment becomes payable;

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<sup>(13)</sup> 1968 c. 16.

<sup>(14)</sup> 1994 c. 39.

- (e) in the case of a retiring allowance or instalment of a retiring allowance (other than one to which paragraph (3) applies), the date on which that allowance or instalment becomes payable;
  - (f) in the case of an ill-health lump sum retiring allowance which becomes payable, the day after the person who is entitled to the allowance ceased to hold his employment;
  - (g) in the case of an ill-health lump sum payable under regulation E11A, the date on which a retirement pension first becomes payable;
  - (h) in the case of a death gratuity payable to the deceased's executors, the date on which proof of confirmation, probate or letters of administration has or have been produced to the administering authority;
  - (i) in the case of a death gratuity which the administering authority have decided to pay under regulation E11ZA to a person other than the deceased's executors, the date upon which the administering authority have received proof of the deceased's death and of the beneficiary's identity;
  - (j) in the case of a return of contributions under regulation C8 of the 1974 Regulations or under regulation C12, the date on which the return is due under the regulation in question; and
  - (k) in the case of a return of contributions which have been made in error, one month after the date on which the contributions were made.
- (3) Where—
- (a) a retiring allowance becomes payable by virtue of an election under regulation E2(6)(c) or (7)(a) given on or after the date on which the allowance becomes payable; or
  - (b) an instalment of a retiring allowance becomes payable by virtue of payments or contributions made after the date on which the remainder of the allowance becomes payable,
- the due date is—
- (i) in the case mentioned in sub-paragraph (a), one month after the notice was given, and
  - (ii) in the case mentioned in sub-paragraph (b)—
    - (I) where an increase in contributions is made following a decision under regulation N1, N10 or N12, the date on which the allowance or instalment would have become payable had those contributions been made at the first opportunity which these Regulations would otherwise have provided, and
    - (II) otherwise, one month after the increase in contributions was paid.
- (4) For the purposes of this regulation “the relevant period” means—
- (a) in the case of a retirement pension, a widow or widower's pension under regulation E5 or E7, a children's pension under regulation E8 or a return of contributions within paragraph (1)(c), twelve months;
  - (b) in the case of a return of contributions within paragraph (1)(b), such period which, when added to the period beginning with the date when the person ceased to be a pensionable employee and ending with the due date, equals twelve months; and
  - (c) in any other case, one month.”.

## Standard remuneration agreements

### 22. In regulation G3–

- (a) the existing provision shall be numbered “(1)”; and
- (b) at the end there shall be added–

“(2) Where such an agreement is in force, then the whole or, as the case may be, the specified part of the remuneration of an employee who is a member of the class or, as the case may be, is of the description specified, shall, in respect of the period during which that agreement remains in force and the employee remains in employment with the scheduled body in question as an employee of that class or description, be deemed for the purposes of these Regulations to be the amount determined in accordance with the method specified.

(3) Where a scheduled body enter into an agreement under paragraph (1), they shall notify in writing every employee of theirs who is a member of a class or, as the case may be, an employee of a description, to which the agreement relates, including in the notification a conspicuous statement directing the attention of the employee to the place where he may obtain information about details of the agreement.

(4) The notification required by paragraph (3) shall be sent to an employee–

- (a) if he is in the employment of the scheduled body on the date the agreement was made, as soon as is reasonably practicable after that date; and
- (b) if he enters the employment later, within three months after entering it.”.

## Transfers

### 23. In regulation J1–

- (a) after the definition of “fund authority” there shall be inserted–

““guarantee date” in relation to a person has the same meaning as in section 93A(15) of the Pension Schemes Act 1993;”.

## Outward transfers

### 24. In regulation J2(8) for sub-paragraph (a) there shall be substituted–

- “(a) the date six months after the guarantee date;”.

## Forfeiture of rights

### 25. In regulation M1(1) after sub-paragraph (b) there shall be inserted–

- “(bb) his employing authority, where they have suffered a financial loss as a direct result of the offence, have taken reasonable steps to recover such loss (including the exercise of their powers under regulations M2 and M3); and”.

## Initial decisions

### 26. In regulation N1 after paragraph (2) there shall be inserted–

“(2A) Where an employing authority are considering whether–

- (a) a person who has ceased to hold a local government employment is entitled to a benefit under regulation E2(1)(b)(i), or

(b) the date on which preserved benefits become payable is to be ascertained in relation to a person under regulation E2(6)(a),  
they shall refer for decision to a registered medical practitioner approved by the appropriate administering authority (if different from the employing authority) the following questions:–

- (i) whether at the time when the employment ceased, in the case of entitlement under regulation E2(1)(b)(i), or at the date in question in the case of payment in terms of regulation E2(6)(a), the person was, on the balance of probabilities, incapable of discharging efficiently the duties of the local government employment he had ceased to hold and, if so,
- (ii) whether the incapacity was by reason of permanent ill-health or infirmity of mind or body.

(2B) The decision of the medical practitioner on the questions referred to him under paragraph (2A) shall be given in the form of a certificate.”.

#### **Decisions by employing authorities as to status of employees**

27. In regulation N2(1)–

- (a) in sub-paragraph (b) after the words “part-time employee” there shall be added the words “and whether his employment is of a casual nature”; and
- (b) sub-paragraph (c) shall be omitted.

#### **Periodical valuation of superannuation funds**

28. In regulation P8, there shall be added at the end–

“(4) Where an admission agreement ceases to have effect, the administering authority with whom it was made shall obtain an actuarial valuation as at the date of the cessation of the agreement of the liabilities of the employing body as respects their superannuation fund and shall send copies of it to that body and to the Secretary of State.”.

#### **Funds out of which combined benefits are to be paid**

29. In regulation P16–

- (a) in paragraph (2) for the words “paragraph (3)” there shall be substituted “paragraph (3) or (3A)”;
- (b) after paragraph (3) there shall be inserted–

“(3A) Where a first fund authority are liable to make payments to a second fund authority under paragraph (2), that liability may be discharged by the payment of a capital sum of an amount equal to the capitalised value at the date of that payment of the payments which would otherwise be due in respect of that liability; and the capitalised value shall be determined in such manner as may be approved by the Government Actuary, having regard to such factors as he considers appropriate, (and he may issue such Tables as he considers appropriate for the purposes of such determinations).”.

#### **Pensions Act premiums**

30. Regulation R4(3) shall be deleted.

## Glossary of expressions

### 31. In Schedule 1–

- (a) after the definition of “Contracted-out employment” there shall be inserted–

““Contractual hours” and “contractual weeks”	Have the meanings given by regulation B2(6).”;
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- (b) after the definition of “Eligible child” there shall be inserted–

““Eligible employee”	Has the meaning given by regulation B2.”;
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- (c) in the definition of “Employee” the words from “, other” to the end shall be deleted;
- (d) in each of the definitions of “Part-time employee” and “Variable-time employee” for the meaning given in column (2) there shall be substituted–
- “Has the meaning given by regulation B2(5).”;
- (e) in the definition of “Pensionable employee” for the words in column (2) from “In relation to any time on or after 1st April 1990” to the end there shall be substituted–

“In relation to any time on or after 1st April 1990 but before 1st April 1998, means a person who was a pensionable employee in accordance with regulations B2, B3, B4A and B4B, as in force during that period.

In relation to any time on or after 1st April 1998 has the meaning given by regulation B1.”;

- (f) in the definition of “Remuneration”–

- (i) for the words “and the money value of any apartments, rations or other allowances in kind appertaining to his employment” there shall be substituted “in respect of his employment, and any other payment or benefit specified in his contract of employment as being a pensionable emolument”;

- (ii) at the end there shall be added–

“This definition is subject to Schedule 1A which makes further provision as to the meaning of “remuneration”.” and

- (g) for the definition of “Whole-time” there shall be substituted–

““Whole-time employee”	Has the meaning given by regulation B2(5).”.
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## Further provision concerning the meaning of “remuneration”

32. After Schedule 1 there shall be inserted the new Schedule 1A set out in the Schedule to these Regulations.

## Eligible employees

### 33. In Schedule 3–

- (a) for the heading there shall be substituted “ELIGIBLE EMPLOYEES”; and

- (b) in Part II–

- (i) in paragraphs 1 and 3 after the word “whole-time” there shall be inserted the word “part-time”, and

- (ii) in paragraph 2 for the words “A whole-time employee or a variable-time” there shall be substituted the word “Any”.

#### **Maximum length of additional period**

- 34. In Schedule 4, paragraph 2(1)(a)(iii) and the word “and” preceding it shall be deleted.

#### **Additional reckonable service for ill-health**

- 35. In Schedule 10 there shall be added at the end—

“5.—(1) Where—

- (a) the whole of a person’s relevant reckonable service is in respect of part-time service, and
- (b) the reduction under regulation E25 is by the same proportion in respect of the whole period,

the additional period of reckonable service shall be determined in accordance with paragraphs 1 to 4 by reference to the period which would be the period of relevant reckonable service if the reduction required by regulation E25 were not made (“the unreduced period”), and then the period resulting from the application of those provisions shall be reduced as mentioned in that regulation.

(2) Where—

- (a) the whole of a person’s relevant reckonable service is in respect of part-time service, and
- (b) different proportionate reductions fall to be made under regulation E25 in respect of different parts of that relevant reckonable service,

the additional period of reckonable service shall be determined in accordance with paragraphs 1 to 4 by reference to the period which would be the period of relevant reckonable service if the reductions required by regulation E25 were not made (“the unreduced period”), and then—

- (i) the period resulting from the application of those provisions shall be apportioned between the different parts mentioned in paragraph (b) in proportion to the respective lengths of the parts of the unreduced period attributable to each of them,
- (ii) each such apportioned part of the unreduced period shall be reduced as mentioned in that regulation, and
- (iii) those reduced periods shall be aggregated together.

(3) Subject to sub-paragraph (4), where part only of a person’s relevant reckonable service is in respect of part-time service, the additional period of reckonable service for the whole of his relevant reckonable service shall be—

- (a) determined in accordance with paragraphs 1 to 4 (and, in so far as the reckonable service in respect of part-time service is concerned, by reference to the unreduced period); and
- (b) reduced by multiplying it by the fraction of which—
  - (i) the numerator is the person’s relevant reckonable service, determined, in so far as any reckonable service in respect of part-time service is concerned, with the reduction required by regulation E25 (and, where different proportionate reductions fall to be made under regulation E25 in respect of different parts of the period of relevant reckonable service, determining the overall reduction as mentioned in sub-paragraph (2) above), and
  - (ii) the divisor is the unreduced period.

(4) Where—

- (a) apart from this sub-paragraph, sub-paragraph (3) would apply, and
- (b) the person's relevant reckonable service includes not less than

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years in respect of whole-time service,

then sub-paragraph (3) shall not apply and the additional period of reckonable service shall be determined in accordance with paragraphs 1 to 4 by reference to that period of whole-time service included in his relevant reckonable service.

(5) Where a person is in part-time service and his contractual hours are determined as mentioned in paragraph (iii) of the definition of "contractual hours" in regulation B2(6), (non-cyclical fluctuation) then, for the purposes of this paragraph—

- (a) the lengths of the parts of the period of relevant reckonable service by reference to which different proportionate reductions fall to be made under regulation E25 shall be determined by reference to the periods mentioned in that paragraph, and
- (b) the reduction under that regulation in respect of any such period shall be made by reference to the contractual hours over that period as determined under that paragraph."

#### **Surrender of part of retirement pension**

**36.** In Schedule 13, paragraph 1(2)(c)(ii) and the word "or" preceding it shall be deleted.

#### **Calculation of transfer values**

**37.** In Part I of Schedule 16—

- (a) in paragraph 1—
  - (i) for the words "material date", wherever they appear, there shall be substituted the words "guarantee date";
  - (ii) in sub-paragraph (1) the words from "less a sum" to "those rights" shall be deleted;
  - (iii) in sub-paragraph (2)(a) for the words "regulation 4(4)(a) of the Occupational Pension Schemes (Transfer Values) Regulations 1985" there shall be substituted the words "regulation 10(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996(16)";
- (b) in paragraph 3—
  - (i) in sub-paragraphs (2) and (3) after the words "guaranteed minimum pensions", in both places where they appear, there shall be inserted the words "or his accrued rights so far as attributable to service in contracted-out employment on or after 6th April 1997"; and
  - (ii) for the words from "of a state scheme premium" to the end there shall be substituted the words "sufficient to meet the liability in respect of that person's and his widow's or, as the case may be, her widower's pensions being guaranteed pensions or pensions so far as attributable to service in contracted-out employment on or after 6th April 1997 and that person's protected rights";
- (c) paragraph 4(4)(b) and the word "and" preceding it shall be deleted;
- (d) in paragraph 5—
  - (i) the definitions of "material date" and "state scheme premium" shall be deleted; and

(ii) at the end there shall be added—

““protected rights” has the same meaning as in section 10 of the Pensions Schemes Act 1993(17).”.

### **Transitional provision**

**38.** Where an application has been made under regulation J2(2)(c), or notice given under regulation J14(4)(b), of the principal Regulations before 6th April 1997, regulations 23, 24 and 37 shall not have effect for the purposes of dealing with that application or notice; and for those purposes Part J of and Schedule 16 to the principal Regulations as in force immediately before these Regulations come into force shall continue to apply in relation to that application or notice.

### **Right to opt out**

**39.**—(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 12th January 1998—

- (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 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 12th January 1998,

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 12th January 1998); 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.

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

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St Andrew's House Edinburgh  
15th December 1997

*Brian Wilson*  
Minister of State, Scottish Office

SCHEDULE

Regulation 32.

“SCHEDULE 1A

Regulation A2(1A)

FURTHER PROVISIONS CONCERNING MEANING OF “REMUNERATION”

*Part-timers*

1. For the purpose of calculating a pensionable employee’s contributions under regulation C2 the remuneration of a part-time employee for any period (other than a period during which he was absent from duty by reason of illness or injury with reduced or no remuneration) is to be taken to be the remuneration he would have received if during that period he had worked no more and no less than the contractual hours.

*Statutory payments during absence*

2. Subject to paragraph 3(b), for the purpose of calculating a pensionable employee’s contributions under regulation C2, any reduction in remuneration by reason of the actual or assumed enjoyment by the employee during any period of absence from duty of any statutory entitlement shall be disregarded.

3. For the purposes of regulation C3A–

- (a) a woman’s remuneration includes any statutory maternity pay payable to her under the Social Security Contributions and Benefits Act 1992(18), and
- (b) in calculating the contributions which an employee would have been required to make under regulation C2, regard shall be had to any reduction in her remuneration during a period of maternity absence by reason of the actual or assumed enjoyment of such statutory maternity pay.

4. In regulation C4 “remuneration” does not include any guarantee payment under Part III of the Employment Rights Act 1996(19).

5. For the purpose of calculating the amount of any benefit payable under these Regulations to a person to whom the Local Government Superannuation (Reserve Forces) (Scotland) Regulations 1992(20) applies, his remuneration in respect of any period of his relevant service (as defined in those Regulations) shall be deemed to be the amount by reference to which the calculation would have been made if he had continued to be employed in his former employment.

*Additional periodical payments: “remuneration for the time being”*

6.—(1) Subject to sub-paragraph (2), for the purposes of Schedule 5 and 6, in relation to any additional periodical payment falling to be paid by a pensionable employee, his remuneration for the time being is the remuneration received by him for the interval at the end of which the payment falls to be paid.

(2) For the purposes of sub-paragraph (1)–

- (a) a pensionable employee is to be taken to have received for any period for which, while a contract of employment subsisted, he was absent from duty with reduced or no remuneration (otherwise than by reason of illness or injury) the remuneration that he would have received but for his absence from duty, and

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(18) 1992 c. 4.

(19) 1996 c. 18.

(20) S.I. 1992/1220.

- (b) any reduction in remuneration by reason of the actual or assumed enjoyment by the employee during any period of absence from duty (other than a period of maternity absence), of any statutory entitlement shall be disregarded.

#### *Motor vehicles*

7.—(1) Where a pensionable employee's contribution under regulation C2 or C3 in respect of a period including 31st December 1992 was based on a remuneration which, for the purposes of these Regulations as in force at that date, included an amount representing the money value to him of the provision of a motor vehicle, then the money value to him of the provision of such a vehicle or a payment accepted by him at any time after 31st December 1992 in lieu of such provision shall be treated as included in his remuneration for the purposes of these Regulations until the earlier of—

- (a) the date on which he ceases to be employed by the employing authority who were employing him on that date; or
- (b) the date on which a motor vehicle is no longer provided for him or a payment accepted by him at any time in lieu of such provision is no longer made.

(2) Where a pensionable employee's cessation of employment is by reason of a transfer to employment with a different employing authority and the transfer is caused by circumstances beyond the employee's control, sub-paragraph (1)(a) shall not apply and, for the purposes of this paragraph, the pensionable employee shall be deemed to continue in the employment of the employing authority who were employing him before the transfer.”

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### **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 3 and 32, in part, from 31st December 1992; regulations 13, 14, 23, 24, 30 and 37 from 6th April 1997; and regulations 15 and 20 from 6th April 1995.

The main changes are as follows.

Regulation 3 inserts a reference to new Schedule 1A which makes further provision as to the meaning of “remuneration”.

Regulation 5 amends regulation B2 to introduce the concept of “eligible employee” (that is, an employee who is qualified to join the Local Government Superannuation Scheme, whether or not he does so) and to provide new definitions of “variable-time”, “whole-time” and part-time employees. The terms “contractual hours” and “contractual weeks” are also defined. In addition, provision is inserted into regulation B2 to safeguard the position of those who, prior to 1st April 1998, were pensionable employees, or had the right to elect to become such, so that they are not prevented from being eligible employees simply because of the changes being made to this regulation. Regulation 33 makes related amendments to Schedule 3.

Regulation 6 deletes regulation B3. As a result, all part-time employees are eligible to join the scheme, regardless of the number of weeks they work per year.

Regulation 7 inserts the new regulation B4, which provides that an eligible employee may apply in writing to his employer to become a pensionable employee. However, scheme membership is effectively automatic for all new employees (except casual employees) in that they are deemed to have made such application unless they opt not to join the scheme. New regulation B4ZA is also inserted, providing for the effective date of a person becoming a pensionable employee in terms of new regulation B4. New regulation B4 does not affect the position of existing pensionable employees (see the definition of “pensionable employee” in regulation B1, as inserted by regulation 4, which covers both existing pensionable employees and persons who become pensionable employees by virtue of new regulation B4).

Regulation 8 amends regulation B4A to deal with the situation where a person has given a notification under that provision (opting out of pensionable employment) but, before the notification takes effect, he is called out under the Local Government Superannuation (Reserve Forces) (Scotland) Regulations 1992 (S.I.1992/1220). In such cases the notification will be treated as if it had not been given, unless the person elects otherwise.

Regulation 11 inserts new regulation C6B, which provides for part-time employees to purchase part-time, instead of whole-time, added years. Part-timers currently buying whole-time added years, however, may continue to do so unless they opt to charge their original election.

Regulation 12 expands the definition of “reckonable service” in regulation D1(2) to include a period of absence due to illness or injury, whether or not contributions have been paid for the period.

Regulations 13 and 14 amend regulation E1 and replace regulation E1A respectively in relation to guaranteed minimum pensions to ensure that the principal Regulations comply with the new contracting-out regime which came into force on 6th April 1997.

Regulation 15 inserts new regulation E2A to allow those who transferred, as a result of local government reorganisation or following dissolution of the new town development corporations or the establishment of the new water and sewerage authorities and the Scottish Children’s Reporter Administration, to a new employment on a reduced remuneration the option of electing to preserve their accrued benefits instead of accepting an “E24” certificate.

Regulation 16 amends regulation E9 to provide that, where no spouse’s long term pension is payable, children’s long term pensions are the same irrespective of who is caring for them.

Regulation 17 amends regulation E11 to provide that a death gratuity is the greater of twice the deceased’s pensionable remuneration or 3/80ths of his pensionable remuneration multiplied by the length of his period of reckonable service.

Regulation 18 provides that an administering authority may, at their discretion, pay all, or a part of, a death gratuity to a nominated beneficiary of the deceased.

Regulation 20 amends regulation E24 to the effect that where during the period from 6th April 1995 to 1st April 1997 a person ceases to be employed by a new town development corporation in consequence of the corporation’s dissolution and obtains employment, at a reduced remuneration, with a new local authority, a water and sewerage authority, the Scottish Children’s Reporter Administration or a joint board, such a reduction is a “reduction in remuneration” for the purposes of that regulation. He is therefore entitled to be issued with a certificate to that effect which is relevant to determination of his pensionable remuneration in terms of regulation E22.

Regulation 21 substitutes regulation E35, making comprehensive provision for interest to be paid on late payment of certain benefits or returns of contributions.

Regulation 22 amends regulation G3 with regard to standard remuneration agreements, providing in particular for employees affected by such an agreement to be given notice of where further information about the agreement may be obtained.

Regulations 23, 24, 30 and 37 make various amendments consequential upon the Pensions Act 1995 and The Occupational Pensions Scheme (Transfer Values) Regulations 1996 (S.I. 1996/1847). Regulation 38 makes related transitional provision.

Regulation 25 amends regulation M1 to require an employing authority to take reasonable steps to recover the financial loss suffered as a result of a pensionable employee's offence before they may direct that the employee's rights under the principal Regulations be forfeited.

Regulation 26 amends regulation N1 to require an employing authority to refer certain questions in connection with ill-health retirement to an qualified medical referee.

Regulation 27 amends regulation N2 to require an employing authority to decide whether a person's employment is of a casual nature.

Regulation 28 provides, in an amendment to regulation P8, that where an admission agreement ceases to have effect the relevant administering authority are to obtain an actuarial valuation, as at the appropriate date, of the liabilities of the employing body.

Regulation 29 amends regulation P16 to provide that, where a combined benefit is payable under regulation E16 in respect of separate local government employments, the administering authority in the person's earlier employment may discharge its liability in respect of that benefit by making a single payment to the administering authority in his later employment.

Regulation 31 makes various amendments to Schedule 1 to the principal Regulations, most of which are consequential on regulations 3, 4 and 5. In addition, the definition of "remuneration" is amended to the effect that the term includes payments and benefits, other than salary or wages etc, only if they are specified in the person's contract as being pensionable emoluments.

Regulation 32 introduces new Schedule 1A which makes further provision on the meaning of "remuneration".

Regulation 34 amends Schedule 10 to allow for additional service in the case of part-timers' ill health enhancement to be calculated as a proportion of the full-time equivalent service.

Regulation 39 provides for a right to opt out of the amendments if a person is placed in a worse position than he would be in if the amendments had not been made and the benefits in question are paid or payable in respect of a person who had left employment before the date these Regulations came into force or died before that date.

Other provisions not specifically mentioned above make amendments of a minor or drafting nature.