
STATUTORY INSTRUMENTS

1998 No. 192

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998

PART III

COMPENSATION FOR PREMATURE RETIREMENT

Adjustments to compensation: new employment

New employment

15.—(1) Where—

- (a) apart from this regulation and regulation 16, annual compensation is payable to a person; and
- (b) he enters a new employment,

the annual compensation shall be reduced in accordance with regulation 16 for so long as he holds that or any other new employment.

(2) Where two or more awards of annual compensation in respect of an eligible person fall to be reduced in accordance with this regulation, each such award shall be reduced in proportion to its amount.

(3) In this regulation and regulation 16, “annual compensation”, in relation to a person, means the annual compensation which would, apart from this regulation and regulation 16 be payable to him under this Part.

(4) In this Part “new employment”, in relation to a person, means employment with a LGSS employer or a relevant English or Welsh employer which he enters after the material date.

(5) If—

- (a) the person’s contractual hours in a new employment are altered; or
- (b) he is transferred to another post under the same employing authority at an altered remuneration,

this regulation applies as if he had again entered a new employment.

Reduction of annual compensation during new employment

16.—(1) If during any period during which a person holds a new employment the aggregate annual rate of—

- (a) annual compensation payable to him;
- (b) remuneration of his new employment; and
- (c) retirement pension payable to him in relation to his former employment,

exceeds the annual rate of remuneration of his former employment, then, subject to paragraph (2), the rate of annual compensation payable to him in respect of that period shall be reduced by the amount of the excess.

(2) If concurrently with his former employment and during the period of 12 months ending with the material date a person who is entitled to annual compensation held any other employment with a LGSS employer or a relevant English or Welsh employer (“concurrent employment”), then, if–

- (a) he ceased to hold the concurrent employment before the material date without having become entitled to receive a retirement pension in relation to it and enters new employment within 12 months after ceasing to hold the concurrent employment; or
- (b) he ceases to hold the concurrent employment on or after the material date without having become so entitled and has later entered new employment,

his annual compensation shall only be reduced in relation to his new employment–

- (i) if he spends in the new employment a time materially greater than the time which during the 12 months ending with the day on which he ceased to hold the concurrent employment he spent in that employment; and
- (ii) if, and to the extent that, the aggregate annual rate mentioned in paragraph (1) exceeds the aggregate of–
 - (I) the annual rate of remuneration of his former employment; and
 - (II) the annual rate of remuneration of the concurrent employment during that year.

(3) In this regulation “retirement pension” means–

- (a) a pension under regulation E2 of the Superannuation Regulations (including an annual pension within the meaning of regulation E15(14) of those Regulations); or
- (b) an occupational pension.

(4) In this regulation “annual compensation”, in relation to a person, means–

- (a) in paragraph (1)(a), the annual compensation payable to him under regulation 10; and
- (b) elsewhere, the annual compensation which would, apart from regulation 15 and this regulation, be payable to him under these Regulations.

(5) For the purposes of this regulation, references to the “annual rate” of retirement pension or of the remuneration of a former employment or concurrent employment are references to the annual rate of such a pension or remuneration with official increases.

(6) In paragraph (5) “official increases”, in relation to a pension or remuneration, means the increases (if any) by which an annual pension of an amount equal to the annual rate of that pension or remuneration would have been increased under the Pensions (Increase) Act 1971(1) during the period ending with the day immediately preceding the day on which the person in question entered the new employment, on the assumption–

- (a) that that pension was specified in Part II of Schedule 2 to that Act and began for the purposes of that Act on the day the pension actually began or, as the case may be, the next day after that on which he ceased to hold the employment; and
- (b) that he had on that day attained the age of 55.

(7) In calculating the annual rate of remuneration of a former, concurrent or new employment, paragraphs (6) to (9) of regulation E15 of the Superannuation Regulations (re-employed pensioners) shall apply on the relevant assumptions–

- (a) as if a former or concurrent employment were a former employment, and a new employment, within the meaning of that paragraph; and

- (b) with respect to regulation E15(6), as if the source of entitlement were the Superannuation Regulations;

but, in relation to a period of special service, regulation E15(7) of the Superannuation Regulations shall have effect as if the words “either” and “or he made contributions or payments under section 6(5) of the Act of 1937 or regulation C3 or C4” were omitted.

Cessation of new employment

17.—(1) Where—

- (a) a person who has been granted a credited period under regulation 8 has ceased to hold a new employment in which he was a pensionable employee or an assumed pensionable employee; and
- (b) the aggregate of—
 - (i) his effective service (to be taken into account under the Superannuation Regulations in the calculation of his retirement pension on cessation of his new employment, on the relevant assumptions); and
 - (ii) the period of residual entitlement which he has to his credit, exceeds his effective service which would have been so taken into account if he had held his former employment until his 65th birthday,

his annual compensation shall be abated in accordance with regulation 18.

- (2) Where a period of pre-material date extra service has been granted to a person, paragraph (1) (b) has effect with the substitution for the reference to former employment—

- (a) if it has been granted in respect of one cessation of employment which occurred before the material date, of a reference to that employment; and
- (b) if it has been granted to him in respect of more than one such cessation, of a reference to the first such employment to cease.

(3) The abatement under paragraph (1) shall have effect from the day the person in question becomes entitled to receive benefits under Part E of the Superannuation Regulations in relation to his new employment (or but for a relevant disqualification and on the relevant assumptions would become so entitled).

(4) For the purposes of paragraph (1), the effective service of a person includes reckonable service which, but for this paragraph, would be excluded by virtue of regulation D3(6) of the Superannuation Regulations (exclusion of periods in respect of which transfer values paid).

(5) In this regulation “annual compensation”, in relation to a person, means the compensation payable to him under regulation 10—

- (a) after any necessary adjustments under regulations 12 and 19; and
- (b) in a case where he has held a previous new employment (that is to say, a new employment which ceased before cessation of the new employment referred to in paragraph (1)), after any necessary adjustments under this regulation made as respects that previous new employment, but disregarding any reduction under regulation 19(3).

(6) For the purposes of paragraph (1), a person has to his credit a period of residual entitlement equal to the aggregate of—

- (a) any period of pre-material date extra service granted to him, reduced as may be necessary in accordance with paragraph (7); and
- (b) his credited period, reduced as may be necessary in accordance with paragraph (8).

(7) Where—

- (a) after the first cessation of employment in respect of which a period of pre-material date extra service was granted to him a person has ceased to hold another employment; and
- (b) his pre-material date extra service has been reduced by, or his compensation or benefit attributable to such a period has been reduced on account of, the period of that other employment or a part of it (“the reduction period”),

his pre-material date extra service shall, for the purposes of paragraph (6)(a), be reduced by the reduction period.

(8) Where there has been an abatement of a person’s annual compensation in accordance with this regulation on account of a period of previous new employment or a part of such a period (“the abatement period”), then for the purposes of paragraph (6)(b) the length of his credited period shall be reduced by the abatement period.

(9) In this regulation “pre-material date extra service” has the meaning given in regulation 8(3)(b).

Reduction of annual compensation on cessation of new employment

18.—(1) The abatement in a person’s annual compensation referred to in regulation 17(1) is its reduction by an annual sum equal to the relevant fraction of the amount calculated in accordance with paragraph (5); and the amount of the annual compensation as so reduced is in this regulation referred to as “reduced annual compensation”.

(2) Subject to paragraphs (3) and (5), the reduced annual compensation is payable to the person in question in lieu of his annual compensation (as defined in regulation 17(5)).

(3) Where on cessation of his former employment a person became entitled to lump sum compensation, his reduced annual compensation shall be further reduced by an amount (“the abatement amount”) equal to the relevant fraction of the amount calculated in accordance with paragraph (5), so that no instalment of reduced annual compensation becomes payable to him until the aggregate of reductions equals the abatement amount.

(4) In this regulation “the relevant fraction” means the fraction, ascertained in accordance with regulation E3(1) to (3) of the Superannuation Regulations, which was the fraction used—

- (a) in the case of paragraph (1), in determining the increase in pension mentioned in regulation 10(2) for the purpose of determining the rate of the annual compensation; or
- (b) in the case of paragraph (3), in determining the increase in grant mentioned in regulation 9(2) for the purpose of determining the lump sum compensation.

(5) The amount to be calculated in accordance with this paragraph is an amount equal to the product of—

- (a) the smaller of—
 - (i) the pensionable remuneration of the person’s former employment; and
 - (ii) the pensionable remuneration of his new employment (after deducting the notional indexed increase); and
- (b) the shortest of—
 - (i) his credited period;
 - (ii) his effective service to be taken into account in relation to his new employment (as described in regulation 17(1)(b)(i)); and
 - (iii) the period of excess referred to in regulation 17(1)(b);

and for the purposes of paragraph (b) periods shall be expressed in years and fractions of a year.

(6) For the purposes of paragraph (5), the notional indexed increase, in relation to the pensionable remuneration of a person’s new employment, is such proportion of it as the aggregate of any increases

which would have been awarded in respect of the relevant period under the Pensions (Increase) Act 1971⁽²⁾ on an official pension of £100 a year which commenced from the first day of the relevant period bears to the amount of an official pension of £100 as so increased.

(7) In paragraph (6) “the relevant period” means the period beginning with the day following cessation of the former employment and ending with the day the person becomes entitled (or but for a relevant disqualification and on the relevant assumptions would become entitled) to a retirement pension in respect of the new employment (notwithstanding that the right to the payment of such pension may be deferred).

(2) 1971 c. 56.