
STATUTORY INSTRUMENTS

1998 No. 192

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

PART III

COMPENSATION FOR PREMATURE RETIREMENT

Interpretation

Interpretation of Part III

5.—(1) Unless the context otherwise requires, in this Part—

“the 1965 Regulations” means the Redundancy Payments Pensions Regulations 1965⁽¹⁾;

“the 1979 Regulations” means the Local Government (Compensation for Premature Retirement) (Scotland) Regulations 1979⁽²⁾;

“annual compensation” shall be construed in accordance with regulation 10;

“credited period”, in relation to a person, means a period with which he is credited under regulation 8;

“effective service” comprises—

- (a) any period of reckonable service up to and including the material date; and
- (b) any period of special service up to and including that date (other than special service consisting of periods of unpaid leave or other unpaid absence from duty);

“eligible person” means a person who satisfies the conditions mentioned in regulation 6(1);

“enactment” includes any instrument made under an Act;

“excepted payment”, in relation to an employment of a person, means a payment received by him which is—

- (a) a redundancy payment to which he is entitled under Part XI of the 1996 Act (redundancy payments), or compensation paid to him under Part II of these Regulations, in respect of the cessation of his former employment (including in either case any amount by which that payment is reduced in accordance with the 1965 Regulations); or
- (b) a payment in respect of that employment made under regulations, or under provisions having effect as provisions of regulations, made under section 7 of the 1972 Act; or
- (c) a payment in lieu of annual or other leave to which he was entitled in that employment; or

⁽¹⁾ S.I.1965/1932.

⁽²⁾ S.I. 1979/785, amended by S.I. 1982/917, 1984/846, 1986/409, 1990/125, 1992/1025 and 1597, 1993/490, 1994/1715 and 3068, 1995/340, 750 and 3294 and 1996/1241 and 1360.

(d) so much of any payment in lieu of notice of termination of that employment, as does not exceed the remuneration he would have received if he had remained in that employment for a period of three months after the material date;

“former employment”, in relation to a person, means the employment which ceased as described in regulation 6(1)(a);

“lump sum compensation” means such compensation as is mentioned in regulation 9;

“material date”, in relation to a person, means the date upon which he ceased to hold his former employment;

“new employment” shall be construed in accordance with regulation 15(4);

“occupational pension”, in relation to a person, means a pension (other than a lump sum) to which he has become entitled (whether or not payable immediately) being—

(a) a pension associated with any employment which is payable under an enactment (other than the Social Security Contributions and Benefits Act 1992⁽³⁾ or the Superannuation Regulations), contract, scheme or other arrangement, including a pension under a personal pension scheme in relation to which the Secretary of State has paid contributions under section 1 of the Social Security Act 1986⁽⁴⁾ or section 43 of the Pension Schemes Act 1993⁽⁵⁾; or

(b) a pension derived from the payment of a transfer value calculated by reference to pension rights (contingent or otherwise) arising under the Superannuation Regulations or arising with respect to such a pension as is mentioned in paragraph (a);

“official pension” has the same meaning as in the Pensions (Increase) Act 1971⁽⁶⁾;

“pensionable remuneration”, in relation to a person, means the remuneration which is (or, if there has been a relevant disqualification, which, but for that disqualification and on the relevant assumptions, would be) that person’s pensionable remuneration;

“the relevant assumptions” has the meaning given in regulation 7(2);

“relevant disqualification” has the meaning given in regulation 7(1);

“relevant English or Welsh employer” means a LGPS employer within the meaning of the Local Government Pension Scheme Regulations 1995⁽⁷⁾;

“special service” has the meaning given in regulation 7(3) and (4).

(2) For the purposes of this Part, a person is an “eligible child” of a person if—

(a) he is a child of a marriage of the person which took place on or before the material date and was born before the expiry of the period of one year beginning with that date; or

(b) he is a child adopted by the person on or before the material date; or

(c) he is a child who was wholly or mainly dependent on the person both on the material date and at the time of the person’s death and is—

(i) the person’s step-child or child born out of wedlock;

(ii) an adopted child of someone else who married the person before the material date; or

(iii) a child accepted by the person as a member of the family.

(3) 1992 c. 4.

(4) 1986 c. 50; section 1 was repealed by the Pension Schemes Act 1993 (c. 48), section 188 and Schedule 5.

(5) 1993 c. 48; section 43 was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 42.

(6) 1971 c. 56; “official pension” is defined in section 5(1) which was amended by the Superannuation Act 1972, Schedule 6, paragraph 85.

(7) S.I. 1995/1019, amended by S.I. 1995/1985, 2249, 2953, 1996/185, 711, 1428, 2180 and 1997/218, 329, 578, 598, 954 and 1613.

(3) For the purposes of these Regulations, a person who in his employment immediately before the material date was subject to regulation B8 of the Superannuation Regulations (separate employments under one employer) (or, if he is an assumed pensionable employee would, apart from a relevant disqualification and on the relevant assumptions, be so subject) shall be treated, unless the context otherwise requires, in relation to each of the employments as if the other or others were held by him under another LGSS employer.

(4) A person who in his employment immediately before the material date was subject to regulation B7 (returning officers etc) of the Superannuation Regulations (or, if he is an assumed pensionable employee would, apart from a relevant disqualification and on the relevant assumptions, be so subject) shall for the purposes of these Regulations be treated, unless the context otherwise requires, as if each additional duty were a separate variable-time employment with a LGSS employer other than the employer with whom he was in whole-time employment.

Eligibility to benefit under this Part

Persons who are eligible to benefit: pensionable employees and assumed pensionable employees

6.—(1) A pensionable employee or an assumed pensionable employee is eligible to benefit under this Part if—

- (a) on or after 1st April 1976 he has ceased to hold his employment with an employing authority—
 - (i) by reason of redundancy;
 - (ii) in the interests of the efficient exercise of that authority’s functions; or
 - (iii) because he was one of the holders of a joint appointment and his appointment has been terminated because the other ceased to hold his employment;
- (b) in a case within paragraph (a)(i) or (ii), that authority—
 - (i) have certified in relation to him in accordance with regulation E2(4)(a) of the Superannuation Regulations (redundancy etc.); or
 - (ii) are satisfied that but for a relevant disqualification and on the relevant assumptions they would have so certified;
- (c) he is not, in respect of the loss of that employment, entitled to have his case considered for the payment of section 219 compensation;
- (d) on the material date he has attained the age of 50, but not the age of 65;
- (e) on that date the aggregate of—
 - (i) his effective service, and
 - (ii) any periods to which regulation D10, D11, E29 or J9 of the Superannuation Regulations applies,amounts to at least 5 years;
- (f) on that date his effective service does not exceed 40 years; and
- (g) the period beginning with the day following the material date and ending with his 65th birthday exceeds any period of residual entitlement which he has to his credit as described in regulation 8(1).

(2) In paragraph (1) “assumed pensionable employee” means a person who the employing authority are satisfied would be or be treated as a pensionable employee but for a relevant disqualification.

(3) In paragraph (1)(c) “section 219 compensation” means long-term compensation or retirement compensation—

- (a) under regulations made under section 219 of the Local Government (Scotland) Act 1973⁽⁸⁾; or
- (b) under any instrument made under any provision to the like effect in any other enactment.

Application of Part III to assumed pensionable employees: “relevant disqualification”, “relevant assumptions” and “special service”

7.—(1) In this Part, in relation to any person, “relevant disqualification” means an act or omission in consequence of which (either alone or taken together with other such acts or omissions) that person has not become, has ceased to be or has not been treated as being a pensionable employee, being one of the following acts or omissions:—

- (a) the failure of any medical examination required to become a pensionable employee;
- (b) the absence of an election or application to become a pensionable employee with respect to any period (including circumstances where such absence is on account of the person’s contractual weeks being fewer than 35 in every period of 12 months or his contractual hours in every week being fewer than 30 or, in the case of a manual worker, his not having completed any period of continuous employment required before he may elect to become a pensionable employee);
- (c) the giving of notification that a person does not wish to be a pensionable employee;
- (d) the making of an election or the absence of an election with respect to any period under regulation 47(1)(c) of the Local Government Superannuation (Scotland) Amendment Regulations 1989⁽⁹⁾.
- (e) the giving of notice by the person’s employer that he is not to be a pensionable employee.

(2) In this Part “the relevant assumptions” means the following assumptions:—

- (a) that during any period of special service a person was a pensionable employee;
- (b) that a person’s reckonable service included any periods of special service which did not consist of periods of unpaid leave or other unpaid absence from duty;
- (c) that any election or determination which, on the assumptions mentioned in sub-paragraphs (a) and (b), might have been made with respect to a period of special service under regulation E22(3) of the Superannuation Regulations (optional alternative relevant periods for calculating pensionable remuneration)—
 - (i) in the circumstances mentioned in regulation E22(3) of those Regulations, had been made; and
 - (ii) in the circumstances mentioned in regulation E22(4) or (5) or E24 of those Regulations, had not been made; and
- (d) that regulation E22(7) of those Regulations did not apply with respect to a period of special service.

(3) In this Part “special service” means, subject to paragraph (4), any period of employment with respect to which the employing authority are satisfied—

- (a) that, if it were not for a relevant disqualification, the person concerned would have been or have been treated as being a pensionable employee; or
- (b) that the employment would have fallen within sub-paragraph (a) if it had not been part-time employment in which the person was ineligible to be a pensionable employee.

⁽⁸⁾ 1973 c. 65.

⁽⁹⁾ S.I. 1989/802.

(4) In relation to any employment ending before a person began his former employment, “special service” only includes such periods as are continuous with the former employment.

(5) For the purpose of paragraph (4), a period of employment is continuous with the former employment if in the interval between its ending and the former employment beginning there has been no period exceeding one month and one day during which the person was not employed by an LGSS employer or a relevant English or Welsh employer.

Discretionary awards of lump sum and annual compensation to former employees

Power to award credited period for compensation purposes

8.—(1) An employing authority may, within the time limit specified in paragraph (2), credit an eligible person (including an eligible person who has already died) with an additional period of service (the “credited period”) not exceeding the shortest of the following:—

- (a) the period by which his effective service falls short of 40 years;
- (b) the period beginning with the day following the material date and ending with his 65th birthday, less any period of residual entitlement which he has to his credit (as described in paragraph (3));
- (c) the aggregate of his effective membership and any periods to which regulations D2, D10, D11, D12 and E28 of the Superannuation Regulations apply (or, if he is an assumed pensionable employee, would apply apart from a relevant disqualification and on the relevant assumptions); or
- (d) 10 years.

(2) The time limit referred to in paragraph (1) is—

- (a) in the case of a person who becomes eligible to benefit under this Part only on its coming into force, where the material date was earlier than the date on which these Regulations come into force, six months after the date on which these Regulations come into force;
- (b) in any other case, six months after the material date.

(3) For the purposes of paragraph (1)(b), where a person has been granted a credited period in respect of a cessation of employment (“the previous cessation”) before the material date, he has to his credit a period of residual entitlement equal to the excess (if any) of the relevant aggregate period over the period which—

- (a) begins with the day immediately following the previous cessation (or, if there has been more than one previous cessation in respect of which pre-material date extra service has been granted to him, the first of them); and
- (b) ends with the day on which he ceased to hold his former employment.

(4) In this regulation, in relation to any person—

- (a) “the relevant aggregate period” means the aggregate of—
 - (i) his pre-material date extra service, reduced as may be necessary in accordance with paragraph (5);
 - (ii) the period of his former employment; and
 - (iii) the aggregate of any periods during which he was a pensionable employee or an assumed pensionable employee, being periods between the previous cessation (or, if there has been more than one previous cessation in respect of which pre-material date extra service has been granted to him, the first of them) and the commencement of the former employment;

- (b) “pre-material date extra service” means a period by which his effective service has been increased or a period of service with which he has been credited, before the material date, for the purpose of calculating one of the kinds of benefit or compensation mentioned in paragraph (6) (or, if more than one such period has been granted to him, the aggregate of them).

(5) Where after his previous cessation (or the first of them) a person has ceased to hold an employment and—

- (a) his pre-material date extra service has been reduced by the period of that employment or part of that period; or
- (b) the compensation or benefit attributable to such extra service has been reduced on account of that period or part of it,

his pre-material date extra service for the purposes of paragraph (4)(a)(i) shall be reduced by that period.

(6) The benefits and compensation mentioned in paragraph (4)(b) are—

- (a) retirement compensation under an Act or under regulations made under section 219 of the Local Government (Scotland) Act 1973, or a similar instrument, on account of loss of employment;
- (b) benefit under regulations made under section 220 of that Act, or a similar instrument;
- (c) compensation under any scheme made under section 1 of the 1972 Act⁽¹⁰⁾, or a similar instrument, on account of his retirement in the public interest;
- (d) compensation under an Act or under these Regulations or any other regulations made under section 24 of the 1972 Act⁽¹¹⁾, or a similar instrument, on account of his ceasing to hold an employment with an authority in such circumstances as are mentioned in regulation 6(1)(a)(i), (ii) or (iii);

and in this paragraph “similar instrument” means any instrument made under any provision to the like effect in any other enactment.

(7) An employing authority shall not credit an eligible person with an additional period of service in terms of paragraph (1) where a determination is made to pay compensation to that person in terms of regulation 5(c) or (d) of the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995⁽¹²⁾.

Lump sum compensation

9.—(1) An eligible person who has been granted a credited period under regulation 8 is entitled to receive compensation in the form of a lump sum in accordance with this regulation.

(2) If—

- (a) he is entitled, on ceasing to hold his former employment, to a retirement allowance by virtue of regulation E2(1)(b)(iii) of the Superannuation Regulations in a case where one of the conditions in paragraph (4) of that regulation is satisfied (early retirement on redundancy, or in the interests of efficiency or on the cessation of a joint appointment); or
- (b) but for a relevant disqualification, he would be so entitled on the relevant assumptions and on the further assumption that, if the employing authority might have certified under regulation E2(4)(a) of those Regulations, they have done so,

⁽¹⁰⁾ Section 1 of the Superannuation Act 1972 (c. 11) was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 8, and the Pension Schemes Act 1993 (c. 48), Schedule 8, paragraph 6.

⁽¹¹⁾ Section 24 of the Superannuation Act 1972 (c. 11) was amended by the Police Pensions Act 1976 (c. 35), section 13(1), Schedule 2, paragraph 10.

⁽¹²⁾ S.I. 1995/340.

he is entitled to receive lump sum compensation of an amount equal to the amount by which that retirement allowance would be increased on the relevant assumptions and in accordance with those Regulations if his effective service were increased by the credited period.

Annual compensation; general provisions

10.—(1) Subject to the following regulations, an eligible person who has been granted a credited period under regulation 8 is entitled to receive annual compensation in accordance with this regulation.

(2) From the day following the material date he is entitled to receive annual compensation at a rate equal to the rate by which the annual retirement pension to which—

- (a) he is entitled, on ceasing to hold his former employment, by virtue of regulation E2(1)(b)(iii) of the Superannuation Regulations in a case where one of the conditions in paragraph (4) of that regulation is satisfied (early retirement on redundancy, or in the interests of efficiency or on the cessation of a joint appointment); or
- (b) but for a relevant disqualification, he would be so entitled on the relevant assumptions and on the further assumption that, if the employing authority might have certified under E2(4)(a) of those Regulations, they have done so,

would be increased on the relevant assumptions and in accordance with those Regulations, if his effective service were increased by the credited period.

Adjustments to compensation: other receipts

Limit on annual compensation where entitlement to occupational pension

11.—(1) Where—

- (a) immediately before the material date a person is entitled to an occupational pension in respect of any period (whether or not it is in payment);
- (b) the aggregate of that period, his effective service and any credited period exceeds 40 years; and
- (c) at any time when the occupational pension is in payment, the aggregate of the annual rate for the time being—
 - (i) of that pension;
 - (ii) of his retirement pension under regulation E2(1)(b)(iii) of the Superannuation Regulations; and
 - (iii) of the annual compensation payable under regulation 9, would (apart from this paragraph) exceed the relevant amount specified in paragraph (2),

the basic rate of the annual compensation shall be reduced so that that aggregate does not exceed the relevant amount.

(2) The relevant amount mentioned in paragraph (1) is—

- (a) if a retiring allowance under Part E of the Superannuation Regulations is payable, 50 per cent of the sum of—
 - (i) the amount of the eligible person's pensionable remuneration; and
 - (ii) the amount of the official increases by which an official pension at the annual rate of that pensionable remuneration would have been increased, if it had begun and first qualified for such increases on the day after the material date; and
- (b) if no such retiring allowance is payable, 66 per cent of the sum of those amounts.

- (3) For the purposes of paragraph (1)–
- (a) the annual rates at any time of the annual compensation and of any other official pension are their annual rates with official increases;
 - (b) the annual rate at any time of an occupational pension which is not such an official pension is its annual rate as increased under any enactment, contract, scheme or other arrangement.
- (4) As respects an occupational pension which is–
- (a) a pension under a personal pension scheme in relation to which the Secretary of State paid contributions under section 1 of the Social Security Act 1986(13) or section 43 of the Pension Schemes Act 1993(14); or
 - (b) a pension derived from the payment of a transfer value calculated by reference to rights arising with respect to such a pension as is mentioned in sub-paragraph (a),
- any reference in paragraph (1) to the period in respect of which a person is entitled to the occupational pension shall be construed as a reference–
- (i) to the period of employment by reference to which the Secretary of State has paid the contributions; and
 - (ii) without prejudice to the generality of that expression in other cases, to any period of employment in relation to which a transfer value has been paid into the personal pension scheme.
- (5) In this regulation–
- “the basic rate”, in relation to annual compensation, means its basic rate for the purposes of the Pensions (Increase) Act 1971(15);
 - “official increases” means any increases under that Act.

Redundancy payments

- 12.**—(1) Where–
- (a) the period with which an eligible person is credited under regulation 8 exceeds 6 2/3 years; and
 - (b) he has received, or is entitled to receive, in respect of the cessation of his former employment–
 - (i) a redundancy payment to which he is entitled under Part XI of the 1996 Act (redundancy payments)(16); or
 - (ii) compensation paid to him under Part II of these Regulations,
 his compensation under this Part shall be abated in accordance with the following provisions.
- (2) In the case of lump sum compensation–
- (a) if it exceeds the amount calculated in accordance with paragraph (3), it shall be reduced by that amount; and
 - (b) if the amount so calculated equals or exceeds it, it shall not be payable (and any such excess (“the outstanding balance”) shall be deducted from the annual compensation as mentioned in paragraph (4)).

(13) 1986 c. 50; section 1 was repealed by the Pension Schemes Act 1993 (c. 48), section 188 and Schedule 5.

(14) 1993 c. 48; section 43 was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 42.

(15) 1971 c. 56; see section 17(1).

(16) 1996 c. 18.

(3) The amount to be calculated in accordance with this paragraph is an amount equal to 30 per cent of the aggregate amount of the redundancy payments referred to in paragraph (1)(b)(i) and (ii), multiplied by the excess mentioned in paragraph (1)(a) (expressed in years and fractions of a year), less the aggregate amount of any reductions made in those payments in accordance with the 1965 Regulations.

(4) Annual compensation payable under regulation 10 shall be reduced by the appropriate percentage—

- (a) if paragraph (2)(b) applies, of the outstanding balance; or
- (b) if, apart from the provisions of paragraph (2), the person is not entitled to receive lump sum compensation, of the amount calculated in accordance with paragraph (3);

and in this paragraph “the appropriate percentage” means the percentage specified in the Table in Schedule 1 in relation to a person of the eligible person’s age and sex.

Other termination payments

13.—(1) Where an eligible person who has been granted a credited period under regulation 8 receives a termination payment to which this regulation applies—

- (a) his lump sum compensation is only payable if, and to the extent that, after abatement under regulation 12, it exceeds the amount of the termination payment;
- (b) if the termination payment exceeds his lump sum compensation after any such abatement, his annual compensation (after any necessary adjustments under regulations 12, 15, 16, 18 and 19) shall be reduced by the amount of the excess;
- (c) if (apart from paragraph (a)) he is not entitled to receive lump sum compensation, his annual compensation (after any such necessary adjustments) shall be reduced by the amount of the termination payment.

(2) Where—

- (a) the whole or part of the termination payment is received by a person after a period is credited to him under regulation 8; and
- (b) his compensation has not been abated on account of that payment in accordance with paragraph (1),

his annual compensation (after any necessary adjustments under regulations 12, 15, 16, 18 and 19) shall be reduced by the amount received in respect of the termination payment.

(3) Where a person’s annual compensation falls to be reduced by an amount under paragraph (1) (b) or (c) or (2), no instalment of annual compensation becomes payable to him until the aggregate of reductions equals that amount.

(4) In this regulation “termination payment” means the aggregate amount of any lump sum payments made to the eligible person by his employing authority in consequence of or as compensation for the loss of his former employment (other than lump sum compensation or any payment which is an excepted payment in relation to that employment), being payments made under an enactment or a contract or arrangement with that authority.

Periodic payments

14.—(1) Where periodic payments are received by a person in respect of any period, annual compensation is only payable to him in respect of that period if, and to the extent that, after any adjustments necessary under regulations 12, 13, 15, 16, 18 and 19 have been made, it exceeds the amount of the aggregate of those periodic payments.

(2) In this regulation, “periodic payment”, in relation to a person, means an instalment of an allowance for life or other period (other than annual compensation under this Part or a payment which is an excepted payment in relation to that employment) granted to him by his employing authority in consequence of or as compensation for the loss of former employment, being an allowance under an enactment or a contract or arrangement with that authority.

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⁽¹⁷⁾ 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—

(17) 1971 c. 56.

- (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(18) 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).

Surrenders

Allocation of part of annual compensation

19.—(1) Where an eligible person who has been granted a credited period under regulation 8 has been allowed, in accordance with regulation E20 of and Schedule 13 to the Superannuation Regulations, to surrender a part of the retirement pension to which he would otherwise be entitled on ceasing to hold his former employment (“the surrendered part”), he may give notice to his employing authority that he wishes this regulation to apply to him.

(2) Notice under paragraph (1) must be given by a person before the expiry of the period of one month beginning—

- (a) in the case of a person who has not entered a new employment, with—
 - (i) the date on which he is given notification under regulation 27(a) of the grant of the credited period; or
 - (ii) his attaining pensionable age,
 whichever is the later;
- (b) if he has entered new employment, with—
 - (i) the date on which that employment ceases;
 - (ii) the date on which he is given notification under regulation 27(c) of any adjustment made by reason of that cessation; or
 - (iii) his attaining pensionable age,
 whichever is the latest.

(3) A person who duly gives notice under this regulation may surrender any part of his annual compensation (not exceeding the surrendered pension percentage), on the like terms and conditions and for the like consideration as if his annual compensation were a retirement pension to which he had become entitled by virtue of regulation E2(1)(b)(iii) and (3)(a) of the Superannuation Regulations (early retirement on redundancy etc.).

(4) In paragraph (3) “the surrendered pension percentage”, in relation to any person, means the same percentage as the surrendered part of the retirement pension is of the retirement pension to which he would be entitled apart from the surrender.

(5) In this regulation “annual compensation”, in relation to any person, means the compensation payable under regulation 10, adjusted as may be necessary—

- (a) in accordance with regulation 12;
- (b) if he is a person to whom such an allowance for life as is mentioned in paragraph (2) of regulation 14 has been granted, in accordance with that regulation; and
- (c) in accordance with regulation 18 (but disregarding any reduction under regulation 17(3)).

(6) In the case of a person to whom regulation E20 of the Superannuation Regulations does not apply because of a relevant disqualification—

- (a) paragraph (1) shall have effect as if he had been allowed to surrender as mentioned in that paragraph; and
- (b) the annual compensation which he is entitled to surrender in accordance with paragraph (3) shall be such part as he may specify in the notice required under paragraph (1).

Awards to surviving spouses

Entitlement to surviving spouse's short-term and long-term compensation

20.—(1) This regulation applies on the death of an eligible person who has been granted (whether before or after his death) a credited period under regulation 8 and is survived by a spouse or spouses—

- (a) who is or, as the case may be, who are jointly entitled to receive a pension under regulation E5 of the Superannuation Regulations (surviving spouses' pensions) in relation to the deceased's former employment; or
- (b) who would be so entitled apart from—
 - (i) a relevant disqualification with respect to the deceased (and on the relevant assumptions); or
 - (ii) the transfer of benefits to another pension scheme.

(2) Where this regulation applies the surviving spouse is or, as the case may be, the surviving spouses are jointly entitled to receive—

- (a) surviving spouse's short-term compensation—
 - (i) in the case of a surviving spouse who has (or one of whose spouse's other surviving spouses has) one or more eligible children in his care, for the period of six months after the date of the death; and
 - (ii) otherwise, for the period of three months after that date; and
- (b) after that period, surviving spouse's long-term compensation;

and where surviving spouses are jointly entitled to compensation under this regulation, the employment authority may decide how it shall be apportioned between them.

(3) If the marriage with the deceased took place after the material date, a surviving spouse is only entitled to receive surviving spouse's short-term or long-term compensation if he is entitled to a surviving spouse's pension under the Superannuation Regulations (or would be so entitled apart from the matters mentioned in paragraph (1)(b)).

(4) Except where paragraph (5) applies, a surviving spouse who is entitled to short-term or long-term compensation by virtue of this regulation—

- (a) is not so entitled during any subsequent marriage or any period of cohabitation outside marriage; and
- (b) is entitled to surviving spouse's long-term compensation from the end of any such marriage or period only if the employing authority in their discretion so decide.

(5) Where a widower and a widow each of whom is entitled to short-term or long-term compensation under this regulation marry each other or cohabit with each other outside marriage—

- (a) only such one of them as they may determine shall be so entitled; and
- (b) the other shall cease to be so entitled until the end of the marriage or cohabitation.

Amount of surviving spouse's short-term and long-term compensation

21.—(1) Surviving spouse's short-term compensation is payable at an annual rate equal to the rate at which any annual compensation would have been payable to the deceased in accordance with these Regulations immediately before his death if there were disregarded any adjustment in accordance with regulation 13, 14 or 18(3).

(2) Surviving spouse's long-term compensation is the relevant fraction of any annual compensation which would have been payable to the deceased in accordance with these Regulations immediately before his death—

- (a) if there were disregarded–
 - (i) any adjustment in accordance with regulation 12, 13, 14, 18(3) or 19;
 - (ii) in a case where at the time of the deceased’s death, the deceased was in a new employment in which he was not a pensionable employee, any adjustment in accordance with regulations 15 and 16; and
- (b) in a case where at the date of death the deceased was in a new employment in which he was a pensionable employee, if that annual compensation were reduced in accordance with regulation 18 on the assumption that the effective service referred to in regulation 18(5)(b) (ii) were the service which the deceased would have been entitled to count as reckonable service on the relevant assumptions if at the date of death the deceased had been such a person as is mentioned in regulation E2(1)(b)(i) of the Superannuation Regulations.
- (3) In paragraph (2) “the relevant fraction” means–
 - (a) if the deceased was entitled to receive compensation under regulation 9, one half; and
 - (b) otherwise, three eighths.
- (4) Where a surviving spouse receives periodic payments in respect of any period, surviving spouse’s short-term or long-term compensation is only payable in respect of that period if, and to the extent that, it exceeds the amount of the aggregate of those periodic payments.
- (5) In paragraph (4) “periodic payment” means an instalment of an allowance for life or other period (other than annual compensation under these Regulations) granted to the surviving spouse by the deceased’s employing authority, in consequence of or as compensation for the loss of the deceased’s former employment, under an enactment, or a contract or arrangement with that authority (excluding a payment which is an excepted payment in relation to that employment).

Awards to surviving children

Entitlement to children’s short-term compensation

- 22.**—(1) This regulation applies on the death of an eligible person who has been granted (whether before or after his death) a credited period under regulation 8 and is survived by an eligible child or children–
- (a) who is or are entitled to receive a children’s short-term pension under regulation E8 of the Superannuation Regulations in relation to the deceased’s former employment; or
 - (b) who would be so entitled apart from–
 - (i) a relevant disqualification with respect to the deceased (and on the relevant assumptions); or
 - (ii) the transfer of benefits to another pension scheme.
- (2) Where this regulation applies, children’s short-term compensation is payable to or for the benefit of such eligible child or eligible children as are mentioned in paragraph (1)–
- (a) if a children’s short-term pension under regulation E8 of the Superannuation Regulations is payable for the period of 3 months beginning with the date of the death, for that period; and
 - (b) otherwise, for the period of 6 months beginning with that date.
- (3) Children’s short-term compensation is not payable in respect of a period for which surviving spouse’s short-term compensation is payable to the surviving spouse of the deceased.

Amount of children's short-term compensation

23.—(1) Children's short-term compensation is payable at an annual rate equal to the rate at which any annual compensation would have been payable to the deceased in accordance with these Regulations immediately before his death, disregarding any adjustment in accordance with regulation 13, 14 or 18(3).

(2) Where periodic payments are received in respect of a child in respect of any period, children's short-term compensation is only payable in respect of that child and that period if, and to the extent that, it exceeds the amount of the aggregate of those periodic payments.

(3) In paragraph (2) "periodic payment" means an instalment of an allowance for life or other period (other than annual compensation under these Regulations) granted to or in respect of the child by the deceased's employing authority, in consequence of or as compensation for the loss of the deceased's former employment, under an enactment, or a contract or arrangement with that authority (excluding a payment which is an excepted payment in relation to that employment).

Entitlement to children's long-term compensation

24.—(1) This regulation applies on the death of an eligible person who has been granted (whether before or after his death) a credited period under regulation 8 and is survived by an eligible child or children—

- (a) in respect of whom there is an entitlement to receive a children's long-term pension under regulation E8 of the Superannuation Regulations in relation to the deceased's former employment; or
- (b) in respect of whom there would be such an entitlement apart from—
 - (i) a relevant disqualification with respect to the deceased (and on the relevant assumptions); or
 - (ii) the transfer of benefits to another pension scheme.

(2) Where this regulation applies, children's long-term compensation is payable to or for the benefit of such eligible child or eligible children—

- (a) if a children's long-term pension under regulation E8 of the Superannuation Regulations is payable following the expiry of the period of 3 months beginning with the date of death, from the day following the expiration of that period; or
- (b) otherwise, from the day following the expiry of the period of 6 months beginning with the date of death.

Amount of children's long-term compensation

25.—(1) Children's long-term compensation is payable at an annual rate equal to the appropriate fraction of the deceased's annual compensation.

(2) In paragraph (1) "the appropriate fraction" means—

- (a) where there is a surviving spouse to whom surviving spouse's short-term compensation or long-term compensation is payable (or would be payable apart from regulation 20(4))—
 - (i) if there is one eligible child, one quarter; and
 - (ii) if there are two or more eligible children one half;
- (b) where there is no such surviving spouse or in respect of any period after the death of such a surviving spouse—
 - (i) if there is one eligible child, one third; and
 - (ii) if there are two or more eligible children, two thirds.

(3) For the purposes of paragraph (1), “the deceased’s annual compensation” means any annual compensation which would have been payable to the deceased in accordance with these Regulations immediately before his death—

- (a) if there were disregarded—
 - (i) any adjustment in accordance with regulation 12, 13, 14, 18(3) or 19; and
 - (ii) in a case where at the time of the deceased’s death, the deceased was in a new employment in which he was not a pensionable employee, any adjustment in accordance with regulation 15 and 16; and
- (b) in a case where at the time of the deceased’s death, the deceased was in a new employment in which he was a pensionable employee, if that annual compensation were reduced in accordance with regulation 18, on the assumption that the effective service referred to in regulation 18(5)(b)(ii) were the service which he would have been entitled to reckon as reckonable service on the relevant assumptions if he had been, at the time of his death, a person such as is mentioned in regulation E2(1)(b)(i) of the Superannuation Regulations.

(4) Where periodic payments (as defined in regulation 23(3)) are received in respect of a child in respect of any period, children’s long-term compensation is only payable in respect of that child and that period if, and to the extent that, it exceeds the amount of the aggregate of those periodic payments.

(5) If an eligible child to whom, or for whose benefit, children’s long-term compensation is payable—

- (a) has attained the age of 17; and
- (b) is in receipt of remuneration in respect of full-time training for a trade, profession or calling at an annual rate in excess of the indexed training rate,

then—

- (i) the annual rate of the children’s long-term compensation shall be reduced by an amount equal to the amount of that excess (less any reduction made in the children’s long-term pension in respect of that excess under regulation E9(5) of the Superannuation Regulations); or
- (ii) if it would result in a smaller reduction of the children’s long-term compensation, that child shall be disregarded for the purpose of calculating the amount of that compensation.

(6) In paragraph (5)(b) “the indexed training rate” means the annual rate at which an official pension would for the time being be payable if it had begun on 1st April 1994 and had then been payable at an annual rate of £1,450.

Payment of children’s compensation

26.—(1) In a case where children’s compensation is payable in respect of children in relation to whom children’s short-term pension or children’s long-term pension is paid under regulation E9(7) of the Superannuation Regulations (discretion as to payment of children’s pensions), children’s compensation—

- (a) is payable to the same person; and
- (b) is payable for the benefit of the eligible children in the same proportions,

as the children’s pension is payable.

(2) If children’s short-term pension or children’s long-term pension is not paid under regulation E9(7) of the Superannuation Regulations because—

- (a) of a relevant disqualification with respect to the deceased; or
- (b) of the transfer of benefits to another pension scheme,

but otherwise (and on the relevant assumptions) it would be so payable, the employing authority shall decide to whom the children's compensation is payable and in what shares it is to be apportioned amongst the eligible children.

Miscellaneous and supplemental

Notification of compensation

27. Before the expiry of the period of one month beginning with the date of—

- (a) the grant of a credited period to any person under regulation 8;
- (b) the death of a person to whom such an award has been made; or
- (c) the making of any adjustment affecting the compensation payable to a person in accordance with this Part,

the employing authority shall give that person, or any other person to whom compensation is payable in accordance with this Part, written notification of the compensation payable or, as the case may be, of the adjustment, giving details of the calculation in question.

Information

28.—(1) Where a person who has been granted a credited period under regulation 8 enters or ceases to hold a new employment, before the expiry of the period of one month beginning with the date on which he does so he shall give his employing authority written notification of that fact.

(2) A person to whom compensation is payable in accordance with this Part shall—

- (a) furnish all such information as the employing authority may at any time reasonably require; and
- (b) verify that information in such manner, including by the production of documents in his possession or control, as may be reasonably so required.

Payment of compensation

29.—(1) Compensation (other than lump sum compensation) which is payable to a person under this Part shall be payable at intervals equivalent to those at which his pension is payable under the Superannuation Regulations (or would have been so payable but for a relevant disqualification and on the relevant assumptions or, as the case may be, the transfer of benefits to another pension scheme), or at such other intervals as may be agreed between him and the paying authority.

(2) Any compensation payable under this Part—

- (a) shall be payable to or in trust for the person entitled to receive the compensation; and
- (b) shall not be assignable or chargeable with his debts or other liabilities.

(3) Where any compensation under this Part is paid in error to any person (including an overpayment)—

- (a) he shall as soon as practicable repay it to the paying authority; and
- (b) the paying authority may recover it from him (including, but without prejudice to any other means of recovery, by deducting it from any compensation payable to or in respect of him under this Part).

(4) In this regulation “the paying authority” means the authority who, in accordance with regulation 31, pay the compensation.

Interest on sums due under Part III

30.—(1) Where all or part of any sum due under this Part by way of compensation is not paid before the expiry of the relevant period after the date on which it becomes payable, the paying authority shall pay the person to whom the sum is payable interest on the amount remaining unpaid, calculated at one per cent above base rate on a day to day basis from that date to the date of payment, and compounded with three-monthly rests.

(2) In paragraph (1) “the relevant period” means—

- (a) in the case of compensation payable in the form of a lump sum, one month; and
- (b) in the case of other compensation, one year.

Paying authority – general

31.—(1) Compensation payable under these Regulations shall, subject to paragraphs (2) to (4) and regulation 32, be paid by the employing authority.

(2) The appropriate authority in relation to any person who is entitled to any compensation under this Part may agree with the employing authority to pay any compensation arising in respect of that person on their behalf and to recover the amount from them.

(3) Compensation payable in the form of a lump sum may not be paid from the superannuation fund maintained by the appropriate authority under the Superannuation Regulations.

(4) The amount of any other compensation paid by an appropriate authority on behalf of the employing authority from that superannuation fund shall be recovered from the employing authority within a period of two months from the payment.

(5) In this regulation any reference to the appropriate authority, in relation to any person, is a reference to the authority who are the administering authority in relation to him for the purposes of the Superannuation Regulations or who would be that authority in relation to him but for a relevant disqualification and on the relevant assumptions.

Paying authority on closure of certain educational establishments

32.—(1) Where an eligible person was formerly employed in one of the educational establishments listed in paragraphs 6 and 7 of Schedule 3 to the Superannuation Regulations, the Secretary of State shall, on closure of that establishment, become liable to meet the cost of compensation, except where—

- (a) the board of management of an educational establishment referred to in paragraph 6 of that Schedule is dissolved by an order made under section 25 of the Further and Higher Education (Scotland) Act 1992(19); and
- (b) the order provides for transfer to any person or body of the liability to pay the compensation.

(2) For the purposes of paragraph (1) the date of closure—

- (a) of an educational establishment referred to in paragraph 6 of that Schedule shall be the date with effect from which the board of management of the establishment is dissolved by an order made under section 25 of the Further and Higher Education (Scotland) Act 1992;
- (b) of an educational establishment referred to in paragraph 7 of that Schedule shall be the date on which the board of management ceases to manage the school and the Secretary of State’s duty to maintain the school ceases in accordance with section 31 of the Self-

Governing Schools etc. (Scotland) Act 1989⁽²⁰⁾ or, if earlier, the date on which the Secretary of State ceases to maintain the school in accordance with section 33 of that Act.

Retrospective effect in certain cases

33. If the material date in respect of any person is before the date when these Regulations come into force and the person is credited with an additional period of service under regulation 8, regulations 9 to 32 and, so far as relevant, Parts I and VII shall have effect in respect of that person from the material date:

Provided that regulation 20(3) shall not have effect from a date earlier than 25th July 1996.