
STATUTORY INSTRUMENTS

1998 No. 192

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

PART IV

COMPENSATION FOR REDUNDANCY WHERE PART III DOES NOT APPLY

Persons to whom this Part applies

- 34.**—(1) This Part applies where any person who is or is eligible to be a LGSS member—
- (a) ceases on or after 28th December 1994 to hold his employment with a LGSS employer—
 - (i) by reason of redundancy; or
 - (ii) in the interests of the efficient exercise of that employer's functions;
 - (b) is not in respect of that loss of employment—
 - (i) entitled to have his case considered for the payment of compensation under Part III; or
 - (ii) disentitled to a redundancy payment under Part VI of the 1978 Act by virtue of section 142(2) of that Act or, as the case may be, under Part XI of the 1996 Act by virtue of section 197(3) of that Act (agreements to exclude rights to redundancy payments on expiry of short fixed term contracts);
 - (c) is entitled to count a qualifying employment amounting—
 - (i) in the case of a person who on the material date has attained the age of 18 but not the age of 50, to at least 2 years; and
 - (ii) in the case of a person who on that date has attained the age of 50, to less than 2 years; and
 - (d) is not a person to whom Part II of the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995(1) applies.
- (2) In determining for the purposes of paragraph (1) whether a person is eligible to be a LGSS member, the fact—
- (a) that his contract of employment is not for at least 35 weeks a year; or
 - (b) that notice has been given to him under regulation B4B(6) of the Superannuation Regulations,
- shall be disregarded.

Determination to pay and computation of compensation

35.—(1) Where this Part applies, the LGSS employer may before the end of the period of six months beginning with the material date determine to pay compensation of an amount not exceeding a sum equivalent to 66 weeks' remuneration or, if it is less—

- (a) in the case of an employee who has attained the age of 18 but not 20 on that date, one half week's remuneration for each complete year of qualifying employment after attaining the age of 18;
- (b) in the case of an employee who has attained the age of 20 but not 23 on that date, one half week's remuneration—
 - (i) for each complete year of qualifying employment after attaining the age of 18; and
 - (ii) for each complete year of qualifying employment after attaining the age of 20;
- (c) in the case of an employee who has attained the age of 23 but not 41 on that date, two weeks' remuneration for each complete year of qualifying employment after attaining the age of 18;
- (d) in the case of an employee who has attained the age of 41 on that date—
 - (i) two weeks' remuneration for each complete year of qualifying employment after attaining the age of 18; and
 - (ii) three weeks' remuneration for each complete year of qualifying employment after attaining the age of 41.

(2) If any redundancy payment is made to the employee, an amount equivalent to it shall be deducted from the amount of the compensation otherwise payable to him under this Part.

Notification and payment of compensation

36.—(1) After making a determination under regulation 35(1) in respect of a person, the LGSS employer shall as soon as is reasonably practicable give him written notification of the compensation payable, giving details of the calculation in question.

(2) Any compensation payable under this Part—

- (a) shall be paid by the LGSS employer, as soon as practicable after making a determination under regulation 35(1), in the form of a lump sum payment 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.

Supplementary provisions

37.—(1) Sections 220 to 224 and 226 to 229 of the 1996 Act (calculation of a week's pay) shall apply for the purposes of calculating a week's remuneration for the purposes of this Part, but with the omission of section 227(1)(c) and the substitution for references to the calculation date of references to the material date.

(2) For the purpose of calculating the compensation payable to a person under this Part, the LGSS employer shall not include any years of qualifying employment which they or a previous LGSS employer have taken into account in calculating compensation which has been paid to him previously under these Regulations or other regulations made under section 24 of the 1972 Act⁽²⁾ (except for concurrent qualifying employment).

(2) 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.

(3) No period of qualifying employment which has been taken into account in calculating compensation paid under this Part may be taken into account for the purposes of calculating compensation to be paid under these Regulations or other regulations made under that section (except, in the case of a calculation by a LGSS employer, for concurrent qualifying employment.)

(4) In this Part—

“concurrent qualifying employment”, in relation to a calculation by a LGSS employer, means qualifying employment with that employer which is concurrent with qualifying employment with that or another LGSS employer;

“excluded employment” means a period of employment—

- (a) in an independent school (within the meaning of section 135(1) of the Education (Scotland) Act 1980⁽³⁾); or
- (b) in relation to which a pension or other benefits (other than a refund of contributions) are being or have been paid under an occupational pension scheme;

“qualifying employment”, in relation to an employee, means a period of employment (other than excluded employment) in relation to which the LGSS employer is satisfied that the employee was in local government employment (within the meaning of the LGSS Regulations) or pensionable employment (within the meaning of the Teachers Superannuation (Scotland) Regulations 1992⁽⁴⁾ or of the National Health Service Superannuation Scheme (Scotland) Regulations 1995⁽⁵⁾) or was in employment which would have been such employment but for a relevant disqualification;

“relevant disqualification”, in relation to an occupational pension scheme (including the LGSS) which applies to qualifying employment, means any of the following reasons in consequence of which (either alone or taken together) a person has not become, has ceased to be or has not been treated as being eligible for membership of the scheme, namely—

- (a) the failure of a medical examination required for such membership;
- (b) the making of any election to opt out of or the absence of an election to opt into such membership with respect to any period of employment;
- (c) a restriction excluding some part-time employment from being employment to which the scheme applies;
- (d) in the case of the LGSS—
 - (i) ineligibility under regulation B4B(6) of the Superannuation Regulations; or
 - (ii) in the case of a manual worker, failure to complete a period of continuous employment required to be a pensionable employee;

and other expressions used in this Part and in Part III have the same meaning as in that Part.

(3) 1980 c. 44.

(4) S.I. 1992/280.

(5) S.I. 1995/365.