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STATUTORY INSTRUMENTS

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**1993 No. 3044 (S.285)**

**PENSIONS**

**The Local Government Superannuation  
(Scotland) Amendment (No.3) Regulations 1993**

<i>Made</i>	- - - -	<i>3rd December 1993</i>
<i>Laid before Parliament</i>		<i>10th December 1993</i>
<i>Coming into force</i>	- -	<i>31st December 1993</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(1) and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate in accordance with section 7(5) of that Act, and not having considered consultation with any individual local authority desirable, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Local Government Superannuation (Scotland) Amendment (No.3) Regulations 1993 and shall come into force on 31st December 1993, but regulation 4 shall have effect as from 1st January 1993, regulation 7 shall have effect as from 28th February 1992 and regulation 9 shall have effect as from 1st April 1990.

**Interpretation**

2. In these Regulations “the principal Regulations” means the Local Government - Superannuation (Scotland) Regulations 1987(2).

**Relevant employment**

3. In regulation B3 of the principal Regulations—
- (a) in paragraph (2)(b) the words “15 or more but” shall be deleted;
  - (b) for paragraph (3) there shall be substituted the following paragraph:—

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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.  
(2) S.I. 1987/1850, amended by S.I. 1988/625, 1989/422, 802 and 967, 1990/422 and 1284, 1991/78, 1992/1220, 1597 and 3025 and 1993/1593 and 2013.

“(3) If a person is in two or more employments under a single scheduled body, and in each of the employments the contractual weeks in every period of 12 months are 35 or more and the contractual hours in every week are fewer than 30, then each of the employments is a relevant employment but an election under this regulation or regulation B4B or notification under regulation B4A in respect of any one of them is of no effect unless elections or notifications are made in respect of all of them.”;

(c) paragraph (4) shall be deleted;

(d) in paragraph (6)(f) there shall be added, after the word “1947”, the words–

“who is employed on terms under which he is or may be required to engage in fire fighting.”;

(e) for paragraph (7) there shall be substituted the following paragraph:–

“(7) Where a person has given a notification under regulation B4A and has ceased to be a pensionable employee, but before giving that notification he had been a pensionable employee in a relevant employment by virtue of an election made before 6th April 1988 under paragraph (1) above (before its amendment by the Local Government Superannuation (Scotland) Amendment Regulations 1989(3)), he may only make a subsequent election under regulation B4B if he is in a relevant employment (or falls within some other description of pensionable employee in regulation B2).”;

(f) there shall be added at the end the following paragraph:–

“(9) Subject to regulation C6A, where on 31st December 1993 a person–

(a) is in a relevant employment,

(b) becomes on that date eligible to elect under paragraph (1) to become a pensionable employee by virtue of the amendment of this Regulation by the Local Government Superannuation (Scotland) Amendment (No.3) Regulations 1993; and

(c) before 30th June 1994 elects to become a pensionable employee,

his period of reckonable service shall be calculated from the date of that election unless he further elects that it shall be calculated from the later of the date on which he commenced the relevant employment or 1st January 1993.”.

### **Contributions and remuneration during maternity absence**

4.—(1) In regulation C3(1) of the principal Regulations at the beginning there shall be added the words “Subject to regulation C3A,”;

(2) After regulation C3 of the principal Regulations there shall be added the following regulation:–

#### **“Maternity absence**

##### **C3A. –**

(1) This regulation applies to a person who–

(a) has a period of maternity absence; and

(b) immediately before the period of maternity absence was a pensionable employee, or had made an election under regulation B3 or B4B.

(2) A person to whom this regulation applies shall make contributions to the appropriate superannuation fund in relation to any period (“the relevant period”) which is, or is part of,

a period of maternity absence and for which she is entitled to receive remuneration, and the amount of any such contributions shall be equal to the amount of the contributions she would have been required to make under regulation C2 based on the remuneration which she is entitled to receive for the relevant period.

(3) A person to whom this regulation applies may elect to make contributions to the superannuation fund in relation to any period (“the unpaid period”) which is, or is part of, a period of maternity absence and for which she is not entitled to receive remuneration, and the amount of any such contributions shall be equal to the amount of the contributions she would have been required to make under regulation C2 based on the remuneration which she was entitled to receive immediately before the beginning of the unpaid period.

(4) An election under paragraph (3) shall be made by notice in writing to the employing authority by 30th June 1994 or, if later, by the date 30 days after the earlier of—

(a) the day on which she returns to duty;

or

(b) the day on which she ceases to be employed by that authority.

(5) Paragraphs (2) and (3) of this regulation do not affect the right of an employee to give notice under regulation B4A during a period of maternity absence.

(6) For the purposes of this regulation—

(a) an employee’s remuneration shall include any statutory maternity pay payable to the employee under the Social Security Contributions and Benefits Act 1992(4); and

(b) “period of maternity absence” means any period throughout which a woman—

(i) is absent from duty by reason of pregnancy or confinement; and

(ii) may exercise the right under her contract of employment to return to work.”.

(3) In regulations C11(1)(a), C12(11)(a)(i), D1(2)(a) and P9(2) of the principal Regulations, for the words “or C3” there shall be substituted the words “, C3 or C3A”;

(4) In regulation E22(7)(a) of the principal Regulations after the words “(leave of absence)” there shall be inserted the words “or C3A (maternity absence)”;

(5) In paragraph 3 of Part II of Schedule 5 and paragraph 7 of Part III of Schedule 6 to the principal Regulations—

(i) in sub-paragraph (2), at the beginning there shall be inserted the words “Except in the case of a period of maternity absence,”; and

(ii) after sub-paragraph (2) there shall be added the following sub-paragraph:—

“(3) In this paragraph, “period of maternity absence” has the same meaning as in regulation C3A.”.

## **Payments by Employees**

5. After regulation C6 of the principal Regulations there shall be added the following regulation:—

### **“Payments in respect of previous part-time service**

**C6A. –**

(1) Where—

(a) a person elects under regulation B3(1) to become a pensionable employee; and

(b) the notice of election specifies in terms of regulation B3(9) that the election shall have effect from a date earlier than the date of the election, the person shall make a payment into the appropriate superannuation fund in order for the election to have effect from the date specified in the notice.

(2) The amount of the payment under paragraph (1) is an amount equal to the contributions which the person would have been required to make under regulation C2 if he had throughout the period from the specified date to the date of the election been a pensionable employee.

(3) A payment under paragraph (1) is to be made, unless the administering authority allow a longer period, within 6 months of the date on which the person is notified by the administering authority of the amount.

(4) A payment under paragraph (1) is to be treated for the purposes of these Regulations as if it consisted of contributions made under regulation C2 in respect of employment in which the person was a pensionable employee.”.

## Service

6. After regulation D8 of the principal Regulations there shall be added the following regulation:–

### “Previous service of certain part-time employees

**D8A.** A pensionable employee who has made a payment under regulation C6A is entitled to reckon as reckonable service in relation to the employment in respect of which he has elected under regulation B3(1) to become a pensionable employee the period for which the payment was made.”.

## Amount of widow’s long-term pension

7. In regulation E6(3) of the principal Regulations there shall be added after sub-paragraph (a) the following sub-paragraph:–

- “(aa) the retirement pension mentioned in paragraph (2)(a) is to be taken to be the pension that would have been payable but for–
- (i) any increase under regulation E3(2), (certain cases where additional service is reckonable),
  - (ii) any reduction under regulation E3(14) (early payments) or E15 (re-employed pensioners) or E32 (National Insurance), and
  - (iii) any surrender under regulation E20.”.

## Saving for entitlement to gratuities

8. In Regulation K4 of the principal Regulations there shall be added–

(a) after paragraph (1) the following paragraph:–

“(1A) For the purpose of calculating the maximum amount of benefit payable under paragraphs (1)(b) and (1)(c) there shall be disregarded, in calculating the length of service of a person whose contractual hours in any week are fewer than 15, any service which would have become reckonable service if he had on 31st December 1993 made an election under regulation B3(1) or regulation B4B, unless before 31st December 1993 he had attained the age of 50.”; and

(b) in paragraph (2) at the end of sub-paragraph (g) the following:–

- “or a failure to elect under regulation B3(1) unless the employee—
- (i) was employed by a scheduled body on 31st December 1993;
  - (ii) had attained the age of 50 before that date; and
  - (iii) was not immediately before that date a pensionable employee by virtue of the fact that his contractual hours were fewer than 15”.

#### **Additional ill-health service in respect of part-time service**

9. In paragraph 1 of Schedule 10 to the principal Regulations—
- (a) there shall be deleted from sub-paragraph (b)(ii) the words from “except” to the end; and
  - (b) there shall be added after sub-paragraph (b) the following sub-paragraphs:—
    - “and
    - (c) in sub-paragraph (b)(ii) above “subsequent reckonable service” does not include an additional period purchased by a lump sum or additional contributions except where the additional period was purchased on or after 1st April 1990 under Regulation C17; and
    - (d) where the additional period to which a person is to be treated as being entitled to reckon as reckonable service would be a longer period if, in calculating the person’s relevant reckonable service, an additional period purchased under regulation C17 were to be disregarded instead of being taken into account, the additional period shall be so disregarded.”.

#### **Right to opt out**

10.—(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 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 31st December 1993—

- (a) ceased to hold an employment in respect of which she was a pensionable employee (whether or not she has subsequently recommenced any such employment), or
  - (b) died while still in such an 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 she 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 three month period beginning with 31st December 1993,

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) above is made in relation to a benefit which is or may become payable in respect of a person who is employed in a 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) above (or, if there has been more than one such cessation, the last of them before 31st December 1993); or
  - (ii) by virtue of contributions paid in respect of any such periods of service; and

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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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(b) in determining entitlement to, or the amount of, the benefit to that extent, she shall (without prejudice to the application of this paragraph) be treated as if she had never recommenced service in such employment at any time after the cessation referred to in sub-paragraph (a) above,  
and the principal Regulations shall apply accordingly.

St. Andrew's House,  
Edinburgh  
3rd December 1993

*Fraser of Carmyllie*  
Minister of State, Scottish Office

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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.

Regulation 3 abolishes the requirement that part-time employees must work at least 15 hours per week in order to be able to elect to become members of the local government superannuation scheme. The change comes into force on 31st December 1993. Special provision is made, however, for persons in relevant employment on that date. Provided the necessary election is made within the specified time limits such persons may calculate their period of reckonable service from the later of the date on which they entered relevant employment or 1st January 1993. An employee making such an election is required to make payment to the superannuation fund of a sum equal to the contributions which he would have been required to make had he, during the relevant period, been a pensionable employee. There is a time limit for making the payment (regulation 5). Where payment is made, the period of service for which payment has been made is treated for the purpose of calculating benefits as reckonable service (regulation 6).

Where an employee makes or is eligible to make, an election he will not be eligible for a gratuity under Part K in respect of the period of service for which the election is made or could be made, unless before 31st December 1993 he had reached the age of 50 (regulation 8).

Regulation 4 makes provision for payment of contributions by women during periods of maternity absence. This regulation implements in respect of the local government superannuation scheme and maternity absence the requirements of the Directive on the implementation of the principle of equal treatment for men and women in occupational social security schemes (86/378/EEC; OJ No.L225, 12.8.86, p.40).

These Regulations make additional amendments to the local government superannuation scheme which affect certain part-time members of a fire brigade maintained under the Fire Services Act 1947 (c. 41) (regulation 3(d)). They also make provision relating to the calculation of a widow's long term pension (regulation 7), restoring a provision incorrectly revoked by the Local Government Superannuation (Scotland) Amendment Regulations 1993 (S.I.1993/1593), and for a part-time employee's pension enhancement for ill-health (regulation 9).

Regulation 10 confers a right to opt that these Regulations shall not apply in certain circumstances where the person is adversely affected by the amendments now made.

Regulation 4 has retrospective effect from 1st January 1993, regulation 7 from 28th February 1992 and regulation 9 from 1st April 1990. Retrospection is authorised by section 12(1) of the Superannuation Act 1972.