
STATUTORY INSTRUMENTS

1998 No. 192 (S. 8)

LOCAL GOVERNMENT, SCOTLAND

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

Made - - - - - *26th January 1998*
Laid before Parliament *11th February 1998*
Coming into force - - - *4th March 1998*

The Secretary of State, in exercise of the powers conferred on him by sections 7, 12 and 24 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 appear 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:

PART I
GENERAL

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 and shall come into force on 4th March 1998.

(2) These Regulations shall, in the circumstances and to the extent specified in regulation 33, have effect from a date earlier than the making of the Regulations.

General interpretation

2.—(1) Unless the context otherwise requires, in these Regulations—

“the 1972 Act” means the Superannuation Act 1972;

“the 1978 Act” means the Employment Protection (Consolidation) Act 1978⁽²⁾;

(1) 1972 c. 11.
(2) 1978 c. 44.

“the 1996 Act” means the Employment Rights Act 1996⁽³⁾;

“assumed pensionable employee” has the meaning given in regulation 6(2);

“employing authority” means a LGSS employer of a kind specified in paragraph (a) or (b) of the definition in this paragraph of such an employer, and in relation to a person whose employment ceases as described in regulation 6(1)(a) means the employing authority by whom he is employed on the material date;

“employment” includes office and service;

“LGSS” means the Local Government Superannuation Scheme constituted under the Superannuation Regulations;

“LGSS employer” means—

- (a) a body specified in Part I of Schedule 3 to the Superannuation Regulations;
- (b) in relation to an employee described in Part II of that Schedule where the body employing him have by statutory resolution specified him as an eligible employee or specified a class of employees to which he belongs as being so eligible, that body;
- (c) in relation to any person who is an admitted employee (as defined in regulation B6 of the Superannuation Regulations), his employing body (as so defined);

“the Superannuation Regulations” means the Local Government Superannuation (Scotland) Regulations 1987⁽⁴⁾.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation, Part or Schedule shall be construed as a reference to the regulation, Part or Schedule, as the case may be, that bears that number in these Regulations, and any reference to a numbered paragraph in a regulation of, or Schedule to, these Regulations shall be construed as a reference to the paragraph bearing that number in that regulation or Schedule.

(3) Any expressions which are used in these Regulations and are not given a specific meaning for the purposes of these Regulations shall, unless the context otherwise requires, be construed as if they were contained in the Superannuation Regulations.

(4) Where in these Regulations references are made to anything done under, required under or arising under any provision of the Superannuation Regulations, those references shall be construed (so far as the context permits) as including references to anything done under, required under or arising under the corresponding provision of the Local Government Superannuation (Scotland) Regulations 1974⁽⁵⁾; and where any references are made to a pensionable employee or a person who would be or would have been a pensionable employee, those references shall be construed so far as the context permits as including references to a pensionable employee or, as the case may be, a person who would be or would have been a pensionable employee, within the meaning of the Local Government Superannuation (Scotland) Regulations 1974.

General exclusions -teachers

3.—(1) References in these Regulations to employment with a LGSS employer do not include employment by virtue of which a person is entitled to participate in benefits provided under regulations made under section 9 of the 1972 Act (teachers' superannuation).

(2) Part II does not apply to a person ceasing to hold an employment in which he was a person in relation to whom regulations may be made under that section.

(3) In Part V “relevant employment” does not include employment as a teacher.

(3) 1996 c. 18.

(4) 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, 1993/1593, 2013 and 3044, 1994/531, 1995/214, 750 and 3294, 1996/414 and 1241 and 1997/674, 1143, 1373, 1435 and 3048.

(5) S.I. 1974/812, amended by other instruments listed in Schedule 21 to the Superannuation Regulations.

(4) In regulations 46(1), 47(1) and 48(1) the references to employment do not include employment as a teacher.

PART II

INCREASE OF STATUTORY REDUNDANCY PAYMENTS

Power to increase statutory redundancy payments above statutory weekly pay limit

- 4.—(1) Where a pensionable employee or an assumed pensionable employee—
- (a) has ceased to hold his employment with an employing authority on or after 1st August 1984; and
 - (b) is entitled to a redundancy payment under 1978 Act or the 1996 Act,
- the authority may pay him compensation under this regulation.
- (2) The compensation payable under this regulation shall not exceed the difference between—
- (a) the redundancy payment to which he is entitled under Part VI of the 1978 Act or, as the case may be, Part XI of the 1996 Act; and
 - (b) the redundancy payment to which he would have been so entitled if paragraph 8(1)(c) of Schedule 14 to the 1978 Act or, as the case may be, section 227 of the 1996 Act (weekly pay in excess of specified limit to be disregarded in calculating redundancy payment) were omitted.

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(6);
 - “the 1979 Regulations” means the Local Government (Compensation for Premature Retirement) (Scotland) Regulations 1979(7);
 - “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);

(6) S.I. 1965/1932.

(7) 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.

“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
- (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⁽⁸⁾ 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⁽⁹⁾ or section 43 of the Pension Schemes Act 1993⁽¹⁰⁾; 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⁽¹¹⁾;

“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⁽¹²⁾;

“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—

⁽⁸⁾ 1992 c. 4.

⁽⁹⁾ 1986 c. 50; section 1 was repealed by the Pension Schemes Act 1993 (c. 48), section 188 and Schedule 5.

⁽¹⁰⁾ 1993 c. 48; section 43 was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 42.

⁽¹¹⁾ 1971 c. 56; “official pension” is defined in section 5(1) which was amended by the Superannuation Act 1972, Schedule 6, paragraph 85.

⁽¹²⁾ 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.

- (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) 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⁽¹³⁾; 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⁽¹⁴⁾.
 - (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

⁽¹³⁾ 1973 c. 65.

⁽¹⁴⁾ S.I. 1989/802.

- (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.
- (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⁽¹⁵⁾, 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⁽¹⁶⁾, 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⁽¹⁷⁾.

⁽¹⁵⁾ 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.

⁽¹⁶⁾ 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.

⁽¹⁷⁾ S.I. 1995/340.

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,

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⁽¹⁸⁾ or section 43 of the Pension Schemes Act 1993⁽¹⁹⁾; 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⁽²⁰⁾;
- “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—

⁽¹⁸⁾ 1986 c. 50; section 1 was repealed by the Pension Schemes Act 1993 (c. 48), section 188 and Schedule 5.

⁽¹⁹⁾ 1993 c. 48; section 43 was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 42.

⁽²⁰⁾ 1971 c. 56; see section 17(1).

(i) a redundancy payment to which he is entitled under Part XI of the 1996 Act (redundancy payments)(21); 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)).

(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.

(21) 1996 c. 18.

(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(22) 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(23) 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⁽²⁴⁾; 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⁽²⁵⁾ 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.

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

⁽²⁴⁾ 1992 c. 37.

⁽²⁵⁾ 1989 c. 39.

(d) is not a person to whom Part II of the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995(26) 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⁽²⁷⁾ (except for concurrent qualifying employment).

(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⁽²⁸⁾); 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⁽²⁹⁾ or of the National Health Service Superannuation Scheme (Scotland) Regulations 1995⁽³⁰⁾) 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

⁽²⁷⁾ 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.

⁽²⁸⁾ 1980 c. 44.

⁽²⁹⁾ S.I. 1992/280.

⁽³⁰⁾ S.I. 1995/365.

- (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.

PART V

INJURY ALLOWANCES ETC.

Interpretation of Part V

38.—(1) In this Part, unless the context otherwise requires, “relevant employment”, in relation to any person, means employment—

- (a) with a LGSS employer or the predecessor of such an employer; or
- (b) in which the person is, by virtue of regulation B6 of the Superannuation Regulations (admission agreements) or any corresponding earlier provision, entitled to participate in the benefits of a pension fund maintained under those Regulations or the former regulations;

and for the purposes of this Part a police cadet appointed under section 8 of the Police (Scotland) Act 1967⁽³¹⁾ shall be deemed to be in employment with the police authority who maintain the force with which he is undergoing training.

(2) In this Part “the relevant employer”, in relation to any person, means—

- (a) the employer by whom the person in question was employed immediately before he first qualifies for any allowance or lump sum payable under this Part;
- (b) if he dies without qualifying for any such allowance or lump sum, the employer who last employed him in a relevant employment before his death; or
- (c) if the employer specified in paragraph (a) or (b) has ceased to exist, the employer to whom he would have been transferred if he had continued in the employment in question.

(3) References in this Part to an injury or disease do not include any injury or disease which is one in respect of which the person is entitled—

- (a) to an injury award under a scheme made in accordance with section 26 of the Fire Services Act 1947⁽³²⁾; or
- (b) to injury benefits under regulations made in accordance with section 27 of the Police (Scotland) Act 1967.

(4) For the purposes of this Part, if a person—

- (a) sustains an injury while travelling as a passenger by vehicle to or from his place of work with his employer’s permission (whether express or implied); and
- (b) at the time of the injury the vehicle was being operated (otherwise than in the course of a public transport service) by or on behalf of, or pursuant to arrangements made by, his employer.

he shall be treated as having sustained the injury as a result of a requirement of carrying out his work.

⁽³¹⁾ 1967 c. 77.

⁽³²⁾ 1947 c. 41 (10 and 11 Geo 6 c.41). Section 26 was amended by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65), section 42; the Fire Services Act 1951 (c. 27, section 1(3)); the Theft Act 1968 (c. 60) section 33; the Superannuation Act 1972 (c. 11), Schedule 8; the Social Security Act 1973 (c. 38), Schedule 27, paragraph 6; S.I. 1976/551.

Loss of employment through permanent incapacity

39.—(1) If—

- (a) as a result of anything he was required to do in carrying out his work a person who is employed in a relevant employment—
 - (i) sustains an injury; or
 - (ii) contracts a disease; and
- (b) he ceases to be employed in that or any other relevant employment as a result of an incapacity which is likely to be permanent and was caused by the injury or disease,

he shall be entitled to an annual allowance not exceeding 85 per cent of his annual rate of remuneration in respect of the employment when he ceased to be employed.

(2) The allowance is to be paid by the relevant employer and, subject to paragraph (1), is to be of such amount as that employer may from time to time determine.

(3) In ascertaining for the purposes of paragraph (1) a person's annual rate of remuneration when he ceased to be employed—

- (a) the annual rate of any fluctuating element included in his remuneration is to be estimated by reference to an average taken over a representative period;
- (b) the annual rate of any benefit in kind included in his remuneration is to be the estimated annual value of the benefit in kind as at the date on which he ceased to be employed;
- (c) if at that date—
 - (i) he had no remuneration; or
 - (ii) his remuneration was reduced,because of absence from duty, the annual rate is that which would have applied if he had not been absent;
- (d) if at that date he was entitled to an allowance under regulation 40 by reason of a reduction in his remuneration (whether as a result of the same or another injury or disease), the annual rate is that which would have applied if his remuneration had not been reduced;
- (e) if his remuneration is calculated by reference to a rate which is not annual, the annual rate is to be derived from the applicable rate at that date; and
- (f) if his remuneration is retrospectively altered as a result of a pay award, the annual rate is that based on the award.

(4) The relevant employer may suspend or discontinue the allowance under this regulation if the person becomes capable of working again.

Reduction in remuneration

40.—(1) If—

- (a) as a result of anything he was required to do in carrying out his work a person who is employed in a relevant employment—
 - (i) sustains an injury; or
 - (ii) contracts a disease,and suffers a reduction in his remuneration while he is employed in that or any other relevant employment; and
- (b) regulation 39 does not apply,

he shall be entitled to an allowance while the reduction continues.

(2) For the purposes of paragraph (1), a person's remuneration is to be treated as reduced at any time when it is lower than it would have been but for the injury or disease.

(3) The allowance under paragraph (1) is to be paid by the relevant employer and is to be of such amount as the employer may from time to time determine, but must not in any year exceed the shortfall between—

- (a) the person's remuneration in the relevant employment; and
- (b) the remuneration he would have been paid if he had not sustained the injury or, as the case may be, contracted the disease.

Allowances for pensioners

41.—(1) Where a person ceases to be employed in a relevant employment, if—

- (a) immediately before so ceasing he was entitled to an allowance under regulation 40;
- (b) on so ceasing regulation 39 does not apply, but he becomes entitled under Part E of the Superannuation Regulations to receive payments in respect of an annual retirement pension and regulation E22(4) of those Regulations (different relevant period for calculating pensionable remuneration where a material reduction has been certified) does not apply; and
- (c) the annual rate of the retirement pension in any year falls short of what it would have been if the amount of the allowance paid under regulation 40 during the period which is the relevant period for the purposes of regulation E22 of the Superannuation Regulations had been part of his remuneration in the relevant employment,

the relevant employer may pay him an allowance (but not of an amount in any year exceeding that shortfall).

(2) An allowance under this regulation continues for such period as the relevant employer may determine.

Death benefits

42.—(1) If—

- (a) as a result of anything he was required to do in carrying out his work a person who is employed in a relevant employment—
 - (i) sustains an injury; or
 - (ii) contracts a disease; and
- (b) he dies as a result of the injury or disease,

then—

- (i) subject to paragraph (2), if the deceased leaves a surviving spouse or spouses, the surviving spouse or all of them shall be entitled to an annual allowance or lump sum; and
- (ii) if the deceased leaves a dependant, the dependant shall be eligible for an annual allowance or lump sum.

(2) A surviving spouse shall not be entitled to an annual allowance or lump sum if at the date of death he was cohabiting with another person outside marriage.

(3) The allowance or lump sum is to be paid by the relevant employer and is to be of such amount as the employer may from time to time determine.

(4) Subject to paragraph (5), an allowance to a surviving spouse shall cease if he remarries or cohabits with another person outside marriage, but if that marriage is dissolved or the cohabitation

ceases the relevant employer may restore the allowance for such period as the employer may determine.

(5) Where the person whom the surviving spouse marries or with whom he cohabits is also a surviving spouse entitled to an allowance under this regulation, they may determine which of them is to be entitled to the allowance and the other shall cease to be entitled to it until the dissolution of the marriage or, as the case may be, the ending of the cohabitation.

(6) An allowance to a dependant shall continue for such period as the relevant employer may determine.

Considerations in determining amount of benefits

43.—(1) In determining the amount of an allowance under regulation 39 or 40 or of an allowance or a lump sum under regulation 42, the relevant employer is to have regard to all the circumstances of the case, including the matters specified in paragraph (2) (except in so far as they are excluded by paragraph (3)).

(2) The matters mentioned in paragraph (1) are—

- (a) any right to benefit under Part V of the Social Security Contributions and Benefits Act 1992~~(33)~~;
- (b) any other statutory right to benefit or compensation;
- (c) any right to receive pension benefit (whether payable under an enactment or otherwise); and
- (d) any damages recovered and any sum received by virtue of a contract of insurance.

(3) In the case of an allowance or a lump sum which is payable by virtue of a person having sustained an injury, no regard shall be had—

- (a) to any benefit payable periodically which the person was entitled to be paid before the injury was sustained;
- (b) to any right which accrued before that time; or
- (c) to any damages or sum received by virtue of such a right.

Application of Part V in respect of injury or disease before commencement date

44.—(1) Subject to the following provisions of this regulation, this Part applies even if the injury or disease was sustained or contracted before the date on which these Regulations come into force.

(2) Regulations 39 and 41 do not apply if the cessation of employment occurred before 31st March 1972, regulation 40 does not apply if the reduction of remuneration occurred before that date and regulation 42 does not apply if the death occurred before that date.

(3) Any injury benefit treated by virtue of regulation L9(6) of the Superannuation Regulations as having been paid under Part L of those Regulations shall be treated as if it were an allowance or lump sum, as the case may be, paid under this Part.

(4) If adequate provision has already been made for a person under regulation 7 of the Benefits Regulations, this Part does not apply to him.

(5) Where—

- (a) by virtue of paragraph (2) regulation 39, 40, 41 or 42 applies in a case where the cessation of the employment, the reduction of remuneration or, as the case may be, the death occurred before 21st December 1987; and
- (b) paragraphs (3) and (4) do not apply,

(33) 1992 c. 4.

the relevant employer shall decide what allowance or lump sum (if any) is to be granted in accordance with this Part for any past or future period (but in making that decision the relevant employer shall take into account any allowance to which the person is or was entitled under regulation 8 of the Benefits Regulations).

(6) Regulation 43(2)(c) has effect in cases where the cessation of employment, reduction in remuneration or death in question occurred before 6th April 1988 with the insertion after the word “otherwise” of the words “out of any fund to which any body which employed him in relevant employment has made any contributions in respect of him or out of any fund to which assets of any such fund were transferred”.

PART VI

GRATUITIES AS RESPECTS NON-PENSIONABLE SERVICE

Meaning of “service” in Part VI

45.—(1) In this Part, unless the context otherwise requires, “service” is to be construed in accordance with this regulation.

(2) A person’s service is the time spent by him in employment with any LGSS employer or former local authority which is not excluded by paragraph (3).

(3) Subject to paragraph (4), a person’s service does not include any period—

- (a) before he attained the age of 16 or after he attained the age of 70;
- (b) in excess of a total of 40 years;
- (c) in respect of which a gratuity has been granted under a local Act, section 18 of the Local Government Superannuation Act 1953(34), the Local Government Superannuation (Scotland) Regulations 1974, the Superannuation Regulations, Part II of the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995 or these Regulations;
- (d) during which he is not a pensionable employee by virtue of a failure to apply under regulation B4(1) of the Superannuation Regulations (application for membership) or notification under regulation B4(2) or B4A of those Regulations (which provide respectively for notifications that a person does not wish to become, or, as the case may be, wishes to cease to be a pensionable employee), or any corresponding act or omission under those Regulations, unless—
 - (i) he was employed by a LGSS employer on 1st April 1986 and had attained the age of 55 before that date; or
 - (ii) he was so employed on 31st December 1993, had attained the age of 50 before that date and immediately before that date was disqualified from being a pensionable employee because his contractual hours were fewer than 15;
- (e) in respect of which he has retained rights in a scheme which was a relevant policy scheme within the meaning of regulation K1 of the Superannuation Regulations; or
- (f) which has been or may be taken into account for the purpose of calculating any benefit under the LGSS or any other public service scheme, or which, but for an election by that person on or after 6th April 1988 not to participate in the benefits of such a scheme, might have been so taken into account.

(34) 1953 c. 25.

(4) Where regulation 46(1) applies, service includes periods before 1st April 1986 of the kinds mentioned in paragraph (3)(e) and (f).

(5) In paragraph (3)(f) “public service scheme” means the Universities' Superannuation Scheme and any occupational pension scheme—

- (a) which cannot come into force, or be amended, without the scheme or amendment being approved by a Minister of the Crown or government department; and
- (b) which includes provisions for any such whole-time service as is described in regulation F2(1) of the Superannuation Regulations, rendered by a person before he becomes entitled to participate in the scheme, to be reckonable as service in respect of which benefits are payable under the scheme.

(6) In paragraph (5) “occupational pension scheme” means any scheme or arrangement comprised in one or more instruments or agreements and having effect (or being capable of having effect) in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, on death or on retirement, to or in respect of earners with qualifying service in an employment of any such description or category.

Death in service gratuities

46.—(1) Where a person who has been employed by a LGSS employer for not less than one year dies while in that employment, the LGSS employer may make a discretionary grant (“a death benefit gratuity”) to one or more of the person’s spouse and dependants.

(2) A death benefit gratuity may consist of a lump sum or an annuity or both.

(3) The amount of a death benefit gratuity (including the capital value of any annuity) or, in a case where the gratuity is paid to more than one person, the aggregate amount of such gratuity must not exceed the prescribed maximum.

(4) In this regulation “the prescribed maximum” means 3.75 per cent of the aggregate of—

- (a) an amount equal to remuneration at the annual rate for a period equal to the total of the length in years and days of the person’s service before 1st April 1986 and 50 per cent of any war service (within the meaning of Part F of the Superannuation Regulations) in respect of which a period might have become reckonable as reckonable service under regulation F6 of those Regulations if the conditions in regulation F3(2) to (9) of those Regulations had been satisfied; and
- (b) an amount equal to remuneration at the annual rate (with the necessary adjustments in accordance with paragraph (6)), for a period equal to the length in years and days of that person’s service after 31st March 1986, but in the case of a person—
 - (i) whose contractual hours are fewer than 15 and who had not attained the age of 50 on 31st December 1993; or
 - (ii) who contractual hours are at least 15 and who had not before 1st April 1986 attained the age of 55,

disregarding the assumed membership.

(5) In this regulation “annual rate of remuneration”, in relation to an employee, means the annual rate of his remuneration (ascertained as if paragraphs 4 and 5 of Part III of Schedule 16 to the Superannuation Regulations had applied) at whichever of the following times yields the highest figure—

- (a) the date on which he ceased to be employed;
- (b) 12 months before that date; or
- (c) 24 months before that date.

(6) For the purposes of paragraph (4), the necessary adjustments to the annual rate of remuneration are—

- (a) if that rate exceeds the annual equivalent of the lower earnings limit in force at the time at which the annual rate of remuneration falls to be ascertained (as determined in accordance with section 5 of the Social Security Contributions and Benefits Act 1992⁽³⁵⁾), but not the upper earnings limit then in force (as so determined), to substitute the lower earnings limit; and
- (b) if that rate exceeds that upper earnings limit, to substitute the sum of that lower earnings limit and the excess over that upper earnings limit.

(7) In paragraph (4) “the assumed membership”, in relation to any person, means any service which would have been counted as part of his effective service if the person—

- (a) in the case of paragraph (4)(b)(i), had made an election under regulation B4 or regulation B4B of the Superannuation Regulations on 31st December 1993; and
- (b) in the case of paragraph (4)(b)(ii)—
 - (i) had made any election which he was entitled to make under regulation B2(4) or B3(2)(a) or (b) of those Regulations on 21st December 1987; and
 - (ii) had not given any notice he is entitled to give under regulation B4A of the Superannuation Regulations.

Retirement gratuities

47.—(1) Where a person—

- (a) who has been employed by a LGSS employer for at least five years; or
 - (b) who has been so employed for at least one year and—
 - (i) has attained the age of 60; or
 - (ii) is incapable of discharging efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body,
- ceases to be so employed (otherwise than as mentioned in regulation 48(1)(b)), the LGSS employer may make him a discretionary grant (“a retirement gratuity”).

(2) A retirement gratuity may consist of a lump sum or an annuity or both.

(3) The amount of a retirement gratuity (including the capital value of any annuity) must not exceed—

- (a) an amount equal to three-eighths of the person’s annual rate of remuneration for each year of service; or
- (b) the prescribed maximum;

and in this paragraph “annual rate of remuneration” has the meaning given in regulation 46(5) and “the prescribed maximum” the meaning given in regulation 46(4).

(4) Where—

- (a) the gratuity granted under paragraph (1) to a person (“the original annuitant”) is or includes an annuity; and
- (b) he dies at a time when the capital value of the payments of the annuity he has received falls short of its capital value at the time of its grant,

the LGSS employer may grant a further gratuity by way of an annuity to one or more of the original annuitant’s spouse and dependants.

(5) The amount of an annuity granted under paragraph (4) or, in a case where an annuity is paid to more than one person, the aggregate amount of annuity must be the lesser of—

- (a) the amount the capital value of which equals the shortfall mentioned in paragraph (b) of that paragraph; or
- (b) two-thirds of the amount of the annuity payable to the original annuitant immediately before his death.

Redundancy gratuities

48.—(1) Where a person—

- (a) has been employed by a LGSS employer—
 - (i) for at least five years; or
 - (ii) in the case of a person who has attained the age of 60, for at least one year;
- (b) ceases to be so employed—
 - (i) by reason of redundancy; or
 - (ii) in the interests of the efficient exercise of the LGSS employer’s functions; and
- (c) the LGSS employer—
 - (i) have certified in relation to him in accordance with regulation E2(4)(a) of the Superannuation Regulations; or
 - (ii) are satisfied that if he were a pensionable employee they would have so certified, the LGSS employer may make him a discretionary grant (“a redundancy gratuity”).

(2) A redundancy gratuity may consist of a lump sum or an annuity or both.

(3) Where—

- (a) the gratuity granted to a person under paragraph (1) is or includes an annuity; and
- (b) he dies before receiving payments of the annuity of an aggregate amount equal to its capital value,

the LGSS employer may grant a further gratuity by way of an annuity to one or more of the person’s spouse and dependants.

(4) Where—

- (a) the gratuity granted to a person under paragraph (1) is or includes an annuity; and
- (b) he dies at a time when the capital value of the payments of the annuity he has received falls short of its capital value at the time of its grant,

the LGSS employer may grant a further gratuity by way of an annuity to one or more of his spouse and dependants.

(5) The amount of a redundancy gratuity in respect of any person (including the capital value of any annuity) or, in a case where the gratuity is paid to more than one person, the aggregate amount of such gratuity must not exceed the prescribed maximum (as defined in regulation 46(4)).

(6) The capital value of an annuity granted under paragraph (4) or, in a case where an annuity is paid to more than one person, the aggregate amount of such annuities must not exceed the shortfall mentioned in paragraph (4)(b).

(7) Where a person to whom a further gratuity is granted under paragraph (4) dies at a time when the capital value of the payments of the annuity he has received falls short of its capital value at the time of its grant, the LGSS employer may grant a further gratuity by way of an annuity to any other person to whom they might have granted a further annuity under paragraph (4) at the time of the original annuitant’s death, but its capital value must not exceed that shortfall.

Schemes in connection with the exercise of powers

49. A LGSS employer may make a scheme with respect to the exercise of their powers under regulation 46, 47 or 48.

PART VII

MISCELLANEOUS AND SUPPLEMENTARY

Decisions and appeals

Decisions and appeals

50.—(1) Any question concerning the rights of any person or his eligibility to be considered for any award under Part V or Part VI shall be decided in the first instance by the relevant LGSS employer, that is to say the LGSS employer who last employed the person in respect of whose employment the question arises.

(2) The questions specified in paragraph (1) shall be decided as soon as is reasonably practicable after the occurrence of the last event by virtue of which the award may be payable.

(3) A body who have decided any question under this regulation shall, as soon as is reasonably practicable after doing so, send a written notification of their decision to every person affected by it.

(4) The notification shall include—

- (a) the grounds for the decision; and
- (b) in any case where paragraph (5) applies, conspicuous statement directing the person's attention to his right under that paragraph to appeal to the Secretary of State.

(5) Where—

- (a) the relevant employer has decided or failed to decide any such question as is mentioned in paragraph (1); and
- (b) an appeal is duly made to the Secretary of State,

then, subject to the following provisions of this regulation, the question shall be determined by him.

(6) The Secretary of State shall not determine any question that fell to be decided by the relevant employer in the exercise of a discretion conferred by these Regulations.

(7) An appeal under paragraph (5) shall be made by notice in writing which—

- (a) shall be served (whether by being sent by post or otherwise) as soon as is reasonably practicable; and
- (b) may be served by any person whose interests are affected.

Supplemental

Finance

51.—(1) The cost of any payment to be made under these Regulations is not to be met out of any pension fund.

(2) Where—

- (a) an allowance under regulation 7 of the Benefits Regulations (a “regulation 7 allowance”) is payable in addition to any allowance or lump sum under Part V of these Regulations; and

(b) the relevant employer is the employing authority for the purposes of regulation 7(4) of the Benefits Regulations (repayment to appropriate superannuation fund),
the regulation 7 allowance shall be treated for the purposes of paragraph (1) as an allowance under these Regulations.

Revocations and transitional provisions

52.—(1) The Regulations specified in Schedule 3 are hereby revoked to the extent specified in that Schedule.

(2) Anything done under or by virtue of any provision of—

- (a) the Local Government (Compensation for Premature Retirement) (Scotland) Regulations 1979⁽³⁶⁾;
- (b) Part II of the Local Government (Compensation for Redundancy and Premature Retirement) (Scotland) Regulations 1984⁽³⁷⁾;
- (c) Part K or L of the Superannuation Regulations; or
- (d) the Local Government (Compensation for Redundancy) (Scotland) Regulations 1994⁽³⁸⁾,

shall be deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under any of those provisions may be continued under these Regulations as if begun under these Regulations.

(3) Where a period of time specified in, or applying by virtue of, a provision specified in paragraph (2) is current at the commencement of these Regulations, these Regulations shall have effect as if the corresponding provision of these Regulations had been in force when that period began to run.

St Andrew's House Edinburgh
26th January 1998

Brian Wilson
Minister of State, Scottish Office

⁽³⁶⁾ 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.

⁽³⁷⁾ S.I. 1984/846.

⁽³⁸⁾ S.I. 1994/3068, amended by S.I. 1995/340.

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

SCHEDULE 1

Regulation 12

APPROPRIATE PERCENTAGES FOR ADJUSTMENT OF
ANNUAL COMPENSATION FOR REDUNDANCY PAYMENTS

TABLE

<i>Age last birthday</i>	<i>Appropriate percentage</i>	
	<i>Male</i>	<i>Female</i>
50	6.04	5.61
51	6.12	5.66
52	6.21	5.72
53	6.31	5.80
54	6.45	5.90
55	6.59	6.02
56	6.75	6.13
57	6.92	6.26
58	7.10	6.40
59	7.30	6.55
60	7.51	6.70
61	7.73	6.87
62	7.97	7.05
63	8.23	7.24
64	8.51	7.45

SCHEDULE 2

Regulation 52(1)

REVOCATIONS

<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>References</i>	<i>(3)</i> <i>Extent of revocation</i>
The Local Government (Compensation for Premature Retirement) (Scotland) Regulations 1979	S.I. 1979/785	The whole Regulations
The Local Government (Compensation for Premature Retirement) (Scotland) Amendment Regulations 1982	S.I. 1982/917	The whole Regulations
The Local Government (Compensation for Redundancy and Premature	S.I. 1984/846	The whole Regulations

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

<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>References</i>	<i>(3)</i> <i>Extent of revocation</i>
Retirement) (Scotland) Regulations 1984		
The Local Government (Compensation for Premature Retirement) (Scotland) Amendment Regulations 1986	S.I. 1986/409	The whole Regulations
The Local Government Superannuation (Scotland) Regulations 1987	S.I. 1987/1850	Parts K and L
The Local Government Superannuation (Scotland) Amendment Regulations 1989	S.I. 1989/802	Regulations 30 and 31
The Local Government (Compensation for Premature Retirement) (Scotland) Amendment Regulations 1990	S.I. 1990/125	The whole Regulations
The Local Government Superannuation (Scotland) Amendment Regulations 1990	S.I. 1990/422	Regulations 29 and 30
The Designation of Institutions of Higher Education (Scotland) Order 1992	S.I. 1992/1025	Schedule, paragraph 3
The Transfer of Colleges of Further Education (Scotland) Order 1992	S.I. 1992/1597	Schedule 2, paragraph 1
The Jordanhill College of Education (Closure) (Scotland) Order 1993	S.I. 1993/490	Schedule, paragraph 1
The Local Government Superannuation (Scotland) Amendment Regulations 1993	S.I. 1993/1593	Regulation 29
The Duncan of Jordanstone College of Art (Closure) (Scotland) Order 1994	S.I. 1994/1715	Schedule, paragraph 1
The Local Government (Compensation for Redundancy) (Scotland) Regulations 1994	S.I. 1994/3068	The whole Regulations
The Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995	S.I. 1995/340	Regulations 13 and 14

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<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>References</i>	<i>(3)</i> <i>Extent of revocation</i>
The Local Government (Superannuation and Compensation for Premature Retirement (Scotland) Amendment Regulations 1995	S.I. 1995/750	In regulation 2 the definition of “the 1979 Regulations” and regulation 3
The Local Government (Superannuation and Compensation for Redundancy or Premature Retirement) (Scotland) Amendment Regulations 1995	S.I. 1995/3294	Regulation 11
The Local Government (Superannuation and Compensation for Premature Retirement) (Scotland) Amendment Regulations 1996	S.I. 1996/1241	Regulation 3
The Compensation for Redundancy or Premature Retirement (Scottish Environment Protection Agency and River Purification Boards Transitional Arrangements) (Scotland) Regulations 1996	S.I. 1996/1360	Regulations 14 and 15

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate, with amendments, the provisions of the Local Government (Compensation for Premature Retirement) (Scotland) Regulations 1979, as amended, Part II of the Local Government (Compensation for Redundancy and Premature Retirement) (Scotland) Regulations 1984 and the Local Government (Compensation for Redundancy) (Scotland) Regulations 1994. They also revoke Parts K and L of the Local Government Superannuation (Scotland) Regulations 1987 dealing with injury allowances and gratuities. Parts V and VI of these Regulations replace them. As a result, these Regulations contain all the provisions relating to discretionary payments and payments of injury benefits by employers to persons engaged in local government employment other than teachers and those engaged in the police and fire services (excluding payments under the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995).

Part II enables Local Government Superannuation Scheme employers (“LGSS employers” defined in regulation 2(1)) to pay to employees who cease to hold employment and become entitled to

a statutory redundancy payment compensation to make up the difference between the statutory redundancy payment and the amount which that payment would have been if based on his full weekly pay, without applying the limits imposed by statute.

Part III enables LGSS employers to pay compensation for premature retirement. This is available to employees over 50 who cease work by reason of redundancy, or in the interests of the efficient exercise of the employers' functions or by reason of being a holder of joint employment where the other holder ceased work, and who fulfil other specified conditions. The employer has power to credit them with an additional period of service, and benefits to the former employee or his surviving spouse and children become payable based on that service.

The main changes in Part III compared to the previous Regulations are that–

- (1) Part III now applies to non-pensionable as well as pensionable employees;
- (2) holders of a joint appointment whose appointment has been terminated because the other ceased to hold his appointment may now be considered for a discretionary award under Part III (regulation 6(1)(a)(iii));
- (3) in the case of employees who become eligible for compensation for the first time under these Regulations by virtue of these changes, where the date of premature retirement is before the Regulations come into force, the employing authority may credit them with an additional period of service within six months of the Regulations coming into force (regulation 8(2)(a)), instead of the usual limit of six months from the date of premature retirement;
- (4) all the service of a part-time employee can be taken into account when considering an award of compensatory added years (regulation 7(3));
- (5) spouses of post retirement marriages of employees awarded compensatory added years may receive part of the annual compensation (regulation 20(3));
- (6) where a child who is eligible for long-term compensation has attained the age of 17 and is receiving remuneration for full-time training for a trade, the “indexed training rate” has been uprated (regulation 25(6));
- (7) interest is to be paid on compensation paid late in certain circumstances (regulation 30);
- (8) the “appropriate authority” (the administering authority or, where a person is not a pensionable employee, the authority which would otherwise have been the administering authority) may pay compensation on behalf of the employing authority and recover it from them. In the case of the lump sum compensation payable under regulation 9, it must not be paid from the superannuation fund. In the case of any other compensation paid on behalf of the employing authority, it may be paid from the superannuation fund but the appropriate authority must recover the amount from the employing authority within two months of payment (regulation 31(2) to (5)).

Regulations 1(2) and 33 provide that where a person is credited with an additional period of service in respect of his redundancy or premature retirement at a material date before these Regulations come into force, the provisions of the Regulations for payment of benefits in respect of that service will have effect from the material date. This is subject to the qualification that regulation 20(3), which introduces compensation for a surviving spouse in a post-retirement marriage, shall not have effect from a date earlier than 25th July 1996 (the date when the equivalent provision came into force in England and Wales). Retrospection is authorised by section 24(3) of the Superannuation Act 1972. No beneficiary is placed in a worse position by such retrospection.

Part IV enables LGSS employers to pay compensation to employees who cease to be employed by reason of redundancy or in the interests of the efficient exercise of the employers' functions, in cases where compensation under Part III is not available. The employees concerned must be eligible to be Local Government Superannuation Scheme members and fulfil other specified conditions.

Part V provides for payment of injury benefits by LGSS employers.

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Part VI enables LGSS employers to pay certain gratuities to former employees or their spouses or children in respect of non-pensionable service.