
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 77

LOCAL GOVERNMENT

The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2000

<i>Made</i>	- - - -	<i>13th March 2000</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>17th March 2000</i>
<i>Coming into force</i>	- -	<i>7th April 2000</i>

The Scottish Ministers, in exercise of the powers conferred upon them by section 24 of the Superannuation Act 1972⁽¹⁾ and of all other powers enabling them in that behalf, after consultation with such associations of local authorities as appear to them to be concerned and such representatives of other persons likely to be affected by the Regulations as appear to them to be appropriate, in accordance with section 7(5) of that Act, and not having considered consultation with any individual local authority desirable, hereby make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2000 and shall come into force on 7th April 2000 but regulation 4 shall have effect from 4 March 1998 and regulation 5 shall have effect from 1 April 1998.

Amendment of Regulations

2. The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998⁽²⁾ (in these Regulations referred to as “the principal Regulations”) shall be amended in accordance with regulations 3 to 9 below.

Power to award credited period for compensation purposes

3. In regulation 8(7) for the words from “in terms of regulation 5(c) or (d)” to the end substitute—

(1) 1972 c. 11; section 24 was amended by the Police Pensions Act 1976 (c. 35) s.13(1), Schedule 2, paragraph 10. The functions of the Secretary of State were transferred to the Scottish Minister by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I.1999/1750).

(2) S.I. 1998/192.

- “(a) in terms of regulation 5(c) or (d) of the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995(3); or
- (b) in relation to an employment in respect of the cessation of which either–
 - (i) an additional period of membership may be counted under regulation 51 of the Local Government Pension Scheme (Scotland) Regulations 1998(4); or
 - (ii) a determination to pay compensation is made under regulation 35(1).”.

Limit on annual compensation where entitlement to occupational pension

4. In regulation 11(2)(b), substitute for the figure “66” the figure “66 2/3”.

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

5. In regulation 20–
 - (a) in paragraph (4), insert after the words “a surviving spouse who is entitled to short-term or long-term compensation by virtue of this regulation” the words “and who is the surviving spouse of an eligible person who ceased employment before 1st April 1998”;
 - (b) in paragraph (5), insert after the words “short-term or long-term compensation under this regulation” the words “and is the surviving spouse of an eligible person who ceased employment before 1st April 1998”; and
 - (c) add as paragraph (6) the following:–
 - “(6) The employing authority may determine by resolution in any case that paragraph (4) or (5), as appropriate, shall not apply.”.

Paying authority – general

6. In regulation 31(2), add at the end–
 - “within such period (subject to paragraph (4)) and on such terms as the appropriate authority may determine.”.

Compensation for redundancy

7. In regulation 34(1)–
 - (a) for sub-paragraphs (b) and (c) substitute the following:–
 - “(b) in respect of that loss of employment is not disentitled to a redundancy payment under Part XI of the Employment Rights Act 1996(5) by virtue of section 197(3) of that Act (agreements to exclude rights to redundancy payments on expiry of short fixed term contracts) and either–
 - (i) is not eligible to benefit under Part III; or
 - (ii) is so eligible but has not been granted a credited period under regulation 8 by his LGSS employer;
 - (c) has attained the age of 18 on the material date and, unless he has attained the age of 50 on that date, is entitled to count a qualifying employment of at least 2 years;”;

(3) S.I. 1995/340.

(4) S.I. 1998/366.

(5) 1996 c. 18.

- (b) after sub-paragraph (d), add—

“;

- (e) on the material date has a total period of membership of 40 years or less; and
(f) has not attained the age of 65 on that date.”.

Determination to pay and computation of compensation

8. In regulation 35—

- (a) in paragraph (1), add at the end—

“;

but no person may be paid compensation under this regulation in respect of the cessation of an employment in respect of which an additional period of membership may be counted under regulation 51 of the Local Government Pension Scheme (Scotland) Regulations 1998”; and

- (b) after paragraph (1), insert—

“(1A) In any case, the maximum amount shall not exceed one week’s pay for each week (fractions of a week being disregarded) between the material date and the employee’s normal retirement date (or the date which would be his normal retirement date if he were a member of the Scheme)(6).”.

Policy statement

9. After regulation 51, insert—

“Policy statement

51A.—(1) Each employing authority must formulate and keep under review the policy they intend to apply in the exercise of their discretionary powers in the discharge of their functions under Parts II, III and IV.

(2) Before the end of six months beginning with 7th April 2000 each employing authority shall publish a written statement of the policy which they are to apply in the exercise of such discretionary powers from the date of publication.

(3) Where, as a result of a review under paragraph (1), an employing authority determine to amend their policy, they must publish a written statement of the amended policy before the expiry of one month beginning with the date on which they so determine.

(4) No change in policy shall come into effect until the expiry of one month from the date on which the written statement of the amended policy is published.

(5) In formulating or reviewing their policy under paragraph (1), an employing authority shall—

- (a) have regard to the extent to which the exercise of their discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service; and

(6) “member” and “the Scheme” are defined in terms of the Local Government Pension Scheme (Scotland) Regulations 1998 (S.I. 1998/366), which re enacted the Local Government Superannuation (Scotland) Regulations 1987 with modifications. A “member of the Scheme” is in effect the current equivalent of a “pensionable employee” under the 1987 Regulations. Regulation 2(3) of the principal Regulations construes expressions used in them and not specifically defined as if they were contained in the 1987 Regulations. By virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30), regulation 2(3) also construes “member” and “the Scheme” as if contained in the 1998 Regulations.

- (b) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.”.

Retrospective effect

10. Nothing in these Regulations shall place any individual who is qualified to participate in benefits for which the principal Regulations provide in a worse position than he would have been in if regulation 5 had been framed so as to have effect only from the date of its making.

St Andrew’s House,
Edinburgh
13th March 2000

SAM GALBRAITH
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (“the principal Regulations”). With the exception of regulations 4 and 5, which have retrospective effect from 4th March 1998 and 1st April 1998 respectively as authorised by section 24(3)(c) of the Superannuation Act 1972, the Regulations have effect from [coming into force date].

Regulation 3 makes an amendment which is consequential upon regulations 7 and 8.

Regulation 4 makes a minor correcting amendment.

Regulation 5(a) and (b) amends regulation 20(4) and (5) of the principal Regulations to restrict the limits on entitlement to spouse’s compensation to surviving spouses of persons who ceased employment before 1st April 1998.

Regulation 5(c) amends regulation 20 of the 1998 Regulations to allow an employing authority to determine that the cessation of entitlement to surviving spouses’ compensation on remarriage or cohabitation shall not apply in any particular case.

Regulation 6 amends regulation 31(2) of the principal Regulations to provide that where the administering authority are to recover any compensation paid on behalf of the employing authority, they may do so within such period (subject to regulation 31(4)) and on such terms as they may decide.

In addition to minor drafting amendments, regulation 7(a) extends to all persons over 18 (who, in the case of those under 50, have more than 2 years qualifying employment) the provision permitting the payment of lump sum compensation for redundancy. Regulation 7(b), however, provides that the extension only covers persons who, at the material date, have a period of membership not exceeding 40 years and have not attained the age of 65.

Regulation 8 provides that no person may be paid compensation in respect of the cessation of an employment if they have already been awarded added years under regulation 51 of the Local Government Pension Scheme (Scotland) Regulations 1998 in respect of the period of that employment.

Regulation 9 introduces a requirement for each employing authority to formulate and publish their policy in connection with the exercise of their discretion to pay compensation under Parts II, III and IV of the principal Regulations.

Regulation 10 provides that the retrospective effect of regulation 5 cannot operate to any individual’s detriment.