
STATUTORY INSTRUMENTS

1977 No. 339

The Land Drainage (Compensation) Regulations 1977

PART IV

LONG-TERM COMPENSATION

Long-term compensation for loss of employment or loss or diminution of emoluments

10. The compensating authority shall, subject to the provisions of these regulations, pay long-term compensation to any person to whom these regulations apply and who satisfies the conditions set out in regulation 11.

Conditions for payment of long-term compensation

11.—(1) Without prejudice to any other requirement of these regulations, the conditions for the payment of long-term compensation to any person are that—

- (a) he has suffered loss of employment or loss or diminution of emoluments attributable to any instrument which is mentioned in column 1 of Schedule 2, or to anything done in pursuance of such an instrument, not later than 10 years after the material date;
- (b) he had not, save as is provided in regulation 26, at the date of the loss or diminution attained normal retiring age;
- (c) he had been, for a period of not less than 5 years immediately before the material date, continuously engaged (without a break of more than 12 months at any one time) for the whole or part of his time in relevant employment;
- (d) he has made a claim for such compensation in accordance with the provisions of Part VII of these regulations not later than 2 years after the loss or diminution which is the cause of the claim or 2 years after the coming into operation of these regulations whichever is the later; and
- (e) if the cause of the claim for compensation is loss of employment—
 - (i) the loss has occurred for some reason other than misconduct or incapacity to perform the duties that, immediately before the loss, he was performing or might reasonably have been required to perform; and
 - (ii) he has not, subject to paragraph (2), after the employer either informed him in writing that his employment was to be terminated or was likely to be terminated or gave him written notice of termination of his employment, been offered in writing any relevant employment which is reasonably comparable with the employment which he has lost.

(2) Regulation 7(2) and (3) (which relate to offers of employment) shall apply for the purposes of this regulation in ascertaining whether a person has been offered reasonably comparable employment.

(3) Claims for long-term compensation for loss of employment shall in all respects be treated as claims for such compensation for the loss of emoluments occasioned thereby and the provisions of these regulations shall apply to all such claims accordingly.

Factors to be considered in determining payment of long-term compensation

12.—(1) For the purpose of determining whether long-term compensation for loss or diminution of emoluments should be paid to any person and, if so, the amount of the compensation (subject to the limits set out in these regulations), the compensating authority shall, subject to the provisions of paragraphs (2) and (3), have regard to such of the following factors as may be relevant, that is to say—

- (a) the conditions upon which the person held the employment which he has lost, including in particular its security of tenure, whether by law or practice;
- (b) the emoluments and other conditions, including security of tenure, whether by law or practice, of any work or employment undertaken by the person as a result of the loss of employment;
- (c) the extent to which he has sought suitable employment and the emoluments which he might have acquired by accepting other suitable employment which, after the employer either informed him in writing that his employment was to be terminated or was likely to be terminated or gave him written notice of termination of his employment, has been offered to him in writing;
- (d) any award of compensation under regulations made under section 24 of the Superannuation Act 1972 or under any similar provision except an award of compensation corresponding to the payments referred to in regulation 9; and
- (e) all the other circumstances of his case;

but, subject to the provisions of regulation 40, no account shall be taken of the fact that he entered the employment which he has lost or the emoluments of which have been diminished after the making of the instrument to which, or in pursuance of which anything is done to which, the loss or diminution is attributable.

(2) In ascertaining for the purposes of paragraph (1)(b) and (1)(c) the emoluments in respect of any work or employment that gives the employee or his widow, child or other dependant the right to benefit under a pension scheme under which the employee is not under an obligation to pay contributions, the amount of emoluments shall be increased by the amount of contributions which the employee would have to pay to secure equivalent benefits under a pension scheme in respect of which both the employer and the employee are under an obligation to pay equal contributions.

(3) Regulation 7(3) shall apply for the purposes of this regulation in ascertaining whether a person has been offered suitable employment.

Amount of long-term compensation payable for loss of emoluments

13.—(1) Long-term compensation for loss of emoluments shall, subject to the provisions of these regulations, be payable until the normal retiring age or death of a person to whom it is payable, whichever first occurs, and shall not exceed a maximum annual sum calculated in accordance with the provisions of paragraphs (2) to (4).

(2) The said maximum annual sum shall, subject as hereinafter provided, be the aggregate of the following sums, namely—

- (a) for every year of the person's reckonable service, one sixtieth of the emoluments which he has lost; and

(b) in the case of a person who has attained the age of 40 at the date of the loss, a sum calculated in accordance with the provisions of paragraph (3) appropriate to his age at that date, but the said maximum annual sum shall in no case exceed two thirds of the emoluments which the person has lost.

(3) The sum referred to in paragraph (2)(b) shall be—

(a) in the case of a person who has attained the age of 40 but has not attained the age of 50 at the date of the loss, the following fraction of the emoluments which he has lost—

(i) where his reckonable service is less than 10 years, one sixtieth for each year of that service after attaining the age of 40; or

(ii) where his reckonable service amounts to 10 years but is less than 15 years, one sixtieth for each year of that service after attaining the age of 40 and one additional sixtieth; or

(iii) where his reckonable service amounts to 15 years but is less than 20 years, one sixtieth for each year of that service after attaining the age of 40 and two additional sixtieths; or

(iv) where his reckonable service amounts to 20 years or more, one sixtieth for each year of that service after attaining the age of 40 and three additional sixtieths;

but the sum so calculated shall not in any case exceed one sixth of the said emoluments;

(b) in the case of a person who has attained the age of 50 but has not attained the age of 60 at the date of the loss, one sixtieth of the said emoluments for each year of his reckonable service after attaining the age of 40, up to a maximum of 15 years; and

(c) in the case of a person who has attained the age of 60 at the date of the loss, one sixtieth of the said emoluments for each year of his reckonable service after attaining the age of 45.

(4) The amount of long-term compensation calculated in accordance with paragraphs (2) and (3) shall be reduced by the amount by which the aggregate of—

(a) the emoluments of any work or employment undertaken by him as a result of the loss of employment, and

(b) the long-term compensation which apart from this paragraph and any reduction under regulation 30(3) and (4) would be payable to him,

exceeds the emoluments of the employment which has been lost.

(5) Long-term compensation shall be payable to a person at intervals equivalent to those at which the emoluments of his employment were previously paid or at such other intervals as may be agreed between the person and the compensating authority.

Long-term compensation for diminution of emoluments

14.—(1) Long-term compensation for diminution of emoluments in respect of any employment shall, subject to the provisions of these regulations, consist of an annual sum calculated in accordance with the provisions of paragraph (2).

(2) The said annual sum shall not exceed the sum that would be the annual sum under the provisions of regulations 13(1) to (4) calculated on the assumptions—

(a) that there was a loss of employment, and

(b) that emoluments after diminution were emoluments of any work or employment undertaken as a result of a loss of employment within the meaning of regulation 12(1)(b).

(3) Long-term compensation for diminution of emoluments shall be payable to a person at intervals equivalent to those at which the emoluments of his employment are or were previously paid or at such other intervals as may be agreed between the person and the compensating authority.

Period during which long-term compensation is to be payable

15.—(1) Long-term compensation shall be payable with effect from the date of the claim or from any earlier date permitted by the succeeding provisions of this regulation.

(2) Where a claim for long-term compensation is duly made within 13 weeks of the occurrence of the loss or diminution which is the cause of the claim, the award shall be made effective from the date on which the loss or diminution occurred.

(3) Where a claim for long-term compensation is made after the expiry of the period mentioned in paragraph (2), the compensating authority may—

- (a) at their discretion make the award effective from a date not earlier than thirteen weeks prior to the date on which the claim was made, or
- (b) if they are satisfied that the failure to make the claim within the period mentioned in paragraph (2) was due to ill-health or other circumstances beyond the claimant's control, make the award effective from a date not earlier than that on which the loss or diminution occurred.

(4) Long-term compensation shall not be payable to a person for any period in respect of which compensation under Part V of these regulations is payable to him.