
 STATUTORY INSTRUMENTS

1978 No. 1926 (S. 168)

PENSIONS**The Local Government Superannuation (Scotland) Amendment
(No. 4) Regulations 1978**

Made - - - - - 15th December 1978
Laid before Parliament 9th January 1979
Coming into Operation 31st January 1979

In exercise of the powers conferred on me by sections 7 and 12 of the Superannuation Act 1972(a), and of all other powers enabling me in that behalf, after consultation with such associations of local authorities as appeared to me to be concerned and such representatives of other persons likely to be affected by the regulations as appeared to me to be appropriate, I hereby make the following regulations:—

Title and commencement

1.—(1) These regulations may be cited as the Local Government Superannuation (Scotland) Amendment (No. 4) Regulations 1978 and shall come into operation on 31st January 1979 and have effect from 6th April 1978 except regulations 17, 20 and 32 which shall have effect from 6th April 1975.

(2) The Local Government Superannuation (Scotland) Regulations 1974 to 1978(b) (in these regulations referred to as “the principal regulations”) and these regulations may be cited together as the Local Government Superannuation (Scotland) Regulations 1974 to 1978.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires, words and expressions to which meanings are assigned by the principal regulations have the same respective meanings.

(2) In these regulations, unless the context otherwise requires, any reference to any enactment or regulation shall be construed as a reference thereto as amended, modified or extended by or under any other enactment or regulation (including any regulation in these regulations).

(3) The Interpretation Act 1889(c) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

Definitions

3.—(1) In regulation A3(1) of the principal regulations after the definition of “combination scheme” there shall be inserted the following definition—

““contracted-out employment” shall be construed in accordance with section 30 of the Pensions Act;”.

(a) 1972 c. 11.

(b) S.I. 1974/812; 1975/638; 1978/425, 1378, 1794.

(c) 1889 c. 63.

(2) In the said regulation A3(1) after the definition of “equivalent pension benefits” there shall be inserted the following definition—

““guaranteed minimum pension” has the meaning assigned to it by section 26 of the Pensions Act;”.

(3) In the said regulation A3(1) in the definition of “remuneration” at the end there shall be added the following proviso—

“Provided that where the employee in his employment under a scheduled body belongs to a class or description of employee in relation to which an agreement entered into by that body under regulation L10A is in force, then in respect of the period during which that agreement remains in force and the employee in his employment under that body remains an employee of that class or description, the amount determined in relation to him in accordance with the method specified in the agreement as the amount representing the whole of his remuneration or, as the case may be, such part of his remuneration as is specified in the agreement, shall be deemed for the purposes of these regulations to be his remuneration or, as the case may be, such part of his remuneration as is so specified;”.

Definition of enactments

4. In regulation A4 of the principal regulations after the definition of “the Northern Ireland Act” there shall be added the following definition—

““the Pensions Act” means the Social Security Pensions Act 1975(a);”.

Return of employee’s contributions in certain cases

5.—(1) At the end of regulation C8(4)(c) of the principal regulations the full stop shall be deleted and there shall be added the following—

”; or

(d) in the case of a person who is entitled to a pension under regulation E2(1)(c) or (d) in respect of any period of service in contracted-out employment.”.

(2) In regulation C8(7) of the principal regulations after the word “applies” there shall be inserted the words “or who satisfies the requirements of regulation E2(1)(d) (other than a person who elects under regulation E2(5)(b))”.

Exclusion from reckonable service and qualifying service

6.—(1) After regulation D3(1)(a)(ii) of the principal regulations there shall be added the following regulation—

“(iii) after he became entitled to a benefit under paragraph (1)(c) or (1)(d) of regulation E2 on ceasing to hold an employment in which he was a pensionable employee and in respect of his so ceasing a return of the whole or a part of the aggregate amount of his contributions to the appropriate superannuation fund within the meaning of regulation C8 has been made under that regulation; or”;

(2) In the proviso to regulation D3(2)(a), after the word “therein” there shall be inserted the words “or in the circumstances mentioned in paragraph (1)(a)(iii)”.

Previous service of certain re-employed persons

7. At the end of regulation D16(1)(a)(iii) of the principal regulations the word “and” shall be deleted and there shall be added the following regulation—

“or

(iv) after he became entitled to a retirement pension by virtue of regulation E2(1)(c) on ceasing to hold an employment in which he was a pensionable employee has entered further employment with a scheduled body and in respect of his so ceasing a return of contributions has been made; and”.

Pensionable remuneration

8.—(1) At the end of regulation E1(3)(f) the word “and” shall be deleted.

(2) At the end of regulation E1(3)(g) the full stop shall be deleted and there shall be added the following—

“; and

(h) in the case of a pensionable employee whose remuneration, or part of whose remuneration, throughout the whole or part of the relevant period was an amount determined in accordance with the method specified in an agreement under regulation L10A, then, if the amount of his pensionable remuneration is less than the amount it would have been if—

(i) the agreement had not been in force; and

(ii) his pensionable remuneration had been determined by reference to so much of his remuneration (if any), other than payments for overtime and payments by way of bonus, in the relevant period as exceeds one and a half times the lower earnings limit within the meaning of the Social Security Act 1975(a) in force when he ceases to hold the employment and does not exceed the upper earnings limit within the meaning of the said Act of 1975 in force as aforesaid,

it shall be increased by the difference between it and the last-mentioned amount.

In the application of the definition of “remuneration” in regulation A3(1) to the word “remuneration”, in the second place in which the word occurs in (ii) above, that definition shall have effect as if the proviso thereto were omitted.”.

Entitlement to retirement pension and retiring allowance

9.—(1) In regulation E2(1) of the principal regulations for the words “paragraph (4)” there shall be substituted the words “paragraphs (4) and (5)”.

(2) After regulation E2(1)(c) of the principal regulations there shall be added the following—

“or

(d) he is not entitled to a benefit under sub-paragraph (a), (b) or (c) and has attained or is in the income tax year in which he attains the age of 65 years in the case of a man or 60 years in the case of a woman.”.

(a) 1975 c. 14.

(3) In regulation E2(4)(a)(iv) of the principal regulations after the word “ceased” there shall be inserted the following—

”: Provided that, if he has a guaranteed minimum under section 35 of the Pensions Act in relation to his retirement pension, he may not make such an election if that pension would be reduced under regulation E3(9), but for the provisions of regulation E20(2), to less than his guaranteed minimum pension”.

(4) The following regulation shall be substituted for regulation E2(4)(c) of the principal regulations—

“(c) if the whole of the aggregate amount of the pensionable employee’s contributions to the appropriate superannuation fund within the meaning of regulation C8 has been returned to him under that regulation;”.

(5) After regulation E2(4) of the principal regulations there shall be added the following regulation—

“(5) A pensionable employee who satisfies the requirements of regulation E2(1)(d) shall not on that account be entitled to receive payment of or payments in respect of a benefit under these regulations—

(a) unless on ceasing to hold his employment he has attained the age of 65 years or until he attains that age; or

(b) in the case of a male pensionable employee who has not attained that age, unless not later than 3 months after ceasing to hold his employment, by notice in writing to the employing authority, he elects to be entitled to receive benefits under this regulation from the date on which he so ceases; or

(c) in the case of a female pensionable employee, until she retires and attains or has attained the age of 60 years:

Provided that an election may not be made under sub-paragraph (b) if the employee has a guaranteed minimum under section 35 of the Pensions Act in relation to his retirement pension and that pension would be reduced under regulation E3(9), but for the provisions of regulation E20(2), to less than his guaranteed minimum pension.”.

Amount of retirement pension and retiring allowance

10.—(1) In regulation E3(1) of the principal regulations after the figure “(2),” there shall be inserted the figure “(7A),”.

(2) After regulation E3(7) of the principal regulations there shall be inserted the following regulation—

“(7A) Where a pensionable employee becomes entitled to benefits under these regulations by virtue of regulation E2(1)(c) and a part of the aggregate amount of his contributions to the appropriate superannuation fund within the meaning of regulation C8 has been returned to him under that regulation, for the purpose of calculating the amount of a benefit under this regulation no account shall be taken of reckonable service in respect of which the return of contributions has been made.”.

(3) The following regulations shall be substituted for regulation E3(9) of the principal regulations—

“(9) Where a pensionable employee becomes entitled to benefits under these regulations by virtue of regulation E2(1)(c) or (d) and—

(a) in the case of a male pensionable employee, elects as mentioned in regulation E2(4)(a)(iv) or, as the case may be, regulation E2(5)(b) to be entitled to receive benefits from the date on which he ceased to hold his employment; or

(b) in the case of a female pensionable employee to whom regulation E2(4)(b)(ii) or, as the case may be, regulation E2(5)(c) applies, the amount of any benefit calculated under the preceding provisions of this regulation shall be reduced by the percentage shown in the appropriate column of the table set out in Schedule 10 opposite to the number of years the person would have had to remain a pensionable employee without any break in service in order to become entitled to benefits by virtue of regulation E2(1)(a) or (b)(ii) on ceasing to be employed:

Provided that a retirement pension payable in respect of any period of reckonable service shall not be reduced under this paragraph below the minimum rate of equivalent pension benefits applicable in respect of that period under the Insurance Acts or below, in the case of a female pensionable employee, an annual rate determined by multiplying one eightieth of her pensionable remuneration by the length in years of the whole period of service in contracted-out employment.

(9A) The aggregate amount of any benefits payable to or in respect of a person entitled to them by virtue of regulation E2(1)(d) shall be reduced by the amount of any payment which was made to him under regulation C8 after 6th April 1978 in respect of service taken into account for the calculation of those benefits:

Provided that a retirement pension payable in respect of any period of reckonable service shall not be reduced under this paragraph below the minimum rate of equivalent pension benefits applicable in respect of that period under the Insurance Acts, or below, in the case of a female pensionable employee, an annual rate determined by multiplying one eightieth of her pensionable remuneration by the length in years of the whole period of service in contracted-out employment.”.

Allocation of part of retirement pension

11.—(1) In regulation E4(1) of the principal regulations after the word “surrendered” there shall be inserted the following—

“: Provided that no such surrender shall be allowed if it would result in the retirement pension being reduced to—

(a) an annual rate less than an annual rate determined by multiplying one eightieth of his pensionable remuneration by the length in years of the whole period of his service in contracted-out employment; and

(b) if he has a guaranteed minimum under section 35 of the Pensions Act in relation to that pension, but for the provisions of regulation E20(2), less than his guaranteed minimum pension”.

(2) In regulation E4(5) of the principal regulations after the words “regulation E2(1)(c)” there shall be inserted the words “or who satisfies the requirements of regulation E2(1)(d)”.

Entitlement to widow's short-term pension and widow's long-term pension

12.—(1) In regulation E5(1)(b) of the principal regulations for the words from “the reckonable” to the end there shall be substituted the words—

- “(i) the reckonable service and qualifying service he was entitled to reckon amounted in aggregate to not less than 5 years; or
- (ii) if he had ceased to be employed otherwise than by reason of his death, would have become entitled on so ceasing to benefits under these regulations by virtue of regulation E2(1)(d); or”.

(2) In the proviso to regulation E5(1) of the principal regulations at the beginning of sub-paragraph (a) there shall be inserted the words “subject to the provisions of regulation E6A,”.

(3) In regulation E5(2)(b) of the principal regulations for the word “cohabiting” there shall be substituted the word “living”.

(4) In regulation E5(2)(c) of the principal regulations for the word “cohabit” there shall be substituted the word “live”.

(5) In the proviso to regulation E5(2) of the principal regulations for the words “the cohabitation has been terminated” there shall be substituted the words “she is no longer living with a man as his wife”.

Amount of widow's short-term pension and widow's long-term pension

13.—(1) In regulation E6(2)(b) of the principal regulations—

- (a) after the words “paragraph (1)(b)” there shall be inserted the words “where she became entitled to such pension by virtue of regulation E5(1)(b)(i),” and
- (b) after the words “regulation E2(1)(b)(i)” there shall be added “and, where she became entitled to such a pension by virtue of regulation E5(1)(b)(ii), one half of the retirement pension to which he would have been entitled under regulation E2(1)(d)”.

(2) After regulation E6(3) of the principal regulations there shall be added the following regulation—

- “(4) The annual rate of the pension payable under this regulation shall not be less than the amount determined by multiplying one one hundred and sixtieth of the pensionable remuneration of the deceased husband by the length in years of the whole period of his service in contracted-out employment.”.

Post-retirement marriages

14. After regulation E6 of the principal regulations there shall be added the following regulation—

“Post-retirement marriages

E6A. Where proviso (a)(i) to regulation E5 applies, the widow shall be entitled to a pension calculated under regulation E6 modified as follows—

- (a) in paragraph (1)(a), for the words “that pension” there shall be

substituted the words “that part of that pension which was attributable to the whole period of his service in contracted-out employment”;

(b) in paragraph (2)—

(i) in sub-paragraph (a), after the words “half of” there shall be inserted the words “that part” and at the end of that sub-paragraph there shall be added the words “which was attributable to the whole period of his service in contracted-out employment”; and

(ii) in sub-paragraph (c), after the words “half of” there shall be inserted the words “that part” and at the end of that sub-paragraph there shall be inserted the words “and which would have been attributable to the whole period of his service in contracted-out employment”.”.

Widow's special short-term pension

15.—(1) In regulation E7 of the principal regulations after the word “years” there shall be inserted the words “and, if he had ceased to be employed otherwise than by reason of his death, would not have become entitled to benefits under these regulations by virtue of regulation E2(1)(d)”.

(2) In sub-paragraph (ii) of the said regulation E7 for the word “cohabiting” there shall be substituted the word “living”.

Entitlement to children's short-term pension and children's long-term pension

16.—(1) In regulation E8(2)(a) of the principal regulations for the word “cohabiting” there shall be substituted the word “living”.

(2) In regulation E8(2)(b) of the principal regulations for the word “cohabit” there shall be substituted the word “live”.

(3) In the proviso to regulation E8 of the principal regulations for the words “the cohabitation has been terminated” there shall be substituted the words “she is no longer living with a man as his wife”.

Death gratuity

17.—(1) In regulation E11(1)(b) of the principal regulations for the words from “(other” to “regulation E2(1)(c)” there shall be substituted the words “and at the time of his death was entitled to receive payments in respect of that pension”.

(2) In regulation E11(2)(a) of the principal regulations for the expression “(b)(ii)” there shall be substituted the words “such a person as is mentioned in paragraph (1)(b)(ii) if he became entitled to the retirement pension mentioned in that paragraph other than by virtue of regulation E2(1)(c)”.

(3) After the said regulation E11(2)(a) there shall be inserted the following regulation—

“(aa) in respect of such a person as is mentioned in paragraph (1)(b)(ii) who became entitled to the retirement pension mentioned in that paragraph by virtue of regulation E2(1)(c), whichever is the greater of the following—

(i) the amount ascertained by multiplying three eighths of his pensionable remuneration by the length in years of his reckonable

service by reference to which that retirement pension was calculated less—

(A) where a pension under regulation E5 is payable in respect of his death to his widow, the amount ascertained by multiplying two eightieths of his pensionable remuneration by the length in years of his reckonable service (if any) before 1st April 1972; and

(B) an amount equal to the aggregate amount of any payments made to him in respect of that retirement pension and the retiring allowance mentioned in paragraph (1)(b)(ii); or

(ii) an amount calculated in accordance with the formula $\frac{T}{H} \times A$

where—

T is the length in years of his reckonable service;

H is the length in years of the reckonable service which he would have been entitled to reckon if he had remained in the employment in relation to which he became entitled to that retirement pension until the earliest age at which he would, under regulation E2(1)(a) or (b)(ii), have become entitled to receive a retirement pension; and

A is the amount of his pensionable remuneration, less—

(i) where a pension under regulation E5 is payable in respect of his death to his widow, the amount ascertained by multiplying two eightieths of his pensionable remuneration by the length in years of his reckonable service (if any) before 1st April 1972; and

(ii) an amount equal to the aggregate amount of any payments made to him in respect of that retirement pension and the retiring allowance mentioned in paragraph (1)(b)(ii):

Provided that in calculating the amount under sub-paragraph (i)(A) or (ii)(i) above no account shall be taken of that part of the reckonable service before 1st April 1972 in respect of which payment under paragraph (2), (3) or (4) of regulation C2A has been completed or is treated by virtue of paragraph (9) or (10) of that regulation as having been completed.”

(4) In regulation E11(2)(b) of the principal regulations after the words “paragraph (1)(b)(i)” there shall be inserted the words “other than by virtue of regulation E2(1)(c) or (d)”.

(5) After the said regulation E11(2)(b) there shall be added the following regulation—

“(bb) in respect of such a person as is mentioned in paragraph (1)(b)(i) who became entitled to the retirement pension mentioned in that paragraph by virtue of regulation E2(1)(c) or (d), an amount calculated in accordance

with the formula $\frac{T}{H} \times A$ where—

T is the length in years of his reckonable service;

H is the length in years of the reckonable service which he would have been entitled to reckon if he had remained in the employment in

relation to which he became entitled to that retirement pension until the earliest age at which he would, under regulation E2(1)(a) or (b)(ii), have become entitled to receive a retirement pension; and

A is an amount equal to five times the rate of that retirement pension, less an amount equal to the aggregate amount of any payments made to him in respect of that retirement pension;”.

(6) After regulation E11(2) of the principal regulations there shall be added the following regulation—

“(2A) For the purposes of paragraph (2)(aa) and (bb), a person who became entitled to a retirement pension by virtue of regulation E2(1)(c) shall be treated as such a person as is mentioned in paragraph (1)(b)(ii), and shall not be treated as such a person as is mentioned in paragraph (1)(b)(i), if the reckonable service by reference to which the retirement pension would have been calculated if he had remained in the employment in relation to which he became entitled to that pension until the earliest age at which he would, under regulation E2(1)(a) or (b)(ii), have become entitled to receive a retirement pension amounts in aggregate to not less than 10 years.”.

(7) In regulation E11(3) of the principal regulations, for the words “paragraph (1)(a), (b)(ii) or (c)” there shall be substituted the words “paragraph (1)(a) or (c) or such a person as is mentioned in paragraph (1)(b)(ii) who became entitled to the retirement pension mentioned in that paragraph other than by virtue of regulation E2(1)(c)”.

(8) In the said regulation E11(3) after the date “1972” there shall be inserted the following—

“; other than reckonable service in respect of which a return of contributions has been made”.

(9) In regulation E11(5) of the principal regulations—

(i) after the words “paragraph (1)(b)(i)” there shall be inserted the words “who became entitled to the retirement pension mentioned in that paragraph other than by virtue of regulation E2(1)(c) or (d)”;

(ii) for the words “the retirement pension mentioned in that paragraph” there shall be substituted the words “that retirement pension”.

(10) In regulation E11(6) of the principal regulations after the words “paragraph (1)(b)(ii)” there shall be inserted the words “who became entitled to the retirement pension mentioned in that paragraph other than by virtue of regulation E2(1)(c)”.

Power to compound certain small pensions

18. After regulation E11 of the principal regulations there shall be added the following regulation—

“Power to compound certain small pensions

E11A.—(1) Where—

(a) a pensionable employee has become entitled to a retirement pension or pensions and has attained the age of 65 years in the case of a man or 60 years in the case of a woman; and

(b) the annual rate of that pension or those pensions including the amount of any pensions increase payable thereon under the Pensions (Increase) Act 1971(a) does not exceed £39,

(a) 1971 c. 56.

the administering authority may discharge their liability in respect of—

- (i) that pension or those pensions; and
- (ii) if the pensionable employee is a male—
 - (A) the widow's long-term pension which, in the event of his dying leaving a widow, would be payable to her in respect of his reckonable service; and
 - (B) the children's long-term pension which, in the event of his dying leaving an eligible child or eligible children, would be payable to or for the benefit of his eligible child or eligible children in respect of his reckonable service,

by payment to the pensionable employee of a lump sum of such amount as represents the capital value of the pensions mentioned in sub-paragraphs (i) and (ii) above, calculated in accordance with tables prepared by the Government Actuary.

For the purposes of this paragraph a pensionable employee who ceases to be employed in the circumstances mentioned in regulation E2(1)(c) or who satisfies the requirements of regulation E2(1)(d) shall not be treated as having become entitled to a retirement pension until the date (if any) on which he becomes entitled to receive payments in respect of that pension.

(2) Where the annual rate of the widow's long-term pension or pensions payable to a widow does not exceed £52, including the amount of any pensions increase payable thereon under the Pensions (Increase) Act 1971, the administering authority may discharge their liability in respect of that pension or those pensions by payment to the widow of a lump sum of such amount as represents the capital value of that pension or pensions, calculated in accordance with the tables mentioned in paragraph (1).

(3) Where the annual amount of the children's long-term pension payable to or for the benefit of an eligible child or eligible children does not exceed £52, the administering authority may discharge their liability in respect of that pension by payment of a lump sum of such amount as represents the capital value of that pension, calculated in accordance with the tables mentioned in paragraph (1).”.

Separate benefits in the case of certain re-employed local government pensioners

19.—(1) The following regulation shall be substituted for regulation E17(2)(c) of the principal regulations—

“(c) dies—

- (i) regulation E11(2)(a)(ii) shall not apply to the death gratuity payable in relation to the further pensionable employment; and
- (ii) if he became entitled to the first pension or to the retirement pension in relation to the further pensionable employment by virtue of regulation E2(1)(c) or (d), then—
 - (A) if the aggregate of the amounts specified in paragraph (2A) equals or exceeds the amount specified in paragraph (2B), title to death gratuity shall not arise under regulation E11 in relation to the further pensionable employment;

(B) if (A) above does not apply and the aggregate of the amounts specified in paragraph (2A), together with the amount of the death gratuity payable under regulation E11 in relation to the further pensionable employment, exceeds the amount specified in paragraph (2B), the amount of the death gratuity as calculated under that regulation shall be reduced by the amount of the excess.”.

(2) After regulation E17(2) of the principal regulations there shall be inserted the following regulations—

“(2A) The amounts specified in this paragraph shall be—

(a) the amount of the death gratuity payable in relation to the employment in relation to which the person became entitled to the first pension as calculated under regulation E11 and as increased by virtue of the Pensions (Increase) Act 1971(a);

(b) the aggregate amount of any payments made to the person in respect of the first pension, including any increase paid under the said Act of 1971;

(c) the amount of the retiring allowance to which the person became entitled in conjunction with the first pension, including as aforesaid;

(d) the aggregate amount of any payments made to the person in respect of the retirement pension to which he became entitled in relation to the further pensionable employment, including as aforesaid; and

(e) the amount of the retiring allowance to which the person became entitled in conjunction with the retirement pension mentioned in sub-paragraph (d), including as aforesaid.

(2B) The amount specified in this paragraph shall be whichever is the greater of the following—

(a) the aggregate of the amount of the pensionable remuneration by reference to which the first pension was calculated and the amount (if any) by which an annual pension of an amount equal to that pensionable remuneration would have been increased under the Pensions (Increase) Act 1971 in respect of the period ending with the last date on which he held the further pensionable employment if the person were in receipt of such a pension and that pension were specified in Part II of Schedule 2 to that Act and were one which began for the purposes of the said Act on the day immediately following the day on which the person ceased to hold the employment in relation to which he became entitled to the first pension and the person had on the day on which he so ceased attained the age of 55 years; or

(b) the amount of the pensionable remuneration by reference to which the retirement pension to which the person became entitled in relation to the further pensionable employment was calculated.

(2C) Where a person has become entitled to two or more first pensions, in relation to death gratuity in relation to a further pensionable employment after the first further pensionable employment, this regulation shall have effect as if—

(a) 1971 c. 56.

- (a) in paragraph (2)(a), (b) and (c)(ii), for the words “the first pension” there were substituted the words “a first pension”;
- (b) in paragraph (2A)—
 - (i) in sub-paragraph (a), for the words “the amount of the death gratuity” there were substituted the words “the aggregate amount of the death gratuities” and for the word “pension” there were substituted the word “pensions”; and
 - (ii) in sub-paragraph (b), for the word “pension” there were substituted the word “pensions”; and
 - (iii) in sub-paragraph (c), for the words “the amount of the retiring allowance” there were substituted the words “the aggregate amount of the retiring allowances” and for the word “pension” there were substituted the word “pensions”; and
- (c) in paragraph (2B)(a), before the word “amount” there were inserted the word “greatest” and for the word “the” in the fourth place where it occurs, there were substituted the word “a”.

Guaranteed minimum pension for certain pensionable employees and their widows

20. After regulation E19 of the principal regulations there shall be added the following regulation—

“Guaranteed minimum pension for certain pensionable employees and their widows

E20.—(1) This regulation shall apply if the service of a pensionable employee in any employment in which he is a pensionable employee becomes contracted-out employment and it shall then override any other provisions of these regulations which are inconsistent with it, except regulations E11A, E15 and L12.

(2) If a pensionable employee has a guaranteed minimum under section 35 of the Pensions Act in relation to the pension to which he is entitled under these regulations—

- (a) the weekly rate of that pension at the date on which he attains the age of 65 years in the case of a man or 60 years in the case of a woman shall not be less than the employee’s guaranteed minimum under that section; and
- (b) if he dies at any time and leaves a widow, the weekly rate of the pension to which she is entitled under these regulations shall not, during any such period as is mentioned in section 36(6) of the Pensions Act, be less than half that guaranteed minimum.

(3) Where this regulation applies in the case of a pensionable employee who on ceasing to hold the employment in which he is a pensionable employee does not become entitled to a pension under these regulations, or on whose death no pension is payable to his widow, then, unless a contributions equivalent premium under Part III of the Pensions Act has been paid, notwithstanding anything in regulation E2 or E5—

- (a) the employee on attaining the age of 65 years in the case of a man or 60 years in the case of a woman shall be entitled to a pension, the weekly rate of which is equal to his guaranteed minimum; and

(b) in the case of a male employee, if he dies at any time and leaves a widow, she shall be entitled, during any such period as is mentioned in section 36(6) of the Pensions Act, to a pension, the weekly rate of which is equal to half that guaranteed minimum.

(4) Where a pensionable employee on attaining the age of 65 years in the case of a man or 60 years in the case of a woman is in employment in which he is a pensionable employee and continues without any break of service in that employment until the expiration of 5 years from the date on which he attains that age, then, notwithstanding that he does not cease to hold that employment, if he has a guaranteed minimum in relation to the retirement pension to which he would become entitled, if he were to cease to hold that employment, he shall be entitled as from the expiration of the said 5 years to such part of that pension as equals his guaranteed minimum.

(5) In paragraphs (2) and (3) above “weekly rate” means, in relation to a pension which is paid otherwise than at weekly intervals, a rate which is equivalent to the guaranteed minimum of the pensionable employee in question having regard to the period in respect of which the pension is paid.

(6) Where the guaranteed minimum pension to which a pensionable employee is entitled by virtue of these regulations is suspended for any period, his guaranteed minimum shall be increased to the extent, if any, specified in section 35(6) of the Pensions Act.”.

Reduction of pension

21. After regulation F7(1) of the principal regulations there shall be inserted the following regulation—

“(1A) Where a person’s pensionable remuneration has been increased under regulation E1(3)(h) his retirement pension shall not be reduced under this regulation.”.

Decisions to be taken by scheduled bodies as to status of employees

22. In regulation L2(4)(c) of the principal regulations—

(i) the word “or” at the end of sub-paragraph (iii) shall be deleted;
 (ii) after the said sub-paragraph (iii) there shall be inserted the following sub-paragraph—

“(iv) an agreement is entered into under regulation L10A; or”;

(iii) sub-paragraph (iv) shall be renumbered (v).

Standard remuneration agreements

23. After regulation L10 of the principal regulations there shall be added the following regulation—

“Standard remuneration agreements

L10A. A scheduled body may from time to time enter into an agreement with the bodies or persons representative of any class or description of employee of that authority specifying the method by which an amount representing the whole of the remuneration of a member of that class or, as the case may be, an employee of that description or such part of his remuneration as is specified in the agreement shall, in respect of the period during which the agreement remains in force, be determined.”.

Provisions as to contributions equivalent premiums

24. After regulation L11 of the principal regulations there shall be added the following regulation—

“Provisions as to contributions equivalent premiums

L11A.—(1) Where a contributions equivalent premium under Part II of the Pensions Act is paid in respect of any pensionable employee the authority responsible for paying that premium shall be entitled to recover out of the superannuation fund to which that person was a contributor or, if that authority is an administering authority, themselves to retain out of that fund a sum not exceeding the amount of that premium, less the amount (if any) which the authority could recover or retain under section 47 of the said Act in respect of that premium.

(2) Where a contributions equivalent premium under the said Part II which has been paid in respect of any pensionable employee is refunded under the provisions of regulation 8(3)(c) of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations 1976(a), the authority to whom the refund is made shall pay to the superannuation fund to which the person has become a contributor a sum equal to the amount of that premium.”.

Forfeiture

25.—(1) In regulation L12(1) of the principal regulations at the beginning there shall be inserted the words “Subject to paragraph (6).”.

(2) After regulation L12(5) of the principal regulations there shall be added the following regulation—

“(6) No direction shall be given under paragraph (1) which would deprive a pensionable employee of his guaranteed minimum pension and, in the event of his dying leaving a widow, his widow of her widow’s guaranteed minimum pension, unless the offence in consequence of which he has been dismissed or resigned or otherwise ceased to hold his employment is—

(a) an offence of treason; or

(b) one or more offences under the Official Secrets Acts 1911 to 1939(b) for which he has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.”.

Rights of persons transferred to scheduled bodies under an order under section 34 of the Local Government (Scotland) Act 1975(c) or in consequence of section 1 of the Education (Mentally Handicapped Children) (Scotland) Act 1974(d)

26.—(1) In regulation N12(3)(e) of the principal regulations, after the word “event” there shall be inserted the words “subject to regulations N12A and N12B”.

(2) After regulation N12 of the principal regulations there shall be inserted the following regulations:—

“N12A.—(1) Notwithstanding anything in paragraph (3)(c) of regulation

(a) S.I. 1976/143.
(c) 1975 c. 30.

(b) 1911 c. 28; 1920 c. 75; 1939 c. 121.
(d) 1974 c. 27.

N12 and subject to paragraph (2), regulations D3, D16, E5, E6A, E15 and L13 shall have effect in relation to a pensionable employee who has given notice in terms of that paragraph, as if—

- (a) any reference to reckonable service or qualifying service included a reference to service reckonable for the purpose of determining whether any benefit is payable to or in respect of him;
- (b) any reference to a retirement pension included a reference to a pension payable to him in terms of regulation N12(3)(e);
- (c) any reference to regulation E2(1)(c) included a reference to any right conferred upon him by virtue of regulation N12(3)(e) corresponding to regulation 10(1)(a)(iv) of the Health Service regulations; and
- (d) in regulation D3(1)(a)(iii), the reference to the appropriate superannuation fund within the meaning of regulation C8 included a reference to the employing authority under the Health Service regulations.

(2) In the case where the conditions of entitlement mentioned in regulation E5 or E6A, as modified by paragraph (1), are satisfied, the widow's pension payable in terms of regulation N12(3)(e) shall be payable at an annual rate of not less than the amount determined by multiplying one one hundred and sixtieth of the pensionable remuneration of her deceased husband by the length in years of the whole period of his service in contracted-out employment.

N12B.—(1) Notwithstanding anything in paragraph (3)(e) of regulation N12, in the case of a pensionable employee who has given notice in terms of that paragraph, a refund of contributions shall not be payable—

- (a) if his period of reckonable service and qualifying service after 5th April 1975 is not less than 5 years, in respect of any period of reckonable service and qualifying service after that date; or
- (b) if his period of reckonable service and qualifying service commenced before 6th April 1975 and is not less than 5 years, in respect of any period of reckonable service and qualifying service after 5th April 1975 of less than 5 years unless a payment is being or has been made in respect of the period of reckonable service and qualifying service before 6th April 1975; or
- (c) if he is entitled to any right conferred upon him by virtue of regulation N12(3)(e) corresponding to regulation 10(1)(a)(iv) of the Health Service regulations,

and any reference in this paragraph to reckonable service and qualifying service shall include any service reckonable for the purpose of determining whether any benefit is payable to or in respect of him.

(2) Notwithstanding anything in paragraph (3)(e) of regulation N12, a pensionable employee who has given notice in terms of that paragraph shall not surrender such part of his pension as would result in that pension being reduced to—

- (a) an annual rate less than an annual rate determined by multiplying one eightieth of his pensionable remuneration by the length in years of the whole period of his service in contracted-out employment; and
- (b) if he has a guaranteed minimum under section 35 of the Pensions Act in relation to that pension, but for the provisions of regulation E20(2), less than his guaranteed minimum pension.”

Persons transferring to approved non-local government employment

27.—(1) The following regulation shall be substituted for regulation P2(2)(d) of the principal regulations—

“(d) who, on ceasing to be employed in his local government employment on or after 6th April 1978 either—

(i) has attained pensionable age within the meaning of the Social Security Act 1975(a) and is entitled to reckon as reckonable service a period of service relating to an employment which commenced before he attained that age; or

(ii) subject to paragraph (4), becomes employed in approved non-local government employment which is not contracted-out employment.”.

(2) After regulation P2(3) there shall be added the following regulation—

“(4) Notwithstanding the provisions contained in paragraph (2)(d)(ii), this regulation shall, subject to the provisions of this Part and to the conditions of paragraph (3), apply to such a person as is mentioned in paragraph (2)(d)(ii) who is either—

(i) a married woman or widow who, by virtue of an election made or treated as made for the purposes of regulations under section 3 of the Pensions Act, is either liable to pay primary Class 1 contributions or Class 2 contributions (within the meaning of the Social Security Act 1975) at a reduced rate prescribed by such regulations or is exempt from liability to pay Class 2 contributions; or

(ii) a person whose reckonable service and qualifying service amounts in aggregate to less than 5 years.”.

Crediting of reckonable service and qualifying service

28.—(1) In regulation P8(1) of the principal regulations after the word “shall” there shall be inserted the words “, subject to regulations P8A and P8B”.

(2) After regulation P8 of the principal regulations there shall be added the following regulation—

“Exclusion from crediting of reckonable service and qualifying service

P8A.—(1) Where any person to whom regulation P7 applies, ceases on or after 6th April 1978 to be employed in non-local government employment which was contracted-out employment, he shall not be entitled to reckon as reckonable or qualifying service under regulation P8, any service in relation to that employment if—

(a) in that employment he did not participate in a statutory scheme or in a scheme which is for the time being treated by the Secretary of State as a statutory scheme; and

(b) the guaranteed minimum pension to which he is entitled by virtue of his service in that employment exceeds an amount calculated in accordance with the formula mentioned in paragraph (2),

and in that event the fund authority shall not receive into the superannuation fund administered by them the transfer value required by regulation P7(3)(b).

(a) 1975 c. 14.

(2) The amount referred to in paragraph (1)(b) shall be calculated in accordance with the following formula—

$$\frac{N}{80} \times S$$

where—

N is the period of reckonable service expressed in years and fractions of a year which the person would, but for the provisions of this regulation, be entitled to reckon if the fund authority received the transfer value required by regulation P7(3)(b); and

S is the annual rate of remuneration on the day on which he became a pensionable employee, such annual rate in the case of a weekly wage earner being 52 times the rate of his weekly wage.

Adjustment to crediting of reckonable service and qualifying service on payment of refund of contributions

P8B. Where a person on ceasing local government employment has received a return of contributions in relation to part only of the service which, but for the provisions of this regulation, he would be entitled to reckon as reckonable service under regulation P8, that reckonable service which he would otherwise be so entitled to reckon shall be reduced by X years where X is a period expressed in years and fractions of a year in accordance with the following formula—

$$X = \frac{A}{B} \times C$$

where—

A is the length of service in the non-local government scheme which reckoned for the purpose of determining whether he was entitled to a benefit thereunder in respect of which contributions were returned by the fund authority on his ceasing local government employment;

B is the service which he is entitled to reckon under regulation P8(1)(b); and

C is the period he would, but for the provisions of this regulation, be entitled to reckon as reckonable service under regulation P8(1)(a).”.

Assignment of policies

29.—(1) The following regulation shall be substituted for regulation P13(3)(b) of the principal regulations—

“(b) all the policies of insurance by way of which he has retained such rights shall be either—

(i) assigned to the fund authority and held for surrender or otherwise by the fund authority freed and discharged in relation to the person from the trusts and conditions of the relevant policy scheme; or

(ii) with the agreement of the fund authority, surrendered and the proceeds paid to that authority and carried to the superannuation fund maintained by them under Part B.”.

(2) In regulation P13(7) of the principal regulations after the word “assigned” there shall be added the words “or surrendered”.

- (ii) sub-paragraph A shall be omitted; and
- (iii) in sub-paragraph B the words “and the retiring allowance” shall be omitted.”; and
- (iii) in sub-paragraph (c), after the words “paragraphs (2)(b)” there shall be inserted the words “and (bb)”.

Calculation of transfer values

32. In Schedule 20 to the principal regulations—

- (a) in sub-paragraph 1(a)(i) after the word “modification” there shall be inserted the words “and guaranteed minimum pension”;
- (b) at the end of sub-paragraph 1(a)(ii) the comma shall be deleted and the following shall be inserted—
 - “; and
 - (iii) where the person is such a person as is mentioned in regulation P2(4)(ii) a sum equal to the contributions equivalent premium paid under Part III of the Pensions Act,”;
- (c) in paragraph 2(1)—
 - (i) for the word “and” in both places where it occurs there shall be substituted a comma;
 - (ii) after the word “modification” in the first place where it occurs there shall be inserted the words “and guaranteed minimum pension”;
 - (iii) after the words “modification factor” there shall be inserted the words “and the guaranteed minimum pension by the guaranteed minimum pension factor”;
- (d) in Table 1 there shall be added the following column—

*“Guaranteed
Minimum
Pension
Factor*

1.47
1.50
1.53
1.56
1.59
1.62

1.65
1.68
1.71
1.74
1.78

1.81
1.85
1.88
1.92
1.95

*“Guaranteed
Minimum
Pension
Factor*

1.99
2.02
2.06
2.10
2.14

2.18
2.22
2.26
2.30
2.34

2.39
2.44
2.48
2.53
2.58

2.62
2.67
2.72
2.78
2.84

2.90
2.97
3.04
3.12
3.20

3.28
3.36
3.44
3.53
3.64

—”; and

(e) In Table 2 there shall be added the following column—

*“Guaranteed
Minimum
Pension
Factor*

2.20
2.24
2.28
2.32
2.36
2.40

*“Guaranteed
Minimum
Pension
Factor*

2.45
2.50
2.55
2.60
2.66

2.71
2.77
2.82
2.88
2.93

2.99
3.05
3.11
3.17
3.24

3.31
3.38
3.45
3.52
3.59

3.66
3.74
3.82
3.90
3.98

4.06
4.15
4.24
4.33
4.43

4.53
4.63
4.74
4.85
4.97

—
—
—
—
—”.

Calculation of reckonable service to be credited under regulation P8

33. At the end of paragraph 2 of Schedule 21 to the principal regulations there shall be added the following sub-paragraph—

“(e) in the case of a person whose non-local government employment was not contracted-out employment the calculation of the period he is entitled to reckon as reckonable service shall be made by reference to the transfer value which would have been payable under regulation P3 of Schedule 20 contained no reference to guaranteed minimum pension.”.

Right to opt out

34.—(1) No provision of these regulations shall apply to any person to whom at any time before the date of coming into operation of these regulations any benefit (including a return of contributions and any pension payable to a widow or any dependant by virtue of a surrender) was being paid or became payable or to any person to whom any such benefit is being paid or may become payable, if—

- (a) he is placed by that provision in a worse position than he would have been if it had not applied in relation to that benefit; and
- (b) that provision relates to a benefit paid or payable in respect of a person who—
 - (i) ceased before the said date of coming into operation to hold an employment in respect of which he was a pensionable employee or
 - (ii) died before that date while still in such an employment; and
- (c) the first-mentioned person, by notice in writing given to the appropriate administering authority within 3 months after the said date of coming into operation, elects that that provision shall not apply to him.

(2) The provisions of Part H of the principal regulations (determination of questions and appeals) shall apply in relation to any question arising under this regulation as they apply in relation to rights and liabilities under the principal regulations.

Bruce Millan,

One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.

15th December 1978.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Local Government Superannuation (Scotland) Regulations 1974 to 1978 to introduce the requirements which the scheme must contain in order to be contracted-out in relation to the upper tier of the State scheme. The requirements include provisions to ensure that: —

- (1) Where an employee has a guaranteed minimum under Section 35 of the Social Security Pensions Act 1975, the local government pension will not be less than that guaranteed minimum and the widow of such a person will receive a pension of not less than half that guaranteed minimum;
- (2) An employee may not allocate part of his retirement pension, opt for an actuarially reduced pension on early retirement or, where he has five years' service or more, receive a refund of contributions if this would leave an entitlement to less than requisite benefits;
- (3) A widow's pension shall be not less than the requisite minimum under Section 36 of the Pensions Act and such a pension shall also be payable where the marriage did not take place until after retirement;
- (4) No forfeiture of a guaranteed minimum pension will be allowed except in the restricted circumstances prescribed under Section 39(4)(b) of the Pensions Act.

Provision is also introduced for: —

- (1) the making of standard remuneration agreements for superannuation purposes;
- (2) entitlement to death gratuities in respect of persons dying while entitled to receive payment of preserved retirement benefits;
- (3) the compounding of trivial pensions; and
- (4) the recovery of the cost of any contributions equivalent premium from the superannuation fund.

The Regulations make consequential amendments to the principal regulations and make a minor amendment to allow authorities to accept surrender values as an alternative to assignment of insurance policies where a person opts under Regulation P13.

Under powers conferred by Section 12(1) of the Superannuation Act 1972 the provisions of the Regulations are brought into force with effect from 6th April 1978 except Regulations 17, 20 and 32 which are brought into force with effect from 6th April 1975.

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