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STATUTORY INSTRUMENTS

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**1987 No. 1850**

**The Local Government Superannuation  
(Scotland) Regulations 1987**

**PART H**

**LOCAL GOVERNMENT REORGANISATION ETC.**

**Definitions**

**H1.** In this Part unless the context otherwise requires—

“Health Service Regulations” means the National Health Service (Superannuation) (Scotland) Regulations 1961 to 1974<sup>(1)</sup>;

“transferred employee” means—

- (a) any person transferred on or after 16th May 1975 by or under an Order or Regulations made under the Local Government (Scotland) Act 1973<sup>(2)</sup> which, in accordance with the provisions of section 216 of that Act, contain a provision as to the transfer of that person;
- (b) any person appointed by a local authority or a river purification board to hold any office or employment before or as from 16th May 1975, who, but for the appointment, would be transferred on that day under the said section 216; or
- (c) any person who at 16th May 1975 remained in the employment of the same body as immediately before that date but who, in consequence of the Local Government (Scotland) Act 1973, or anything done thereunder or of the 1974 Regulations, became on that day entitled to participate in the benefits of a superannuation fund maintained under those Regulations by a body different from the body which maintained the superannuation fund in the benefits of which he was immediately before 16th May 1975 entitled to participate;

“new employment” means employment to which a person is so transferred or appointed; and

“new employing body” means the body which becomes the employing authority in relation to a person so transferred or appointed;

and in relation to a person appointed as aforesaid his taking up the office or employment to which he is appointed shall for the purposes of this Part be deemed to be a transfer.

**Continuity of employment and preservation of status**

**H2.**—(1) Subject to paragraph (2)—

- (a) any provision of these Regulations has effect, in relation to a transferred employee to whom it applies, as if his new employment and his former employment had been one continuous employment, and

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(1) S.I. 1961/1398, 1966/1522, 1972/1356, 1604, 1973/304, 746, 1713, 1974/441 and 1357.

(2) 1973 c. 65

- (b) notwithstanding anything in these Regulations, a transferred employee who is transferred after 20th December 1987 and was a pensionable employee immediately before the date on which he is transferred continues in his new employment to be a pensionable employee.
- (2) Paragraph (1) does not affect the operation of regulation H3 or of regulations Q1 to Q3.

### **Discretionary powers**

#### **H3.** Where—

- (a) a transferred employee has continued in the employment of his new employing body, and
- (b) immediately before he was transferred (whether before or after the commencement of these Regulations) it was the prevailing practice of the body employing him, in relation to employees of that description, to exercise so as to secure the payment of, or of increased, gratuities, allowances or pensions any discretionary power exercisable by them by virtue of any enactment relating to pensions, and
- (c) that or any corresponding power becomes exercisable in relation to him,

the new employing body shall exercise the power in a way which is not less beneficial than the general character of that practice.

### **Contributions of transferred manual workers**

**H4.** A transferred employee who immediately before he was transferred (whether before or after the commencement of these Regulations) was paying contributions at a rate appropriate to a manual worker shall continue to contribute at the like rate so long as he continues to be employed by his new employing body on duties reasonably comparable to those on which he was engaged immediately before he was transferred.

### **Persons transferred to scheduled bodies under an Order under section 34 of the Local Government (Scotland) Act 1975 or in consequence of section 1 of the Education (Mentally Handicapped Children) (Scotland) Act 1974**

#### **H5.—**(1) This regulation applies to a person—

- (a) (i) who was by or under an order made under section 34 of the Local Government (Scotland) Act 1975(3), or
  - (ii) who was in consequence of section 1 of the Education (Mentally Handicapped Children) (Scotland) Act 1974(4), transferred to the employment of a scheduled body, and
  - (b) who immediately before he was so transferred was in an employment in which he was an officer within the meaning of the Health Service Regulations, and
  - (c) to whom neither paragraph (6) nor paragraph (8) applies.
- (2) Subject to paragraph (8), a person to whom paragraph (1) applies is entitled to reckon—
- (i) as reckonable service, any service which for the purposes of the Health Service Regulations he was entitled to reckon in relation to the employment mentioned in paragraph (1)(b) as, or as a period of, contributing service, and
  - (ii) as qualifying service, any service which for the purposes of those Regulations he was entitled to reckon in relation to that employment for the purpose of determining whether he was entitled to a benefit under those Regulations, but for no other purpose.

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(3) 1975 c. 30

(4) 1974 c. 27

(3) Where, immediately before he was transferred, a person to whom paragraph (1) applies was in the process of making payments which were or were deemed to be payments under Schedule 2 to the Health Service Regulations, he is entitled—

- (a) to make the outstanding payments as if they had been instalments of an amount payable under regulation D6 of the 1974 Regulations, and
- (b) if he completes the payments in the manner provided in Schedule 7, to have the service in respect of which they were made counted for all the purposes of these Regulations at its full length.

(4) Where, immediately before he was transferred, a person to whom paragraph (1) applies was in the process of making payments in respect of added years under Schedule 8 to the Health Service Regulations, he is entitled—

- (a) to make the outstanding payments as if they had been payments of an amount payable under regulation D10 of the 1974 Regulations, and
- (b) in respect of the added years for which those payments are made he shall enjoy rights and be subject to liabilities as if those years were added years reckonable under regulation D6 in the employment to which he is so transferred.

(5) For the purposes of paragraph (2) any period of part-time service shall be treated as though it was whole-time service for a proportionately reduced period and, except for the purposes referred to in regulation E27(3), any service which was reckonable under the Health Service Regulations for all purposes (other than for the purpose of determining whether any benefit was payable) as a period of contributing service at half its length shall, subject to paragraph (3), be counted at half its length.

(6) Where, immediately before he was transferred, a person in relation to whom paragraph (1) is satisfied was a person in respect of whom the Secretary of State paid contributions under regulation 46 of the Health Service Regulations (persons subject to non-statutory superannuation schemes and arrangements) or carried out any such scheme or arrangements as are referred to in that regulation, that person shall not be subject to any provisions of these Regulations except those contained in this regulation, and the body to which that person was transferred shall—

- (a) where immediately before 16th May 1974 the Secretary of State was under regulation 46 of the Health Service Regulations paying in respect of that person the contributions authorised or required by the relevant scheme to be paid by the employer, pay those contributions, and
- (b) deduct from the person's remuneration the amount of any contribution required by the scheme or under the arrangements to be paid by the employee.

(7) A person to whom sub-paragraph (1)(a) of this regulation applies but who was not, immediately before he was so transferred, an officer within the meaning of the Health Service Regulations and who would otherwise have become a pensionable employee in terms of regulation B2 of the 1974 Regulations shall not become a pensionable employee in terms of regulation B1 without his agreement so long as he is employed without a disqualifying break of service by a scheduled body on duties reasonably comparable to those on which he was engaged immediately before he was so transferred.

(8) In relation to a person who gave notice under regulation N12(3)(e) of the 1974 Regulations that he did not wish to avail himself of the benefits provided under those Regulations, these Regulations have effect as if they conferred on him rights corresponding with those which he would have enjoyed if he had remained subject to the provisions of the Health Service Regulations, and continue so to apply so long as he is employed without a disqualifying break of service by a scheduled body on duties reasonably comparable to those on which he was engaged immediately before he was transferred.

- (a) (9) (a) Notwithstanding anything in paragraph (3) and subject to paragraph (6), regulations D3, D11, E5, E6, E15, and E33 shall have effect in relation to a pensionable employee who had given notice under regulation N12(3)(e) of the 1974 Regulations as if—
- (i) 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;
  - (ii) any reference to a retirement pension included a reference to a pension payable to him in terms of paragraph (8);
  - (iii) any reference to regulation E2(1)(c) included a reference to any right conferred upon him by virtue of paragraph (8) corresponding to regulation 10(1)(a)(iv) of the Health Service Regulations; and
  - (iv) in regulation D3(3)(b) the reference to the appropriate superannuation fund within the meaning of regulation C12 included a reference to the employing authority under the Health Service Regulations.
- (b) In the case where the conditions of entitlement mentioned in regulation E5 or E6, as modified by sub-paragraph (a)(i), are satisfied, the widow's pension payable in terms of paragraph (8) 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 of years of the whole period of his service in contracted-out employment.
- (a) (10) (a) Notwithstanding anything in paragraph (8), in the case of a pensionable employee who has given notice under regulation N12(3)(e) of the 1974 Regulations a refund of contributions shall not be payable—
- (i) 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
  - (ii) 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
  - (iii) if he is entitled to any right conferred upon him by virtue of regulation N12(3)(e) of the 1974 Regulations 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.
- (b) Notwithstanding anything in paragraph (3)(e) of regulation N12 of the 1974 Regulations, 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—
- (i) 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
  - (ii) if he has a guaranteed minimum under section 35 of the Pensions Act in relation to that pension, but for the provisions of regulation E1, less than his guaranteed minimum pension.

### **Gratuities etc. granted by former local authorities**

**H6.** Notwithstanding the revocation of the 1974 Regulations, an authority who became responsible under regulation N6(1)(a) of those Regulations for the continued payment of a gratuity or allowance remain so responsible as if the 1974 Regulations had not been revoked.

### **Policy schemes**

**H7.** Any agreement or trust deed which immediately before 21st December 1987 had effect as mentioned in regulation N7 of the 1974 Regulations continues so to have effect and any policy of insurance held by a scheduled body immediately before that date for the purposes mentioned in that regulation shall continue to be held by them for those purposes.

### **Overseas employment**

**H8.—**(1) This regulation applies—

- (a) to a person who as at 31st March 1972 was subject to the Superannuation (Local Government and Overseas Employment) Interchange (Scotland) Rules 1969(5) (in this regulation referred to as the “Rules of 1969”); or
- (b) to a person who had ceased to be a contributory employee or local Act contributor before 1st April 1972 and had become so subject before the appointed day;

and shall apply to such a person who left his overseas employment and entered other overseas employment, whether or not he gave notice of the change of employment to the first fund authority or there was a break of more than 12 months between the overseas employments and who had not—

- (i) again become a contributory employee or a local Act contributor, or
- (ii) received any benefit under rule 6 of the Rules of 1969.

(2) Subject to paragraph (3), where a person, to whom this regulation applies, becomes a pensionable employee then, notwithstanding that there may have been a break of more than 12 months between his ceasing his overseas employment and becoming a pensionable employee, he shall be entitled—

- (a) to reckon as reckonable service—
  - (i) any service, employment or period which immediately before he ceased to be a contributory employee in the employment of a local authority or other body he was, or for the purposes of the Regulations is treated as having been, entitled under or by virtue of the former Regulations or any other enactment to reckon as or aggregate with service he was entitled to reckon as either contributing service in relation to his employment under that body or non-contributing service for the purposes of the former Regulations, or
  - (ii) any service, employment or period which he would have been entitled to reckon as service (or a period of contribution) for the purpose of calculating a benefit payable to him under a local Act scheme if at the date on which he ceased to be a local Act contributor he had been entitled to a benefit payable under that scheme;
- (b) to reckon as qualifying service—
  - (i) any service, employment or period which immediately before he so ceased he was entitled under or by virtue of the former Regulations or any other enactment to reckon either for the purpose of determining whether he was entitled to receive a benefit under the former Regulations or, as the case may be, for the purpose of determining

whether he was entitled to a benefit under a local Act scheme, but for no other purpose, and

- (ii) any period of overseas employment;
- (c) where he gives notice in writing to the new fund authority, to aggregate the service he is entitled to reckon as reckonable or qualifying service by virtue of this regulation with any other service he is entitled to reckon as reckonable or qualifying service respectively by reason of the employment in respect of which he became a pensionable employee for the first time; and
- (d) for the purpose of these Regulations to be regarded as if he had ceased to be a contributory employee or a local Act contributor immediately before 16th May 1974 and became a pensionable employee on that day but, for the purpose of observing any time limit related to the appointed day of the 1974 Regulations, the appointed day shall be taken to be the date on which he became a pensionable employee for the first time:

Provided that nothing in this paragraph shall entitle any person to reckon as reckonable service any period between the date he ceased to be a contributory employee or a local Act contributor and became for the first time a pensionable employee, or to reckon as qualifying service any period between those dates other than service in overseas employment.

(3) Paragraph (2) shall not apply to a person who has received a return of contributions from the first fund authority on or after ceasing to hold his last overseas employment unless he pays to the new fund authority an amount equal to the returned contributions (other than voluntary contributions) and compound interest thereon at a rate of three per cent per annum with half-yearly rests for a period beginning either with the date 12 months after the date on which he left overseas employment or, where this is later, the date on which he received the return of contributions and ending on the date on which he pays the said amount.

(4) Where a person gives notice in terms of paragraph (2)(c) and pays any amount required by paragraph (3) and the first fund authority and the new fund authority are not the same authority, then the first fund authority shall pay to the new fund authority a transfer value in accordance with the provisions of regulation Q2(1).

(5) Where a person to whom this regulation applies does not become a pensionable employee, then where he is, or but for the revocation of the Rules of 1969 would be, entitled to a benefit under rule 6 of the Rules of 1969 he shall, notwithstanding the revocation of the Rules of 1969, continue to be entitled to that benefit and the said benefit shall become payable without any requirement that he ceases to be in his overseas employment, but nothing in this paragraph shall entitle a person to reckon any service as reckonable service under regulation D1.

- (6) Where a person to whom this regulation applies—
  - (a) does not become a pensionable employee,
  - (b) would not under the former Regulations or appropriate local Act scheme and the Rules of 1969 have had an entitlement to a benefit (other than a refund of contributions),
  - (c) was when he ceased to be a contributory employee or a local Act contributor entitled under the former Regulations to reckon not less than 5 years' contributing service, or not less than 5 years' service (or a period of not less than 5 years' contributions) under a local Act scheme,
  - (d) has attained the age of 60 years, or any lesser age at which under the conditions of service applicable to him in his overseas employment he is required by reason of age to retire from that employment,
  - (e) gives notice to the first fund authority, and
  - (f) has not received a refund of contributions, or has received a refund of contributions and either previously repaid such a refund, or within one month of giving notice under this

regulation makes payment to the first fund authority of an amount equal to the refunded contributions (other than voluntary contributions) together with a like sum of interest as he would have had to pay had the repayment of refunded contributions been made under paragraph (3) of this regulation,

he shall be entitled to receive a benefit (not being a refund of contributions) calculated on the basis of the former Regulations or the appropriate local Act scheme, and the Rules of 1969 as they applied to that person at the time he ceased to be a contributory employee or a local Act contributor, but nothing in this paragraph shall entitle a person to reckon any service as reckonable service under regulation D1.

(7) This regulation shall apply to any person to whom rule 16 of the Rules of 1969 applied as if, in any paragraph other than this paragraph, there were substituted for any reference to the Rules of 1969 a reference to the Superannuation (Local Government and Overseas Employment) Interchange (Scotland) Rules 1958(6) and for any reference to rule 6 of the Rules of 1969 a reference to rule 5 of the said Rules of 1958.

(8) Notwithstanding regulation J2(5)(d) or Part Q, where before 5th September 1984 there was paid a transfer value under Part P or Part Q of the 1974 Regulations in respect of a person to whom this regulation applies and that transfer value took no account of any additional reckonable service to which that person is entitled by virtue of this regulation, an additional transfer value shall be paid in respect of that person as regards the said additional reckonable service calculated in accordance with the provisions of Part J or Part Q as the case may be.

(9) In this regulation—

“appointed day” means 16th May 1974;

“contributing service” and “non contributing service” mean the service which a person to whom this regulation applies was entitled to reckon as contributing or non contributing service within the meaning of the Act of 1937;

“first fund authority” means the successor to the local authority administering the superannuation fund to which the person last contributed before entering overseas employment;

“new fund authority” means the local authority administering the superannuation fund to which the person contributes after first becoming a pensionable employee;

“overseas employment” means employment in the service of—

- (a) the central or local government of an overseas country or a government constituted for two or more overseas countries or any Authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more overseas countries;
- (b) a university or college in an overseas country;
- (c) a public institution or other organisation engaged in health, welfare, research or educational services in an overseas country;
- (d) an organisation receiving grants from Her Majesty’s Government in connection with functions overseas;
- (e) the United Nations Organisation or any of its specialised agencies or any other inter-governmental organisation to which Her Majesty’s Government may be party; or
- (f) the Overseas Development Administration or any predecessor body for service overseas, being employment which is either pensionable employment within the meaning

of section 17(1) of the Superannuation (Miscellaneous Provisions) Act 1948(7) or employment undertaken with the approval of the first fund authority;

“voluntary contributions” means payments made voluntarily by a contributory employee for the purpose of securing benefits for his widow, children or other dependants and payments (other than payments made in respect of a liability which has been wholly discharged) of any of the following categories—

- (a) additional contributory payments of the kind referred to in section 2(3) and (4) of the Act of 1953;
- (b) any similar payments made under a local Act scheme as a condition of reckoning any period of employment as service or as a period of contribution for the purposes of the scheme or where the local Act scheme provides for the reckoning of non-contributing service for the purposes of the scheme;
- (c) any payments made for the purpose of increasing the length at which any period of service or of contribution would be reckonable for the purpose of calculating a benefit under a local Act scheme;
- (d) any payments made in respect of added years.