
STATUTORY INSTRUMENTS

1987 No. 1850

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

PART J

INTERCHANGE ETC.

Interpretation

J1. In this Part, unless the context otherwise requires—

“Communities' scheme” means the pension scheme provided for officials and other servants of the Communities in accordance with regulations adopted by the Council of the European Communities;

“Community institution” includes a body treated as one of the Community institutions for the purposes of the Communities scheme;

“fund authority” means—

- (a) in relation to a person who became, or ceased to be, employed in his local government employment before 16th May 1974, the local authority within the meaning of the Act of 1937 maintaining the superannuation fund to which the person became a contributor after he ceased to be employed in non-local government employment or, as the case may be, was last a contributor before he became employed in approved non-local government employment; and
- (b) in relation to a person who became, or ceased to be, employed in his local government employment on or after 16th May 1974, the scheduled body maintaining the superannuation fund to which the person became a contributor after he ceased to be employed in non-local government employment or, as the case may be, was last a contributor before he became employed in approved non-local government employment;

“local Act authority” and “local Act scheme” have—

- (a) in relation to any time before 25th March 1972, the same meanings as in the Act of 1937, and
- (b) in relation to any time on or after 25th March 1972, the same meanings as in section 8 of the Act of 1972;

“local government employer”, in relation to a person who is, or has been, employed in local government employment, means the body which is, or is treated as being, the employing authority or former employing authority for the purposes of the Acts of 1937 to 1953, the local Act scheme or these Regulations, as the case may be;

“pension” does not include an allowance or gratuity; and

“service” means service or employment with any employer.

Outwards transfers

J2.—(1) Subject to paragraphs (5) and (6), a transfer value shall be paid in relation to a person who has ceased to be employed in local government employment and has become employed in approved non-local government employment if the conditions in paragraph (3) are satisfied.

(2) This regulation applies even if the cessation of the local government employment, or the commencement of the approved non-local government employment, or both the cessation and the commencement, occurred before 21st December 1987.

(3) The conditions are that—

- (a) he has made a written request to his fund authority for the transfer value to be paid; and
- (b) subject to paragraph (4), the request was made not later than 6 months after 21st December 1987 or, if later, 6 months after the date on which he became employed in his approved non-local government employment; and
- (c) the scheme managers of his approved non-local government scheme have agreed to accept the transfer value; and
- (d) in the case of a person who ceased to be employed in his local government employment before 31st March 1972, his local government employer has consented to the payment of the transfer value; and
- (e) in the case of a person who received a return of contributions in relation to his local government employment (other than a person falling within paragraph (6)), he has within 3 months of making his request under sub-paragraph (a) paid his fund authority for the credit of their superannuation fund—
 - (i) a sum equal to the contributions returned to him (together with any interest which he was paid),
 - (ii) a sum equal to any deduction made on account of tax under section 378(2) of the Income Tax Act 1952⁽¹⁾ or section 209(2) of the Income and Corporation Taxes Act 1970⁽²⁾; and
 - (iii) compound interest on both those sums calculated in accordance with regulation J7 for the period beginning with the date on which he received the return of contributions and ending on the date of his request under sub-paragraph (a) (but no interest is to be paid if that period is less than 6 months).

(4) The local government employer may in any particular case extend the period mentioned in paragraph (3)(b).

(5) A transfer value shall not be paid in relation to a person—

- (a) who has received any benefit (other than a return of contributions) under the Acts of 1937 to 1953 and the Regulations made thereunder, the former Regulations, any local Act scheme, the 1974 Regulations or these Regulations in respect of his local government employment, or
- (b) who ceased to be employed in local government employment on or after 6th April 1978 having reached state pensionable age, unless his accrued pension for the purposes of Schedule 16 relates solely to service after he reached state pensionable age, or
- (c) who ceased to be employed in local government employment on or after 6th April 1978 and who has become employed in approved non-local government employment (other than employment with a Community institution) which is not contracted-out employment for the purposes of the Pensions Act, unless—

(1) 1952 c. 10

(2) 1970 c. 10

- (i) the person is 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(3) at a reduced rate prescribed by such Regulations or is exempt from liability to pay Class 2 contributions; or
 - (ii) the person's reckonable service and qualifying service amounts in aggregate to less than 5 years; or
 - (d) in respect of whom a transfer value has been paid by the fund authority or a predecessor of that authority since he ceased to be employed in his local government employment; or
 - (e) who, on becoming employed in approved non-local government employment, became entitled, without any condition as to receipt of a transfer value, to reckon service in his local government employment in relation to his approved non-local government employment; or
 - (f) if a direction has been made in relation to his service in his local government employment under regulation C12(5) or M1 or any corresponding provision of earlier legislation or a local Act scheme.
- (6) In relation to a person who ceased to be employed in local government employment on or after 6th April 1978 and has received a return of contributions in relation to that employment, a transfer value may only be paid in relation to service in respect of which he is entitled to preserved benefits.

Additional transfer value for certain persons transferring to public service pension schemes

J3.—(1) Notwithstanding regulation J2(5)(d), where after 31st March 1978 and before 5th September 1984 there has been paid in respect of a person to whom regulation F3 applies a transfer value in the calculation of which the period that he became entitled by regulation F6(1)(a) or (b) to reckon as reckonable service was not taken into account, an additional transfer value shall be paid in respect of that period.

(2) Notwithstanding regulation J2(5)(d), where a transfer value has been paid before 1st April 1978 in respect of a person in relation to whom one of the conditions in regulation F3(2)(a) to (e) is satisfied and the conditions in regulation F3(4) to (9) were satisfied at the time of payment, an additional transfer value shall be paid if the conditions in paragraph (3) are satisfied.

(3) The conditions are that—

- (a) the scheme managers of a public service scheme not specified in Schedule 15—
 - (i) have made a written request to the fund authority for the additional transfer value to be paid, and
 - (ii) have given them particulars of the service (being such whole-time service as is described in regulation F2(1)) to which it is to relate, and the rate or amount, as the case may be, to be used in ascertaining C of the formula set out in Part V of Schedule 16, and
- (b) on payment of the additional transfer value the service to which it relates will be reckonable as service in respect of which benefits are payable under the war service provisions of the scheme.

Amount of transfer value

J4.—(1) The amount of any transfer value payable under regulation J2 and of any additional transfer value payable under regulation J3(1) shall be calculated in accordance with the provisions of Parts I to III of Schedule 16.

(2) The amount of any additional transfer value payable under regulation J3(2) shall be calculated in accordance with Part V of Schedule 16.

(3) The transfer value or additional transfer value shall be paid to the scheme managers by the fund authority out of their superannuation fund.

(4) The fund authority shall provide the scheme managers and the person to whom the transfer value or additional transfer value relates with a written notice showing how it was calculated.

(5) A notice provided to a person under paragraph (4) shall include a statement of the kind required by regulation N7(2)(c).

Termination of right to payment out of fund authority's superannuation fund

J5. Notwithstanding anything in the Acts of 1937 to 1953 and the Regulations made thereunder, the former Regulations, any local Act scheme, the 1974 Regulations or any other provision of these Regulations (excepting regulations H8(8), J3 and J6), where a transfer value is to be or has been paid under regulation J2 no other payment or transfer of assets shall, subject to regulations H8(8), J3 and J6, be made out of the superannuation fund on account of the service to which the transfer value relates.

Rights where a person transfers to the Communities' scheme and leaves without a right to either immediate or prospective pension

J6.—(1) Where a person—

- (a) became employed by a Community institution and became a participant in the Communities' scheme after having been employed in local government employment, and
- (b) the scheme managers of the Communities' scheme were paid a transfer value under regulation 12 in relation to his previous service in local government employment, and
- (c) he ceased to be employed in his employment with the Community institution without the right to an immediate or prospective pension, and
- (d) his fund authority has been paid for the credit of their superannuation fund—
 - (i) a sum equal to the amount of the transfer value which the scheme managers received, and
 - (ii) compound interest on that sum calculated in accordance with regulation J7 for the period beginning with the date on which the transfer value was received by the scheme managers and ending on the date on which the fund authority was paid the sum required by (i) above (but no interest is to be paid if that period is less than 6 months),

the person and those claiming through him shall be entitled to the rights specified in paragraphs (2) and (3) below and nothing in regulation J5 shall apply to any such rights unless a transfer value under regulation J4 is subsequently paid.

(2) Where the person ceased to be employed in his local government employment before 31st March 1972, he and those claiming through him shall have the same rights (other than to a refund of contributions) as they would have had by virtue of the Acts of 1937 to 1953 and the Regulations made thereunder, the former Regulations, any local Act scheme and these Regulations (so far as applicable) if—

- (a) he had reached the age of 65 by the termination of his local government employment, and
- (b) he had been able to reckon 10 years' service, and
- (c) the payment of the transfer value had not been requested or made.

(3) Where the person ceased to be employed in his local government employment on or after 31st March 1972, he and those claiming through him shall be entitled to the like benefits other than to a return of contributions) as those which—

- (a) if, on so ceasing, he had become entitled to benefits under Part E other than a pension under regulation E1 or E2(2)(a) or a local Act scheme, would have become payable to or in respect of him under that Part or that scheme in respect of service for which the transfer value mentioned in paragraph (1) above was paid if this Part had not applied to him, or
- (b) if, on so ceasing, he had not become so entitled, would have become payable to or in respect of him under Part E or a local Act scheme in respect of such service as aforesaid if, immediately before he ceased that employment, he had been entitled to reckon an aggregate of 5 years' reckonable service and qualifying service or 5 years' service for the purpose of determining whether he was entitled to a benefit under a local Act scheme and if this Part had not applied to him,

and such benefits shall be deemed to be benefits under regulation E2(1)(c).

(4) This regulation shall not confer any right to the payment of any benefit for any period ending on or before—

- (a) in relation to a person who ceased to be employed in his local government employment before 31st March 1972, the date on which he ceased to be employed in the service of the Community institution mentioned in paragraph (1) above or, where this is later, the earliest date at which, if he had remained in his local government employment without any break of service and become a pensionable employee on 16th May 1974, he would have become entitled, on ceasing to be employed, to a retirement pension by virtue of sub-paragraph (a) or, as the case may be, (b)(ii) of regulation E2(1); and
- (b) in relation to a person who ceased to be employed in his local government employment on or after 31st March 1972, the date on which he ceased to be employed in the service of the Community institution mentioned in paragraph (1) above or, where this is later, the date on which the benefits to which he became entitled on ceasing to be employed in his local government employment or, as the case may be, to which he would have become so entitled if, immediately before he ceased to be employed in that employment, he had been entitled to reckon an aggregate of 5 years' reckonable service and qualifying service would, if this Part had not applied to him, have become payable to him under Part E.

(5) For the purposes of this regulation references to those claiming through a person shall be construed as references to his widow, dependants, children and executors so far as is appropriate in his particular case.

Compound interest on certain sums

J7. Compound interest under regulations J2(3)(e)(iii) and J6(1)(d)(ii) and Parts I paragraph 1(2)) and V of Schedule 16 is to be calculated—

- (a) at the rate of 6 per cent with yearly rests for each complete period of a year ending before 1st April 1977 (and any residual period of less than a year is to be ignored), and
- (b) at the rate of 21 per cent with 3-monthly rests for each complete period of 3 months beginning after 31st March 1977 (and any residual period of less than 3 months is to be ignored).

Inward transfers

J8.—(1) Subject to paragraphs (5) and (6), a transfer value offered to a person's fund authority by the scheme managers of his previous non-local government scheme shall be accepted by them and shall, together with the amount of any limited revaluation premium under section 45 of the Pensions Act repaid to the fund authority by the Secretary of State, be credited to their superannuation fund if the conditions specified in paragraph (3) are satisfied.

(2) This regulation applies even if the cessation of the non-local government employment, or the commencement of the local government employment, or both the cessation and commencement, occurred before 21st December 1987.

(3) The conditions are that—

- (a) except where the transfer value is offered as mentioned in paragraph (5)(a) and is in respect of such a period as is mentioned in paragraph (5)(b), or relates only to service reckonable under the war service provisions of a public service scheme, he has made a written request to his fund authority for the transfer value to be accepted, and
- (b) subject to paragraph (4), the request was made not later than 6 months after 21st December 1987 or, if later, 6 months after the date on which he became employed in his local government employment, and
- (c) the transfer value is not offered on conditions which are inconsistent with the provisions of these Regulations, and
- (d) his local government employer has consented to the transfer value being accepted, except in the case of a person who became employed in his local government employment on or after 6th April 1978 and who ceased to be employed in his non-local government employment on or after 31st March 1972, and
- (e) in the case of a person who became employed in his local government employment before 31st March 1972, he was employed in local government employment on that date.

(4) The local government employer may in any particular case extend the period mentioned in paragraph (3)(b).

(5) A transfer value which—

- (a) is offered by the scheme managers of a public service scheme in relation to a person in relation to whom a transfer value was accepted and received before 1st April 1978, and
- (b) is in respect of a period which could, if he had not ceased to be employed in his non-local government employment, have become reckonable under the war service provisions of the scheme,

shall not be accepted unless it is one calculated in accordance with Part V of Schedule 16.

(6) A transfer value under paragraph (1) shall not be accepted in relation to a person if—

- (a) his non-local government employment was contracted-out employment for the purposes of the Pensions Act, and
- (b) his non-local government scheme was not a statutory scheme or a scheme which is to be treated for the purposes of Schedule 17 as being a statutory scheme, and
- (c) the transfer value would not secure a resultant pension calculated under paragraph (7) at least equal to—
 - (i) the annual equivalent of his guaranteed minimum in respect of service to which the transfer value relates, and
 - (ii) where equivalent pension benefits were, but would not remain, assured by his non-local government scheme, the annual rate of those benefits.

(7) A person's resultant pension shall be calculated in accordance with the formula—

$$R = \frac{N}{80} \times S,$$

where—

R is the annual amount of the resultant pension,

N is the reckonable service (expressed in years and fractions of a year) which would, apart from paragraph (5), be credited to him under regulation J9(1)(a) if the transfer value were to be accepted by the fund authority, and

S is the annual rate of his remuneration on becoming employed in his local government employment (if he is paid weekly, the annual rate shall be calculated by multiplying the weekly rate by 52.18).

(8) A person's guaranteed minimum shall be calculated in accordance with section 35 of the Pensions Act and the annual equivalent shall be calculated by multiplying the guaranteed minimum by 52.18.

Right to reckon service

J9.—(1) Where a transfer value (other than one to which regulation J8(5) applies) has been accepted in relation to a person under regulation J8—

- (a) he shall, subject to regulation J10, be entitled to reckon as reckonable service a period calculated in accordance with Schedule 17 for all purposes of these Regulations except that of determining whether there is any entitlement to benefit (other than any benefit under regulation E2(2)), and
- (b) he shall be entitled to reckon as qualifying service any service to which the transfer value relates which would not otherwise be qualifying service.

(2) A period reckonable under paragraph (1)(a) shall be treated as reckonable service after 31st March 1972 for the purposes of making any calculation under these Regulations.

(3) Service reckonable under paragraph (1)(b) shall count at its actual length.

(4) The fund authority shall provide the person with a written notice stating the periods of service which he is entitled to reckon under paragraph (1)(a) and (b) and, in the case of a person who became employed in his local government employment before 1st April 1980, whether or not his retirement pension is subject to reduction under regulation J12.

(5) A notice under paragraph (4) shall contain a statement of the kind by regulation N7(2)(c).

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

J10. 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 J9, 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 19(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 J9(1)(a).

Computation of contributions

J11.—(1) Where a person to whom regulation 18 applies ceases to be employed in his local government employment in circumstances in which there is payable to him under regulation C12(4) an amount by way of return of contributions (with or without interest), then, in calculating that amount, the amount of the contributions paid by him shall be deemed to be increased by the aggregate of the following two sums:—

- (i) if his non-local government scheme contains provision for return of contributions, such sum as would have been payable by way of a return of contributions, including interest (if any), under his non-local government scheme at the date of payment of the transfer value received under regulation J8(1) had that transfer value not been paid, and
- (ii) such sum as was paid by him by way of superannuation contributions during the period which has become reckonable as reckonable service under regulation J9 which has not been taken into account under sub-paragraph (i).

(2) under regulation C12(4) the amount payable by way of return of contributions is a sum equal to the amount of a person's contributions with compound interest thereon, compound interest shall also be payable on the amount by which those contributions are increased under paragraph (1) above, calculated in the manner described in regulation C12(4)(b) in respect of the period from the date of payment of the transfer value.

(3) Notwithstanding anything previously contained in this regulation, the sum by which contributions are increased under paragraph (1) above shall not include any sum in respect of contributions which were returned to and retained by the person who had paid them.

National Insurance modification

J12.—(1) The retirement pension of a person to whom regulation J9 applies shall be reduced in accordance with paragraph (2) where—

- (a) he became employed in his local government employment before 1st April 1980, and
- (b) on becoming employed in his local government employment he did not enjoy unmodified status for the purposes of Part F of the 1974 Regulations, and
- (c) his retirement pension is calculated by reference to reckonable service which includes the period which he is entitled to reckon under regulation J9(1)(a).

(2) Regulation F7 of the 1974 Regulations shall be taken to have applied in relation to the period which he is entitled to reckon under regulation 19(1)(a) as if—

- (a) during that period he had been a person within Case B of Part F of the 1974 Regulations, and
- (b) that period were service after 31st August 1947.

(3) Where a person to whom paragraph (1)(a) applies was in his non-local government employment subject to a statutory scheme under which he was subject to a reduction of pension in connection with graduated retirement benefit under section 36 of the Insurance Act, any retirement pension payable to him at the termination of his local government employment shall be reduced by the amount by which his pension under that scheme would have been reduced in connection as aforesaid.

(4) The reduction shall take effect on the date when a retirement pension becomes payable unless the person has not then reached pensionable age within the meaning of the Social Security Act 1975, in which case the reduction shall take effect on the date on which he reaches that age.

Certain persons who become subject to certain other superannuation schemes

J13.—(1) Subject to the conditions in paragraph (2) being satisfied, this regulation applies to a person—

- (a) who either—
 - (i) is in the employment of a passenger transport executive by virtue of which he is a pensionable employee; or
 - (ii) is in the employment of a body (other than a scheduled body) mentioned in regulation B5 by virtue of which he is deemed to be a pensionable employee; or
 - (iii) is in the employment of a body mentioned in paragraph (8) of regulation B6 and by virtue of an agreement made, or continued in force as if made, under that regulation is in that employment entitled to participate in the benefits of a superannuation fund maintained under Part P; and
- (b) for whose superannuation in that employment that body can make other provision under an approved non-local government scheme.

(2) The conditions referred to in paragraph (1) are that—

- (a) the person shall notify the body in whose employment he is as mentioned in paragraph (1) (a) and the appropriate administering authority in writing that he desires this regulation to apply to him; and
- (b) that body and that authority shall consent to the application to him of this regulation.

(3) A person to whom this regulation applies—

- (a) shall not, on and after the date on which he becomes subject in the employment mentioned in paragraph (1)(a) to an approved non-local government scheme, in that employment be liable to contribute to the appropriate superannuation fund; and
- (b) shall be treated for the purposes of these Regulations (other than regulation C12 and, in the case of a person to whom regulation J14 applies, regulation J2) as if he had ceased to hold that employment on the day immediately before that date.

(4) In this regulation, for the purpose of giving on or after 21st December 1987 a notification under paragraph (2), “approved non-local government scheme” means such a scheme which is a contracted-out scheme within the meaning of the Pensions Act.

Transfer of rights of persons to whom regulation J13 applies

J14.—(1) Where—

- (a) regulation J13 applies to a person; and
- (b) on the date on which he becomes subject to the approved non-local government scheme he has not reached pensionable age within the meaning of the Social Security Act 1975(4); and
- (c) he gives written notice to the appropriate administering authority that he wishes to transfer his rights under these Regulations to the approved non-local government scheme; and
- (d) both the appropriate administering authority and the body by whom he is employed have given their consent,

the appropriate administering authority shall, subject to paragraphs (3), (4) and (5), pay to the scheme managers of the approved non-local government scheme out of the superannuation fund a transfer value calculated in accordance with Schedule 16.

(2) The appropriate administering authority shall not give their consent under paragraph (1)(d) unless they are satisfied that the person transferring his rights will acquire rights under the approved non-local government scheme at least equivalent to those which he would have obtained if a transfer value had been paid to the scheme managers under regulation J2 or J3.

(3) If—

- (a) the number of persons transferring their rights under paragraph (1) from a particular superannuation fund to the same or a different approved non-local government scheme as part of the same transfer scheme is more than 9 but less than 100; and
- (b) the superannuation fund's assets immediately before any transfer takes place are not adequate, or are more than adequate, to meet the accrued actuarial liabilities of the fund at that time,

the total payable under paragraph (1) (or, as the case may be, the respective totals) shall be adjusted by an actuary appointed by the administering authority to the extent he considers appropriate in the circumstances, subject to the agreement of that authority and the scheme managers.

(4) If the parties are unable to agree on the adjustment to be made under paragraph (3), the adjustment (if any) to be made shall be decided by an actuary appointed by the Secretary of State.

(5) If the number of persons transferring their rights under paragraph (1) from a particular superannuation fund to the same or a different approved non-local government scheme as part of the same transfer scheme is 100 or more—

- (a) no payment shall be made under that paragraph; and
- (b) the superannuation fund shall be apportioned in accordance with Schedule 18.

(6) Notwithstanding anything in the Acts of 1937 to 1953 and the Regulations made thereunder, the former Regulations, any local Act scheme, the 1974 Regulations or any provision of these Regulations, where a payment or transfer of assets is to be or has been made under this regulation or under Schedule 18, no other payment or transfer of assets shall be made out of the superannuation fund on account of service or employment to which the payment or transfer of assets under this regulation or under Schedule 18 relates.

(7) A person to whom this regulation applies shall be treated for the purposes of this regulation and of Schedule 18 as if a transfer value had been paid in terms of these Regulations on the day on which he becomes subject to the approved non-local government scheme.

(8) For the purposes of this regulation, a transfer scheme is a scheme, agreed between the scheme managers, the appropriate administering authority and, if different, the employing authority, providing for the transfer of rights under this regulation of a number of employees.

(9) In this regulation “accrued actuarial liabilities” means the actual and potential liabilities of the fund in connection with any service or employment before any transfer takes place.