
STATUTORY INSTRUMENTS

1997 No. 1373 (S. 108)

PENSIONS

**The Local Government Superannuation
(Scotland) Amendment (No. 2) Regulations 1997**

<i>Made</i>	- - - -	<i>27th May 1997</i>
<i>Laid before Parliament</i>		<i>9th June 1997</i>
<i>Coming into force</i>	- -	<i>30th June 1997</i>

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

Citation and commencement

1. These Regulations may be cited as the Local Government Superannuation (Scotland) Amendment (No. 2) Regulations 1997 and shall come into force on 30th June 1997.

Amendment of the Local Government Superannuation (Scotland) Regulations 1987

2. The Local Government Superannuation (Scotland) Regulations 1987(2) shall be amended in accordance with regulations 3 to 6 below.

Rejoining pensionable employment

3. Regulation B4B(4) shall be amended—

- (a) by inserting after “paragraph (1)” the word “(a)”; and
- (b) by adding at the end the following:—

“; or

- (b) if he is an individual who during any period has been eligible to be a pensionable employee but has instead made contributions to a personal pension

(1) 1972 c. 11.

(2) S.I.1987/1850, amended by S.I. 1988/625, 1989/422, 802 and 967, 1990/422 and 1284, 1991/78, 1992/1220, 1597 and 3025, 1993/1593, 2013 and 3044, 1994/531, 1995/214, 750, 2865 and 3294, 1996/414 and 1241 and 1997/674.

scheme and has suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986⁽³⁾ (actions for damages in respect of contravention of rules etc made under the Act).”.

Right to reckon service

4. Regulation J9(1)(a) shall be amended by inserting after the words “Schedule 17” the words “or, as the case may be, regulation J15(2)”.

Mis-sold pensions – calculation of restitution

5. After regulation J14B(4) there shall be inserted the following regulation:–

“Mis-sold pensions – calculation of restitution

J15.—(1) Where–

- (a) in relation to an individual mentioned in regulation B4B(4)(b) who is still eligible to be a pensionable employee, information is requested by a prescribed person in the prescribed circumstances for the purpose of calculating what payment would need to be made in respect of the individual to restore the position to what it would have been if the individual had been a pensionable employee throughout the period referred to in that regulation (“the restitution payment”); or
- (b) an individual mentioned in sub-paragraph (a) makes an election under regulation B4B to become a pensionable employee or applies to have a restitution payment accepted having become a pensionable employee after the period referred to in regulation B4B(4)(b),

the administering authority who maintain the superannuation fund which would be the appropriate superannuation fund for that individual shall calculate the restitution payment in accordance with Schedule 17A.

(2) Where–

- (a) an individual mentioned in regulation B4B(4)(b) becomes a pensionable employee;
- (b) a transfer value is accepted in respect of him under regulation J8;
- (c) the transfer value–
 - (i) is paid by the trustees or managers of the personal pension scheme to which he has made contributions in the circumstances specified in regulation B4B(4)(b);
 - (ii) has been calculated in a manner consistent with the methods adopted and assumptions made by the administering authority in determining the restitution payment; and
- (d) the administering authority of the superannuation fund to which the transfer value is paid are satisfied that–
 - (i) it is adequate to restore the position in relation to that individual to what it would have been if the individual had been a pensionable employee throughout the period during which he was eligible to be a pensionable employee but instead made contributions to the personal pension scheme (“the relevant period”), or

(3) 1986 c. 60.

(4) Regulation J14B was inserted by S.I. 1996/414.

- (ii) where it is not so adequate, it represents an amount which would enable the individual to reckon as reckonable service such period as the administering authority may approve in respect of the relevant period,

Schedule 17 shall not apply and the period mentioned in regulation J9(1)(a) shall—

- (i) where sub-paragraph (d)(i) applies be equal to the period which the individual would have been entitled to reckon as reckonable service if he had been a pensionable employee throughout the relevant period, and
- (ii) where sub-paragraph (d)(ii) applies, be equal to the period approved by the administering authority thereunder.

(3) In the case of an individual mentioned in regulation B4B(4)(b) who has become a pensionable employee after the period referred to in that provision and who has been credited with an additional period of reckonable service calculated as specified in paragraph 2(2) of Schedule 17 (transfer from non-statutory schemes), the administering authority may adjust the period of reckonable service referred to in paragraph (2)(i) or (ii) on account of the transfer value payment by reference to which that additional period of reckonable service was credited.

(4) Where at any time an individual mentioned in regulation B4B(4)(b) makes an election to become a pensionable employee and dies in pensionable employment or becomes entitled to benefits under Part E of these Regulations before the transfer value referred to in paragraph (3) has been paid to the appropriate superannuation fund in respect of him, paragraph (2) shall continue to apply in the case of that individual.

(5) In this regulation “prescribed person” and “prescribed circumstances” have the same meaning respectively as in regulations 3 and 4 of the Local Government, Teachers' and National Health Service (Scotland) Pension Schemes (Provision of Information and Administrative Expenses etc.) Regulations 1996(5).”.

Prescribed persons and transfer values

6. After Schedule 17 there shall be inserted the following Schedule:—

“SCHEDULE 17A

Regulation J15(1)

MIS-SOLD PENSIONS – RESTITUTION PAYMENT

1. A restitution payment in relation to an individual shall be an amount equal to the total of—
 - (a) the capitalised value of the rights which would have accrued to him under these Regulations in respect of the period referred to in regulation B4B(4)(b) if he had been a pensionable employee throughout that period, including the capitalised value of any rights under the Pensions (Increase) Act 1971(6) and the Pensions (Increase) Act 1974(7); and
 - (b) the transfer value (if any) previously paid under regulation J2 to the personal pension scheme, increased by interest at a rate approved from time to time by the Government Actuary for that purpose on a daily basis over the period from the date on which the person ceased to be a pensionable employee as described in regulation J2(1)(b) to the date on which it is assumed, for the purpose of calculating the restitution payment, that a transfer value will be paid to the appropriate superannuation fund.

(5) S.I. 1996/2809.

(6) 1971 c. 56.

(7) 1974 c. 9.

2. The amount, if any, calculated by virtue of paragraph 1(b) shall be at least equal to the amount of the cash equivalent transfer value, calculated and verified as required by Chapter IV of Part IV of the Pension Schemes Act 1993(8), which would be payable by the fund authority in respect of the period referred to in regulation B4B(4)(b) if the fund authority were to pay a cash equivalent transfer value in respect of that period immediately after the time at which the transfer payment is paid to them by the trustees or managers of the personal pension scheme.

3. In this Schedule—

“capitalised value” means the capitalised value at the material date as determined by the fund authority in such manner as shall be approved by the Government Actuary and using the then current tables of factors issued by the Government Actuary for calculating cash equivalent transfer values;

“material date” means the date on which information is requested as mentioned in regulation J15(1)(a) or, as the case may be, the date on which an election or application is made as mentioned in regulation J15(1)(b).”.

St Andrew’s House,
Edinburgh
27th May 1997

Brian Wilson
Minister of State, Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Superannuation (Scotland) Regulations 1987. They make provision in connection with persons who have been eligible to be pensionable employees under the Local Government Superannuation Scheme but have instead made contributions to a personal pension scheme and have suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986.

Regulation 3 amends regulation B4B(4) of the 1987 Regulations to enable such a person, who is still eligible to be a pensionable employee, to elect to rejoin the Scheme at any time.

Regulations 5 and 6 add respectively new regulation J15 and Schedule 17A providing for the calculation of the amount (“the restitution payment”) which would need to be made to the Scheme in respect of such a person to restore his position to what it would have been if he had been a pensionable employee throughout the period when he made contributions to the personal pension scheme. New regulation J15 also provides that where the administering authority are satisfied that the transfer value paid by the personal pension scheme to the appropriate superannuation fund on the individual becoming a pensionable employee is adequate to so restore his position, the individual is entitled to count as reckonable service the whole of the period during which he contributed to the personal pension scheme. Provision is also made for partial reinstatement, that is for the individual to buy such lesser amount of reckonable service as the administering authority may approve.

Regulation 4 makes an amendment to regulation J9(1)(a) of the 1987 Regulations consequential on insertion of new regulation J15.