
STATUTORY INSTRUMENTS

1990 No. 422 (S.49)

PENSIONS

**The Local Government Superannuation
(Scotland) Amendment Regulations 1990**

<i>Made</i>	- - - -	<i>28th February 1990</i>
<i>Laid before Parliament</i>		<i>7th March 1990</i>
<i>Coming into force</i>	- -	<i>1st April 1990</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 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.—(1) These Regulations may be cited as the Local Government Superannuation (Scotland) Amendment Regulations 1990.

(2) These Regulations shall come into force on 1st April 1990; regulation 11 shall have effect from 6th April 1988 and regulations 14, 16(b), 19(a)(i), (b), (c), (e)(i) and (f), 21, 23, 24, 26 and 39 shall have effect from 21st December 1987.

Interpretation

2. In these Regulations “the principal Regulations” means the Local Government Superannuation (Scotland) Regulations 1987⁽²⁾.

Pensionable Employees

3. Regulation B1 of the principal Regulations shall be deleted.

Pensionable Employees

4. In regulation B2 of the principal Regulations—

(1) 1972 c. 11.

(2) S.I. 1987/1850, amended by S.I. 1988/625, 1989/422 and 802.

- (a) for the heading there shall be substituted “Pensionable employees”;
- (b) in the first sentence of paragraph (1), after the words “paragraphs (2) and (3)”, there shall be inserted the words “and Regulations B4A and B4B”;
- (c) in the first sentence of paragraph (1) and in paragraphs (1)(d)(ii) and (3), for the words “eligible employees”, there shall be substituted the words “pensionable employees”;
- (d) for paragraph (1)(b) there shall be substituted the following:–
 - “(b) a whole-time manual worker employed by a Part I scheduled body;”;
- (e) in paragraphs (1)(c), (d)(i), (e) and (f) and (2), for the words “eligible employee”, in each place in which they occur, there shall be substituted the words “pensionable employee”.
- (f) in paragraph (3)(a), for the words “18 years”, there shall be substituted the words “16 years”;

Other persons who may elect to be pensionable employees

5. In regulation B3 of the principal Regulations–

- (a) for the heading there shall be substituted “Other persons who may elect to be pensionable employees”;
- (b) for paragraph (1) there shall be substituted the following:–
 - “(1) Subject to paragraph (6) and regulations B4A and B4B, a person who is in a relevant employment as defined in paragraph (2) may elect to become entitled in relation to that employment to participate in the benefits of the appropriate superannuation fund maintained under these regulations.”;
- (c) in paragraph (3), for the words “regulation B4 or”, there shall be substituted the words “this regulation or regulation”;
- (d) in paragraph (4), for the words “regulation B4 or”, there shall be substituted the words “this regulation or regulation”;
- (e) paragraph (6)(d) shall be deleted;
- (f) in paragraph (7), for the word “eligible”, there shall be substituted the word “pensionable”;
- (g) for paragraph (7)(a) there shall be substituted the following:–
 - “(a) a person became entitled by virtue of an election under–
 - (i) this regulation, or
 - (ii) regulation B4B, or
 - (iii) regulation B4 before its deletion by the Local Government Superannuation (Scotland) Amendment Regulations 1990; or
 - (iv) this regulation before its amendment by the Local Government Superannuation (Scotland) Amendment Regulations 1989(3);
 to be a pensionable employee in relation to one or more employments, and”;
- (h) after paragraph (7) there shall be inserted the following:–
 - “(8) An election under this regulation may be made at any time by giving notice in writing to the employing authority, and
 - (a) subject to paragraphs (3) and (4), has effect from the day on which it is made, and
 - (b) subject to regulation B4B, continues to have effect so long as the person who made it remains in the employment in respect of which it was made.”.

Opting into pensionable employment

6. Regulation B4 of the principal Regulations shall be deleted.

Opting out of pensionable employment

7. In regulation B4A of the principal Regulations -

- (a) for paragraphs (1) and (2) there shall be substituted the following:-

“(1) A person who is a pensionable employee, or who on entering employment with an employing authority would become a pensionable employee, may at any time notify his employing authority in writing that he does not wish to be a pensionable employee for the purposes of these Regulations.

(2) A notification given under paragraph (1) and received by the employing authority before or during the first pay period of entering employment shall have effect from the first day of employment and a notification given at any time thereafter shall have effect from the day following the end of the pay period in which the notification was received or such later date as may be specified in the notification.”;

- (b) at the end of the regulation there shall be added the following paragraphs:-

“(5) Any person who between 6th April 1988 and 1st April 1990 was entitled to make an election under regulation B4(1) before its revocation by the Local Government Superannuation (Scotland) Amendment Regulations 1990 but did not do so shall be deemed to have given a notification under paragraph (1) of this regulation.

- (6) In paragraph (2)-

“pay period” means the period in respect of which each payment of salary or wages is made.”.

Rejoining pensionable employment

8. In regulation B4B of the principal Regulations-

- (a) in paragraph (1), for the words “paragraphs (3), (4) and (5)”, there shall be substituted the words “paragraphs (3) to (8)”;

- (b) for paragraph (5) there shall be substituted the following paragraphs:-

“(5) Subject to paragraphs (6) and (7), where a person gives notice of election on or before the relevant date, the election shall have effect from the date on which he enters employment unless the notice specifies otherwise and, in any other case, it shall have effect from the day following the end of the pay period in which the election was received or such later date as may be specified in the notice.

(6) In an exempt case, the employer to which notice of election is given may give notice to the person electing that he is not to become a pensionable employee; and a case is an exempt case for this purpose if that person-

- (a) has attained or would, on or by the date on which he would otherwise become a pensionable employee pursuant to the election, have attained the age of 50 years; and

- (b) was first employed by that employer before he attained that age.

- (7) A notice of election under paragraph (1) shall have effect-

- (a) subject to any subsequent notification under regulation B4A; and

- (b) both in relation to the employment with the employer to whom notice is given, and in relation to any subsequent employment under which the person may become a pensionable employee.
- (8) In paragraph (5)–
“the relevant date” means the last day of the period of service to which the person’s first payment of wages or salary due from his employer after he commences employment relates.”.

Power to admit employees of other bodies

- 9. In regulation B6 of the principal Regulations–
 - (a) in paragraph (2), for the words “an eligible employee”, there shall be substituted the words “a pensionable employee”;
 - (b) in paragraph (4)(a), for the words “18 years”, there shall be substituted the words “16 years”;
 - (c) in paragraph (5), for the words “an eligible employee”, there shall be substituted the words “a pensionable employee”.

Payment by manual worker in respect of previous service

- 10. In regulation C7 of the principal Regulations–
 - (a) in paragraph (1), for the word “becomes”, there shall be substituted the word “became” and, for the words “B1(3)(c)”, there shall be substituted the words “B2((1)(b) before its amendment by the Local Government Superannuation (Scotland) Amendment Regulations 1990”;
 - (b) in paragraph (2), for the word “becomes”, there shall be substituted the word “became”.

Return of employee’s contributions in certain cases

11. For paragraph (7) of regulation C12 of the principal Regulations there shall be substituted the following–

- “(7) No return of contributions shall be payable to a person under paragraph (4)–
 - (a) before the expiration of a year from the date on which–
 - (i) in the case of a person to whom paragraph (1)(a) applies, he ceases to be employed;
 - (ii) in the case of a person to whom paragraph (1)(b) applies, he ceases to be a pensionable employee while continuing to be employed; or
 - (b) until a claim for payment, made not earlier than one month and two days after the date on which–
 - (i) in the case of a person to whom paragraph (1)(a) applies, he ceases to be employed;
 - (ii) in the case of a person to whom paragraph (1)(b) applies, he ceases to be a pensionable employee while continuing to be employed, has been made to the employing authority;
- whichever event occurs first.”.

Payment in respect of previous service by a person who elected under regulation B2A of the 1974 Regulations

12. After regulation C16 of the principal Regulations there shall be added the following regulation—

“Payment in respect of previous service by a person who elected under regulation B2A of the 1974 Regulations

C17.—(1) This regulation applies to a pensionable employee or former pensionable employee or the widow or widower of such a person who, on 1st April 1986, or within 12 months of that date, made an election under regulation B2A of the 1974 Regulations⁽⁴⁾ and who is entitled to reckon a period as qualifying service by virtue of regulation D2(2)(b).

(2) Subject to paragraphs (3) and (4), a person to whom this regulation applies may, by notice in writing given to the appropriate administering authority, elect to make payment to the appropriate superannuation fund in order to become entitled under regulation D12 to reckon such qualifying service as is specified in paragraph (1), or part thereof, as reckonable service.

(3) A notice under paragraph (2) shall specify—

- (a) whether payment is to be made in respect of the whole of the qualifying service specified in paragraph (1) or, if not, the length and dates of the part of that service it is desired to reckon as reckonable service; and
- (b) whether payment is to be made by lump sum or, where the person is still a pensionable employee, by instalments; and
- (c) where payment is to be made by instalments, over what period of years the instalments are to be paid; such period not exceeding 5 years or the period between the date of the election and the date on which the pensionable employee attains the age of 65 years, whichever is the shorter.

(4) An election under this regulation shall be made within 6 months of this regulation coming into force.

(5) Subject to paragraphs (6) to (8), where a notice under paragraph (2) specifies that payment is to be made by lump sum, the payment to be made shall be 12% of the pensionable employee's, or former pensionable employee's, annual rate of remuneration as at 1st April 1986 for each complete year specified in the notice and pro rata for any fraction of a year.

(6) The appropriate employing authority shall meet 50% of the sum, calculated in accordance with paragraph (5), in respect of such service as is specified in the notice under paragraph (2) occurring between 1st April 1974 and 31st March 1978 or, in the case of a manual worker, between 1st April 1973 and 31st March 1978.

(7) The appropriate employing authority may give notice to a person who has given notice under paragraph (2), and to the appropriate administering authority, of their intention to meet a proportion, not exceeding 50%, of the sum calculated in accordance with paragraph (5) in respect of such service as is specified in the notice under paragraph

(2) occurring after 31st March 1978.

(8) Where paragraph (6) and, as the case may be, paragraph (7) apply, the sum or sums to be paid by the person who has given notice under paragraph (2) shall be correspondingly reduced and—

(4) S.I. 1974/812; the relevant amending instrument was S.I. 1986/214.

- (a) the appropriate employing authority shall make the appropriate payment, where the pensionable employee has opted to pay by lump sum, within one month of that person paying a lump sum to the appropriate administering authority; or
- (b) where payments are being made by instalments, payments to be made by the employing authority shall be made at the same time as the instalments fall to be made by the person who has given notice under paragraph (2).

(9) Where a notice given under paragraph (2) specifies that payment is to be made by instalments, they shall be of equal amounts and be paid at such intervals as the appropriate administering authority determines, not being periods of more than one month.

(10) Where, before completion of payment of the instalments specified in a notice under paragraph (2), the person ceases to be employed and subsequently takes up a new local government employment and a transfer value, under regulation Q2, in respect of his benefits is paid for the credit of a superannuation fund maintained under these Regulations by a different administering authority from the one to which the above-mentioned notice was given, the remaining instalments shall be paid to that superannuation fund.

(11) Where, before completion of payment of the instalments specified in a notice given under paragraph (2), the person ceases to be a pensionable employee, and becomes entitled to benefits under regulation E2(1)(c) or to a transfer value under regulation J2, the person may elect to pay the balance of the instalments within 3 months of so ceasing to be a pensionable employee, but if the person does not so elect, or fails otherwise to make payment of any of the instalments, the reckonable service specified in the notice shall be reduced pro rata by the same proportion that the sum of the outstanding instalments bears to the sum of the total instalments that would have been paid.

(12) Where, before completion of payment of the instalments specified in a notice given under paragraph (2), the person ceases to be a pensionable employee and becomes entitled to benefits under regulation E2(1)(a), (b)(iii) or (d), the appropriate administering authority shall deduct an amount equivalent to the balance of the instalments outstanding from the person's lump sum retiring allowance.

(13) Where, before completion of payment of the instalments specified in a notice given under paragraph (2), a pensionable employee dies, or ceases to hold his employment by reasons of permanent ill-health or infirmity of mind on body, the payments will be deemed to have been completed.

(14) Payment of instalments specified in a notice given under paragraph (2) may be discontinued if the pensionable employee satisfies the appropriate administering authority that its continuance would cause financial hardship and, in such circumstances, the reckonable service specified in the notice shall be reduced pro rata by the same proportion that the sum of the outstanding instalments bears to the sum of the total instalments that would have been paid.

(15) Where a reduction in reckonable service has been made under paragraph (14), payment of instalments may be resumed if the pensionable employee satisfies the appropriate administering authority that payment would no longer cause financial hardship.

(16) In this regulation "appropriate employing authority" means—

- (a) in the case of a pensionable employee, the body employing him; and
- (b) in the case of a former pensionable employee, the body employing him when he made an election under regulation B2A of the 1974 Regulations."

Reckonable service

13. In regulation D1(2)(c) of the principal Regulations, after the words “regulations D4 to D7”, there shall be inserted “or regulation D12”.

Exclusion from reckonable service and qualifying service

14. After regulation D3(6) of the principal Regulations there shall be added the following paragraph:–

“(7) A woman who exercises, in accordance with section 47 of the Employment Protection (Consolidation) Act 1978(5), a right to return to work after being absent from work wholly or partly because of pregnancy or confinement is to be treated as not having entered a local government employment in any of the circumstances mentioned in this regulation.”.

Previous service of a person who elected under regulation B2A of the 1974 Regulations

15. After regulation D11 of the principal Regulations there shall be added the following regulation:–

“Previous service of a person who elected under regulation B2A of the 1974 Regulations

D12. A pensionable employee, or a former pensionable employee, who has made an election under regulation C17 is entitled to reckon as reckonable service in relation to the relevant employment the period in respect of which the election was made.”.

Entitlement to retirement pension and retiring allowance

16. In regulation E2 of the principal Regulations –

- (a) in paragraph (6)(c)(ii), for the words “any employment”, there shall be substituted the words “any local government employment.”;
- (b) for paragraphs (7) and (8) there shall be substituted the following:–

“(7) Subject to paragraph (11), benefits to which a man has become entitled by virtue of paragraph (1)(d) are payable–

- (a) if he has ceased to hold the employment before he attained the age of 65 years and has made an election by notice in writing given to the employing authority not later than 3 months after ceasing to hold the employment, immediately on the cessation of that employment;
- (b) if he has ceased to hold the employment before he attained the age of 65 years and has not made an election referred to in sub-paragraph (a) above, from the date on which he attains the age of 65 years;
- (c) if he has ceased to hold the employment on or after attaining the age of 65 years, immediately on the cessation of that employment.

(8) Benefits to which a woman has become entitled by virtue of paragraph (1)(d) are payable from the first date on which she has both attained the age of 60 years and is no longer in any local government employment.”;

- (c) after paragraph (9)(c) there shall be added the following:– “or

(d) if the employing body has certified, under regulation E24, that he had suffered a material change in circumstances.”;

- (d) in paragraph (11), for the words “(6) or (8)(a)”, there shall be substituted the words “(6) or (7)(a)”.

Amount of retirement pension and retiring allowance

17. In paragraph (14)(a) of regulation E3 of the principal Regulations, for the words “E2(6) or E2(8)(a)”, there shall be substituted the words “E2(6) or E2(7)(a)”.

Ill-health lump sum retiring allowance

18. In regulation E4 of the principal Regulations, after paragraph (4), there shall be inserted the following paragraph:–

“(5) Where–

- (a) a person who died before 9th February 1982 had received a return of contributions, and
- (b) paragraph (1) of regulation E21 of the 1974 Regulations⁽⁶⁾ would otherwise have applied to him,

he is to be treated as having become entitled to an ill-health lump sum retiring allowance of $A - B$, where–

A is the amount of the ill-health lump sum retiring allowance that would have been payable if that paragraph had applied to him, and

B is the net amount he received when the return of contributions was made.”.

Death gratuity

19. In regulation E11 of the principal Regulations–

- (a) in paragraph (3)–

(i) after the words “C is the length in years of his reckonable service,” there shall be added the following:–

“C1 is the length in years of the reckonable service that would have been taken into account in calculating a retirement pension if he had become entitled to one under regulation E2(1)(b)(i) (permanent ill-health etc.) on the day of his death,

C2 is the length in years of the reckonable service taken into account in calculating his retirement pension.”; and

(ii) for the words “G is the annual rate of his retirement pension” there shall be substituted the words “G is the total amount that would (or would but for regulation E15 or his death, or both) have been paid to him by way of retirement pension for the first 5 years after he became (or would, but for regulation E15, have become) entitled to receive payments in respect of the pension”;

- (b) for paragraph (4) there shall be substituted the following paragraphs:–

“(4) Subject to paragraph (9), where paragraph (1)(a) applies, the amount of the death gratuity is the greater of A and $(B \times C1)$.

(4A) Subject to paragraphs (9) and (11), where paragraph (1)(b) or (c) and paragraph (2) (b) apply, and the deceased became entitled to the retirement pension otherwise than by virtue of regulation E2(1)(c), the amount of the death gratuity is the greater of A and $(B \times C2)$.”;

(6) S.I. 1974/812; regulation E21 was inserted by S.I. 1981/1892.

- (c) in paragraph (5)–
- (i) for sub-paragraph (b) there shall be substituted the following:–
- “(b) paragraph (1)(b) or (c) and paragraph (2)(a) apply and–
- (i) the deceased became entitled to the retirement pension by virtue of regulation E2(1)(c), and
- (ii) the reckonable service that would have been taken into account in calculating a retirement pension if he had remained in his local government employment until pensionable age is 10 years or more;” and
- (ii) for the formulae “(B x C) – (D + E) or
- $$\frac{C}{F} \times (A - (D + E))$$
- ” there shall be substituted the formulae “(B x C2) – (D + E) or
- $$\frac{C2}{F} \times (A - (D + E))$$
- ”;
- (d) in paragraph (6), for the words “is 5 x G”, there shall be substituted the words “is G”;
- (e) in paragraph (7)–
- (i) in sub-paragraph (a), for the words after “regulation E2(1)(c)”, there shall be substituted the words “and the reckonable service that would have been taken into account in calculating a retirement pension if he had remained in his local government employment until pensionable age is less than 10 years, or”; and
- (ii) for the formula “
- $$\frac{C}{F} \times ((5 \times G) - H)$$
- ” there shall be substituted the formula “
- $$\frac{C2}{F} \times ((5 \times G) - H)$$
- ”;
- (f) in paragraph (8), for the formula “B x C”, there shall be substituted the formula “B x C2”.

Combined benefits in the case of certain re-employed pensioners

20. In regulation E16 of the principal Regulations–

- (a) in paragraph (1)–
- (i) in sub-paragraph (b), for the words “whole-time”, there shall be substituted the words “employment which was or became”;
- (ii) sub-paragraph (c) shall be deleted;
- (iii) in sub-paragraph (d), the words “which has become payable” shall be deleted; and
- (iv) for the words “the second retirement pension became payable” there shall be substituted the words “he became entitled to the second retirement pension”;
- (b) in paragraph (2), after the words “the second retirement pension became”, there shall be inserted the words “or becomes”;

- (c) in paragraph (4)–
 - (i) for the word “received” there shall be substituted the words “was entitled to”;
 - (ii) after sub-paragraph (a) there shall be inserted the following:–
 - “(aa) if he has not received the allowance before becoming entitled as mentioned in paragraph (2)(a), he ceases to be entitled to it.”; and
 - (iii) in sub-paragraphs (b) and (c), after the word “if”, there shall be inserted the words “he has received the retiring allowance and”;
- (d) in paragraph (5) for the word “reduced”, in both places in which it occurs, there shall be substituted the words “subject to reduction”.

Separate benefits in the case of certain re-employed pensioners

21. For paragraph (4) of regulation E17 of the principal Regulations there shall be substituted the following paragraph:–

“(4) Subject to paragraph (5), if, when the person dies, paragraph (4) of regulation E11 (death gratuity) applies, it applies with the substitution for the words “is the greater of A and (B × C)” of the words “is (B × C1)”; and if paragraph (4A) of regulation E11 applies, it applies with the substitution for the words “is the greater of A and (B × C)” of the words “is (B × C2).”.”

Power to compound certain small pensions

22. In regulation E21(1) of the principal Regulations, for the words “sub-paragraphs (i) and (ii)”, there shall be substituted the words “sub-paragraphs (i), (ii) and (iii)”.

Pensionable remuneration

23. In regulations E22(8)(c) and E22(9)(c) of the principal Regulations, after the words “regulation E11(4)”, in both places in which they occur, there shall be inserted the words “or (4A)”.

Certificates as to reduction in remuneration

24. In regulation E24 of the principal Regulations–

- (a) in paragraph (1) the words “other than a person who is a pensionable employee by virtue of an election under regulation B3” shall be deleted and, for the words “the remuneration of an employment which he continues to hold”, there shall be substituted the word “remuneration”;
- (b) after paragraph (1) there shall be inserted the following paragraph:–
 - “(1A) For the purposes of paragraph (1), a person suffers a reduction in remuneration if–
 - (a) the remuneration of an employment which he continues to hold is reduced, or
 - (b) he is transferred to another employment under the same scheduled body at a reduced remuneration.”.

Interest on late payment of certain benefits

25. After regulation E34 of the principal Regulations, there shall be inserted the following regulation:–

“Interest on late payment of certain benefits

E35.—(1) Where all or part of—

- (a) a retiring allowance,
- (b) an ill-health lump sum retiring allowance payable under regulation E4, or
- (c) a death gratuity,

is not paid within one month after the due date, the appropriate administering authority shall pay to the person to whom the allowance or gratuity is payable interest, calculated at the standard rate on a day to day basis from the due date to the date of payment, and compounded with 3 monthly rests, on the amount remaining unpaid.

(2) For the purposes of this regulation the due date is—

- (a) in the case of a retiring allowance which becomes payable by virtue of a notice in writing under regulation E2(6) or (7)(a) given on or after the date on which the allowance by virtue of that notice became payable, the date one month after that notice was given;
- (b) in the case of a part of a retiring allowance which becomes payable by virtue of payments or contributions (other than an increase in contributions made following a decision under regulations N1 or N8) made after the date on which the remainder of the allowance became payable, the date one month after that increase in contributions was paid;
- (c) in the case of a retiring allowance or part of a retiring allowance which becomes payable by virtue of contributions made following a decision under regulations N1 or N8, the date on which that allowance or part of an allowance would have become payable had those contributions been made at the first opportunity which these Regulations would otherwise have provided;
- (d) in all other cases in which a retiring allowance or part of a retiring allowance becomes payable, the date on which that allowance or part of an allowance becomes payable;
- (e) in the case of an ill-health lump sum retiring allowance which becomes payable, the day after the person who is entitled to the allowance ceased to hold his employment;
- (f) in the case of a death gratuity where no nomination has been made by the deceased the date on which proof of confirmation, probate or letters of administration has or have been produced to the administering authority;
- (g) in the case of a death gratuity where a nomination has been made by the deceased, the date upon which the administering authority has received proof of the deceased’s death and of the nominee’s identity.”.

Persons entitled before 16th May 1974 to preserved benefits

26. After regulation G3 of the principal Regulations there shall be added the following regulation:—

“Persons entitled before 16th May 1974 to preserved benefits

G4. In the case of a person who is entitled to preserved benefits to which he became entitled by virtue of regulation E2(1)(c) of the 1974 Regulations as applied by Part K of those Regulations—

- (a) the preserved benefits are subject to reduction, but

- (b) on return to local government employment previous service becomes reckonable on repayment of returned contributions,
as if regulations K1(5), D1(2) (with the substitution for “the appointed day” of “16th May 1974”) and D1(3) of the 1974 Regulations had continued to have effect.”.

Inward transfers

27. In regulation J8(1) of the principal Regulations, for “B4”, there shall be substituted “B3”.

Calculation of benefit

28. In regulation K4(2)(g) of the principal Regulations, after the words “regulation B4”, there shall be inserted the words “before its deletion by the Local Government Superannuation (Scotland) Amendment Regulations 1990”.

Transfer of certain sums from the superannuation fund

29. At the end of regulation M2(1) of the principal Regulations there shall be added the following:– “, and

(c) either–

- (i) he became entitled to benefits under regulation E2(1) and a direction has been given under regulation M1(1), or
(ii) he did not become so entitled and the total of his reckonable service and qualifying service is less than 2 years.”.

Recovery or retention by employing authority of certain sums from the superannuation fund

30. At the end of regulation M3(1) of the principal Regulations there shall be added the following:– “, and

(c) is entitled to benefits under regulation E2(1).”.

Decisions by employing authorities as to status of employees

31. In regulation N2 of the principal Regulations–

- (a) in paragraph (1)(c), for “B1(11)”, there shall be substituted “B2(2)”;
(b) in paragraph (3)(b)(i), for “B1(5)”, there shall be substituted “B2(1)(d)”.

Periodical valuation of superannuation funds

32. In regulation P8(2) of the principal Regulations, for the words “21 months”, there shall be substituted the words “12 months”.

Actuary’s certificates

33. In regulation P9 of the principal Regulations —

- (a) in paragraph (1), for the word “third”, there shall be substituted the word “second”; and
(b) paragraph (5) shall be deleted.

Change of local government employment and fund authority

34. In regulation Q2 of the principal Regulations–

- (a) in paragraph (1), for the words “Part I”, there shall be substituted “Part III”;
- (b) after paragraph (1)(c) there shall be added the following:–
 - “(d) no direction has been made at any time in relation to his reckonable service in his previous local government employment under regulation M1, regulation L12 of the 1974 Regulations, or any corresponding provision of any earlier enactment.”;
- (c) for paragraph (2) there shall be substituted the following:–
 - “(2) Subject to paragraphs (3), (4) and (5), if the change of employment occurs as a result of an Order or Regulations made under the Local Government (Scotland) Act 1973(7) in accordance with section 216 of that Act and the number of persons changing superannuation funds is more than 9 but less than 100, the transfer values payable under paragraph (1) shall be calculated as if they were payable under Part I of Schedule 16.
 - (3) An adjustment shall be made to the total sum payable under paragraph (2) if the assets of the fund of the previous fund authority, immediately before any change of employment occurs, are not adequate, or are more than adequate, to meet the accrued actuarial liabilities.”;
- (d) in paragraph (5) for “(2)” there shall be substituted “(3)”.

Partial forfeitures

35. After regulation Q2 of the principal Regulations there shall be inserted the following regulation:–

“Partial forfeitures

Q3.—(1) Where–

- (a) a direction has been made in relation to any person under regulation M1, or any corresponding provision of any earlier enactment, and
- (b) any right to benefit under these Regulations, the 1974 Regulations or the former Regulations is retained, and
- (c) the conditions of regulation Q2(1) are satisfied with the exception of the conditions in sub-paragraph (d) of that regulation,

the previous fund authority shall pay out of their superannuation fund to which the person was a contributor a transfer value to the new fund authority for the credit of their superannuation fund.

(2) The transfer value is to be an amount equal to the actuarial value of the remaining benefits.”.

Pensions Act premiums

36. The following regulation shall be substituted for regulation R4 of the principal Regulations:–

“Pensions Act premiums

R4.—(1) Where a scheduled body pay a contributions equivalent premium under Part III of the Social Security Pensions Act 1975(8) in respect of any pensionable employee, they are entitled to recover, or if they are an administering authority to retain, out of the

(7) 1973 c. 65; section 216 was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 4, Part I.
(8) 1975 c. 60; section 44A was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 1.

appropriate superannuation fund a sum not exceeding the amount of that premium, less the amount (if any) which they could recover or retain under section 47 of that Act in respect of the premium.

(2) Where such a contributions equivalent premium is refunded under regulation 24(3)(c) of the Occupational Pension Schemes (Contracting-Out) Regulations 1984(9), the authority to whom it is refunded shall pay to the superannuation fund, to which the person involved has become a contributor, a sum equal to the amount of the premium.

(3) Where a scheduled body have paid a transfer premium under section 44A, or a limited revaluation premium under section 45 of the Social Security Pensions Act 1975, they are entitled to recover, or if they are an administering authority to retain, the amount of the premium out of the appropriate superannuation fund.”.

Glossary of expressions

37. In Schedule 1 to the principal Regulations—

- (a) the definition of “Eligible employee” shall be deleted;
- (b) in the definition of “pensionable employee”, for the second sentence, there shall be substituted the following sentences:—

“In relation to any time on or after 21st December 1987 but before 1st April 1990, means a person who was a pensionable employee as defined in Regulation B1 before its deletion by the Local Government Superannuation (Scotland) Amendment Regulations 1990.

In relation to any time on or after 1st April 1990, means a person who is a pensionable employee in accordance with Regulations B2, B3, B4A and B4B.”.

Pensionable employees

38. In Schedule 3 to the principal Regulations—

- (a) in the heading, for the word “Eligible”, there shall be substituted the word “Pensionable”;
- (b) Part III of the Schedule shall be deleted.

Modifications to Part E where no right to retiring allowance etc.

39. In paragraph 9 of Schedule 12 to the principal Regulations—

- (a) in sub-paragraph (c), for the words “paragraph (4)(b),” there shall be substituted the words “paragraph (4A)”;
- (b) in sub-paragraph (e), for the formulae “(B × C) – E or

$$\frac{C}{F} \times (A - E)$$

”, there shall be substituted the formulae “(B x C2) — E or

$$\frac{C2}{F} \times (A - E)$$

”.

Calculation of Transfer Values

40.—(1) In paragraph 1 of Part I of Schedule 16 to the principal Regulations there shall be inserted after “J3(1),” the word “or” and after “J14” the words “or Q2” shall be deleted.

(2) In Part II of Schedule 16, for paragraphs 2 and 3, there shall be substituted the following paragraph:—

“2. For the purposes of paragraph 1, the annual rate of a person’s pensionable remuneration shall be ascertained in accordance with the provisions of paragraphs 4 and 5 of Part III of this Schedule.”.

(3) After Part II of that Schedule there shall be inserted the Part III set out in the Schedule to these Regulations.

Transitional provisions

41.—(1) Regulation E2 of the principal Regulations applies as amended by regulation 16(b) only where the material change in circumstances occurs after 31st March 1990.

(2) Regulation E11 of the principal Regulations applies as amended by regulation 19(a)(ii),

(d) and (e)(ii) only where the death occurs after 31st March 1990.

(3) Regulation E16 of the principal Regulations applies as amended by regulation 20 only where the person became entitled to the second retirement pension after 31st March 1990, but where that is the case, applies as so amended even where the further employment began, or became a local government employment, before 1st April 1990.

(4) Regulations M2 and M3 of the principal Regulations apply as amended by regulations 29 and 30 only where the cessation of employment occurs after 31st March 1990.

(5) In regulation R4 of the principal Regulations, as substituted by regulation 36, paragraph (3) applies where the premium was paid at any time after 4th April 1983.

Right to opt out

42.—(1) No provision of these Regulations shall apply to any person to whom, at any time before the date of coming into force of these Regulations, any benefit (including a return of contributions and any pension payable to a widow or any dependent 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 force 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 person, by notice in writing given to the appropriate administering authority within 3 months after the said date of coming into force, elects that that provision shall not apply to him.

(2) The provisions of Part N of the principal Regulations (decisions and appeals) shall apply in relation to rights and liabilities arising by virtue of these Regulations as they apply in relation to other rights and liabilities under the principal Regulations.

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St. Andrew's House,
Edinburgh
28th February 1990

Michael B. Forsyth
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE

Regulation 40

PART III TO BE INSERTED AFTER PART II OF
SCHEDULE 16 TO THE PRINCIPAL REGULATIONS

“PART III

1. The transfer value payable under regulation Q2(1) in respect of a person is to be calculated in accordance with the following formula if the service he is entitled to reckon in his new local government employment which he was also entitled to reckon in his previous local government employment exceeds 182 days—

$$T = \frac{(F \times S \times R)}{100} - A,$$

where—

T is the amount of the transfer value;

F is the amount shown in column (2) of the following Table applicable to his age as set out in column (1) when he ceased to be employed in his previous local government employment,

TABLE

<i>(1)</i> <i>(Age on ceasing to be employed in previous local government employment)</i>	<i>(2)</i> <i>(Amount)</i>
Under 30	11
30 to 39 (inclusive)	12
40 to 49 (inclusive)	13
50 and over	14;

S is the length of the reckonable service in complete years ignoring any residual period of 182 days or less and taking any residual period which exceeds 182 days as a complete year;

R is the annual rate of his remuneration of his previous local government employment at the date on which he ceased to be employed in that employment; and

A is the amount of any additional contributory payments remaining outstanding when he ceased to be employed in his previous local government employment.

2. In any case not falling within paragraph 1 the transfer value payable under regulation Q2(1) in respect of a person is to be calculated in accordance with the following formula—

$$T = 2 \times C, \text{ where—}$$

T is the amount of the transfer value; and

C is the amount of the employer's contributions in relation to the reckonable service, but the amount of the transfer value shall be zero if the person becomes employed in his new local government employment on or after 1st October 1981.

3. In ascertaining for the purposes of this Part the length of reckonable service which a person is or was entitled to reckon, the reckonable service is to count at the length at which

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it would reckon in calculating the amount of a retirement pension under regulation E2(1)(b) (ii), except that—

- (a) any period of reckonable service which was reckonable under section 15 of the Act of 1937 (which related to teachers) is to be ignored;
- (b) it is to be assumed that he had completed the payment of any additional contributory payments; and
- (c) if additional contributions under regulation D10 of the 1974 Regulations (or any corresponding provision of an earlier enactment) or regulation C6 have been paid but not all those for which he was originally liable, the apportionment formula in paragraph 3 of Schedule 9 is to be applied.

4. Subject to paragraph 5, in ascertaining for the purposes of this Part the annual rate of a person's remuneration at the date on which he ceased to be employed in his previous local government employment—

- (a) the annual rate of any fluctuating element of his remuneration is to be estimated by reference to an average taken over a representative period;
- (b) the annual rate of any benefit in kind included in his remuneration is to be the estimated annual value of the benefit in kind at the date on which he ceased to be employed;
- (c) if at that date he had no remuneration or his remuneration was reduced because of absence from duty, the annual rate is to be taken to be the annual rate which would have applied if he had not been absent;
- (d) if the annual rate of his remuneration is retrospectively altered as a result of a pay award promulgated by a national joint council or other negotiating body on or before the date on which he ceased to be employed, the annual rate of his remuneration is to be based on the retrospective pay award;
- (e) if his remuneration is not calculated by reference to an annual rate but by reference to some other rate, the annual rate is to be derived from the applicable rate at the date on which he ceased to be employed;
- (f) if his previous local government employment was part-time, the annual rate of remuneration of a single comparable whole-time employment is to be used; and
- (g) if the annual rate of his remuneration exceeds £100 it is to be rounded down to the nearest £100.

5. If—

- (a) during the 13 years ending on the cessation of the person's previous local government employment his remuneration was reduced; and
- (b) his employing authority certified under regulation E24 that the reduction was in consequence of a material change in circumstances; and
- (c) his annual rate of remuneration immediately before the reduction, ascertained on similar principles to those in paragraph 4, was greater than the annual rate of remuneration on the date on which he ceased to be employed in his previous local government employment,

it is to be assumed for the purposes of this Part that he was earning at the higher rate at the date on which he ceased to be employed in his previous local government employment.

6. Where the person has made a payment to his new fund authority under regulation D1(2) or J9(3) of the 1974 Regulations or H8(3) of these Regulations, the transfer value payable under regulation Q2(1) is to be reduced by an amount equal to that payment.

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7. Compound interest calculated in accordance with regulation J7 is to be paid on the transfer value payable under regulation Q2(1) for the period beginning with the date on which the person ceased to be employed in his previous local government employment and ending on the date on which the transfer value is paid (but no interest is to be paid if that period is less than 6 months).”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of largely unrelated amendments to the Local Government Superannuation (Scotland) Regulations 1987 (“the principal Regulations”) (S.I.1987/1850) as follows:–

- (a) to provide that new whole-time employees will be members of the Local Government Superannuation Scheme unless or until they make an election to the contrary (regulations 3, 4(a), (b) and (e), 5, 6, 7, 8, 9(a) and (c));
- (b) to reduce the minimum age of entry into the scheme from 18 years to 16 years (regulations 4(d) and 9(b));
- (c) to abolish the 12 month waiting period for manual workers (regulations 4(c), 10 and 38(b));
- (d) to insert new regulations C17 and D12 which introduce arrangements enabling a person who–
 - (i) was a part-time or variable-time employee; and
 - (ii) on, or within 3 months of, 1st April 1986 made an election to join the Local Government Superannuation Scheme,to make payment by lump sum or instalments in order to reckon as reckonable service any period prior to that date which they are entitled to count as qualifying service under regulation D2(2)(b) of the principal Regulations (regulations 12, 13 and 15);
- (e) to make explicit the continued reckonability of previous service where a statutory right to return to work after pregnancy or confinement is exercised (regulation 14);
- (f) to clarify the existing provisions dealing with benefits for employees retiring at, or in the tax year they attain, State pension age, (regulation 16(a) and (c));
- (g) to enable a certificate of reduction in remuneration to be given where an employee is transferred to another employment under the same body, and to provide that where a certificate is given there is no right to preserved benefits in respect of the old employment (regulations 16(b) and 24);
- (h) to make ill-health lump sum retiring allowances payable in respect of deceased persons who were precluded from receiving them by reason of their having had contributions returned which they could not have repaid before their death (regulation 18);
- (i) to make a number of changes to the methods of calculating death gratuities (regulations 19, 21, 23 and 39);

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- (j) to enable an election to be made so as to combine benefits in respect of consecutive employments, notwithstanding that benefits in respect of either or both of the employments have not yet become payable (regulation 20);
- (k) to insert a new regulation E35 to provide for interest to be paid where payment of certain lump sum benefits is delayed (regulation 25);
- (l) to insert a new regulation G4 which in effect continues earlier provisions governing the position of certain persons who retain rights to preserved benefits acquired after 31st March 1972 and before 16th May 1974, (regulation 26);
- (m) to clarify the circumstances in which superannuation fund money may be applied to make good losses sustained by employing authorities through the fault of former employees (regulations 29 and 30);
- (n) to reduce the period between the date of the valuation of a superannuation fund and the provision of the actuary's report from 21 months to 12 months and to provide that the actuary's certificate specifying employers' contribution rates shall be effective from 1st April in the year following the valuation instead of the 1st April third following (regulations 32 and 33);
- (o) to restore the previous basis for calculating interfund adjustments (regulations 34, 35 and 40);
- (p) to add transfer premiums and limited revaluation premiums to the premiums payable under the Pensions Act that may be met from the superannuation fund (regulation 36);
- (q) to make a number of consequential and technical amendments and corrections (regulations 11, 17, 22, 27, 28, 31, 37 and 38(a));
- (r) transitional provisions are contained in regulation 41.

Provision is made for opting out where rights in relation to ex-employees could be adversely affected (regulation 42).

Regulations 11, 14, 16(b), 19(a)(i), (b), (c), (e)(i) and (f), 21, 23, 24, 26 and 39 have retrospective effect as authorised by section 12(1) of the Superannuation Act 1972 (regulation 1(2)).