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STATUTORY INSTRUMENTS

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**1992 No. 1220 (S.119)**

**PENSIONS**

**The Local Government Superannuation  
(Reserve Forces) (Scotland) Regulations 1992**

<i>Made</i>	- - - -	<i>15th May 1992</i>
<i>Laid before Parliament</i>		<i>4th June 1992</i>
<i>Coming into force</i>	- -	<i>25th June 1992</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. These Regulations may be cited as the Local Government Superannuation (Reserve Forces) (Scotland) Regulations 1992 and shall come into force on 25th June 1992, but shall have effect as from 17th December 1990.

**Interpretation**

2. In these Regulations, unless the context otherwise requires—

“the principal Regulations” means the Local Government Superannuation (Scotland) Regulations 1987((2)), and any expression used in these Regulations which is also used in the principal Regulations has the same meaning as in those Regulations;

“the 1951 Act” means the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951((3));

“former employment” means the employment in which a person is a pensionable employee immediately before he begins to perform relevant service, and “former employer” shall be construed accordingly;

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(1) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).  
(2) S.I.1987/1850, amended by S.I. 1988/625, 1989/422, 802 and 967, 1990/422 and 1284 and 1991/78.  
(3) 1951 c. 65.

- “pensionable employee” includes an admitted employee;
- “relevant service” has the meaning given in the Schedule to these Regulations;
- “service pay” means pay for performing relevant service, and includes marriage, family and other similar allowances.

### **Persons to whom these Regulations apply**

3.—(1) Subject to paragraph (3), these Regulations apply to a person who ceases to be a pensionable employee, or is granted leave of absence from duty in an employment in which he is a pensionable employee, in order to perform relevant service.

(2) Subject to paragraph (3), where—

- (a) a person is not a pensionable employee when he ceases his employment, or begins his leave of absence from duty in that employment, in order to perform relevant service, but
- (b) he is before so ceasing his employment, or beginning his leave of absence from duty in that employment, entitled by virtue of that employment to make an election to become a pensionable employee under regulations B3 or B4B of the principal Regulations ((4)), and
- (c) he has before so ceasing his employment, or beginning his leave of absence from duty in that employment, made such an election,

these Regulations shall apply to him as if he were a pensionable employee when he so ceased his employment, or began his leave of absence from duty in that employment, but as if references to his relevant service did not include references to any period before the day from which his notice of election has effect.

(3) These Regulations shall not apply to a person in respect of a period of relevant service if he gives notice in writing to the appropriate administering authority that he does not wish these Regulations to apply to him in respect of that period.

(4) A notice under paragraph (3) shall be given not later than 12 months after—

- (a) the end of the period of relevant service to which the notice relates;
- (b) the date on which these Regulations come into force; or
- (c) such other date as may be agreed by the appropriate administering authority,

whichever is the latest.

### **Rights under the principal Regulations**

4.—(1) Where these Regulations apply to a person, the period of his relevant service shall, for the purposes of the principal Regulations, be treated as reckonable service in relation to his former employment.

(2) Where these Regulations apply to a person who has elected under any provision of the principal Regulations (other than regulation C9A((5))) to pay additional contributions, make payment by instalments, or make any other payment to the appropriate superannuation fund other than a lump sum payment, that person shall be treated, for the purposes of the principal Regulations, as if he has, throughout the whole of the period of his relevant service, paid any such additional contributions, instalments or other payments.

(3) If, during the period of his relevant service, a person to whom these Regulations apply—

- (a) dies; or

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(4) Regulation B3 was amended by S.I. 1989/802 and 1990/422 and regulation B4B was inserted by S.I. 1989/802 and amended by S.I. 1990/422.

(5) Regulation C9A was inserted by S.I. 1989/802, regulation 7.

- (b) becomes incapable of discharging efficiently the duties of his former employment by reason of permanent ill-health, injury or infirmity of mind or body; or
- (c) attains pensionable age,

he shall be deemed for the purposes of the principal Regulations to have been serving in his former employment at the time of his death, or at the time when he ceased to perform relevant service, or at the time at which he attained pensionable age, as the case may be.

(4) Where, for the purpose of calculating the amount of any benefit payable to any person under the principal Regulations, it is necessary to take account of his remuneration in respect of any period of his relevant service, the amount of his remuneration during that period shall be deemed to be the amount by reference to which the calculation would have been made if he had continued to be employed in his former employment.

### **Payment of contributions**

5.—(1) A person to whom these Regulations apply shall, subject to paragraph (2), during or in respect of any period of his relevant service when his service pay, when aggregated with any payments under Part V of the 1951 Act, is not less than the remuneration he would have received if he had during that period continued to be employed in his former employment, pay to the appropriate superannuation fund all such contributions, additional contributions, payments by way of instalments and other payments as would have been payable under the principal Regulations if he had continued to be employed in his former employment.

(2) Paragraph (1) above does not apply in respect of contributions under regulation C9A of the principal Regulations.

(3) All payments made by a person under this regulation shall, subject to paragraph (4), be treated for the purposes of the principal Regulations as if they were made under the provision of those Regulations under which they would have been made if he had continued to be employed in his former employment.

(4) Regulation C11 of the principal Regulations (deduction and recovery of employee's contributions) shall not apply to sums payable under this regulation.

### **Return of contributions**

6. Where any person to whom these Regulations apply elects to receive a return of contributions under regulation C12 of the principal Regulations, no period after the date on which the election is made shall be included in the period of his relevant service for the purpose of these Regulations.

### **Deduction and recovery of contributions**

7.—(1) The former employer of a person by whom any sums are payable under regulation 5 may deduct such sums from any payment made to that person by the said employer under Part V of the 1951 Act, but only insofar as those sums are payable in respect of the period in respect of which that payment is made.

(2) If and so far as deductions are not made under paragraph (1), the appropriate administering authority may recover any outstanding sum remaining due—

- (a) by deducting it from any payment by way of benefits to or in respect of the person under the principal Regulations; or
- (b) if the sum is not paid within 12 months of the person ceasing to perform relevant service, as a debt in any court of competent jurisdiction.

### **Additional voluntary contributions**

**8.—(1)** In this regulation, “additional voluntary contributions” means contributions payable under regulation C9A of the principal Regulations.

(2) Where, before the commencement of his relevant service, a person to whom these Regulations apply was paying additional voluntary contributions to be used to provide benefits payable in the event of death, and he has not elected to discontinue those contributions—

- (a) the appropriate administering authority shall continue to make the appropriate payments in respect of him during the period of his relevant service in accordance with the arrangements made under paragraph 3(1) of Schedule 7A to the principal Regulations((6)); and
- (b) the sums so paid shall be deductible by the former employer, or be otherwise recoverable by the appropriate administering authority, in accordance with regulation 7 as if they were sums payable under regulation 5.

(3) Where, before the commencement of his relevant service, a person to whom these Regulations apply was paying additional voluntary contributions which were not to be used to provide benefits payable in the event of death, and he has not elected to discontinue those contributions, he may continue to make such contributions during the period of his relevant service if he wishes to do so.

### **Notifications under regulation B4A of the principal Regulations**

**9.—(1)** Where a person to whom these Regulations apply has, before ceasing to be a pensionable employee or beginning his leave of absence in order to perform relevant service, given a notification under Regulation B4A of the principal Regulations((7)) (opting out of pensionable employment) and that notification has not taken effect before he so ceases to be a pensionable employee or begins his leave of absence, that notification shall be treated as if it had not been given, unless the person gives notice in writing to the appropriate administering authority electing that this regulation shall not apply.

(2) An election under this regulation shall be made not later than 12 months after the end of the person’s relevant service.

(3) The appropriate administering authority may agree to extend the time for making an election under this regulation.

(4) The appropriate administering authority shall take all practicable steps to ensure that a person who is entitled to make an election under this regulation is notified of that entitlement.

### **Amendment of the principal Regulations**

**10.—(1)** Regulation C3 of the principal Regulations (leave of absence from duty) is amended by inserting after paragraph (4) the following:—

“(5) This regulation does not apply where the leave of absence is given to enable the employee to perform relevant service within the meaning of the Local Government Superannuation (Reserve Forces) (Scotland) Regulations 1992.”.

(2) Regulation D1(2) of the principal Regulations (reckonable service) is amended by inserting after sub-paragraph (c) the following:—

“,

- (d) any period which he is entitled to reckon by virtue of regulation 4 of the Local Government Superannuation (Reserve Forces) (Scotland) Regulations 1992.”.

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(6) Schedule 7A was inserted by S.I. 1989/802, regulation 43.

(7) Regulation B4A was inserted by S.I. 1989/802, regulation 5, and amended by S.I. 1990/422.

## **Right of appeal**

**11.** The provisions of Part N of the principal Regulations (determination of questions and appeals) shall apply in relation to rights and liabilities arising under these Regulations as they apply in relation to rights and liabilities under the principal Regulations.

St. Andrew's House,  
Edinburgh  
15th May 1992

*Fraser of Carmyllie*  
Minister of State, Scottish Office

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

Regulation 2

### RELEVANT SERVICE

1. “Relevant service” means service on or after 17th December 1990, other than for the purposes of training only,—

- (a) in pursuance of any notice or directions given under any enactment which provides for the calling out on permanent service, or the calling into actual service, or the embodiment of any reserve or auxiliary force, or members of such a force, or the recall of service pensioners; or
- (b) in pursuance of any obligation or undertaking, whether legally enforceable or not, to serve when called upon as a commissioned officer, not being an obligation or undertaking—
  - (i) to accept a permanent commission or a commission for a fixed term; or
  - (ii) to serve for the purposes of periodical training; or
- (c) rendered by virtue of section 14(1) or 34 of the Reserve Forces Act 1980~~(8)~~.

2. In this Schedule—

“regular forces” means the Royal Navy, the Royal Marines, the regular army and the regular air force or any reserve or auxiliary force which has been called out on permanent service, or which has been embodied;

“reserve or auxiliary force” means the whole or any part of the Royal Naval Reserve (including the Royal Fleet Reserve), the Royal Marines Reserve, the Territorial Army, the Army Reserve, the Air Force Reserve, the Royal Air Force Volunteer Reserve or the Royal Auxiliary Air Force;

“service pensioner” means a person in receipt of a pension granted in respect of service in the regular forces, or in respect of that service and other service, not being a pension awarded in respect of disablement.

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in connection with the pension rights of pensionable employees under the Local Government Superannuation (Scotland) Regulations 1987 ( “the principal Regulations”) who are called out or volunteer for duty as reservists in the Armed Forces.

Regulation 4 provides that all such employees will be able to count their military service as reckonable service for superannuation purposes, and will be treated as having paid all the appropriate contributions under the principal Regulations during the period of that service, whether or not they are in fact paid. If the employee dies, becomes permanently incapacitated, or reaches pensionable age while on military service he is deemed to have been serving in his local government employment at the time.

Regulation 5 provides that if the employee’s service pay, together with any “top up” paid by his local government employer, is not less than his local government pay he is required to pay the same

(8) 1980 c. 9.

contributions as would have been payable if he had remained in his local government employment. Regulation 7 sets out the methods by which such contributions may be recovered.

Regulation 8 deals with cases where the employee has elected to pay additional voluntary contributions under regulation C9A of the principal Regulations. Where such contributions are used to provide benefits payable in the event of death by means of an insurance policy, the appropriate administering authority is required to continue to pay the premiums, which are recoverable from the employee. Any other such contributions may continue to be paid by the employee if he so wishes.

The Regulations make provision for cases where the employee is called out after he has opted to join, or to leave, the Local Government Superannuation Scheme but before that option has taken effect. In such cases he will be treated as being in the Scheme unless he elects otherwise.

The Regulations are by virtue of section 12(1) of the Superannuation Act 1972 made retrospective to 17th December 1990.