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STATUTORY INSTRUMENTS

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**1998 No. 192**

**The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998**

**PART V**

**INJURY ALLOWANCES ETC.**

**Interpretation of Part V**

**38.**—(1) In this Part, unless the context otherwise requires, “relevant employment”, in relation to any person, means employment—

- (a) with a LGSS employer or the predecessor of such an employer; or
- (b) in which the person is, by virtue of regulation B6 of the Superannuation Regulations (admission agreements) or any corresponding earlier provision, entitled to participate in the benefits of a pension fund maintained under those Regulations or the former regulations;

and for the purposes of this Part a police cadet appointed under section 8 of the Police (Scotland) Act 1967<sup>(1)</sup> shall be deemed to be in employment with the police authority who maintain the force with which he is undergoing training.

(2) In this Part “the relevant employer”, in relation to any person, means—

- (a) the employer by whom the person in question was employed immediately before he first qualifies for any allowance or lump sum payable under this Part;
- (b) if he dies without qualifying for any such allowance or lump sum, the employer who last employed him in a relevant employment before his death; or
- (c) if the employer specified in paragraph (a) or (b) has ceased to exist, the employer to whom he would have been transferred if he had continued in the employment in question.

(3) References in this Part to an injury or disease do not include any injury or disease which is one in respect of which the person is entitled—

- (a) to an injury award under a scheme made in accordance with section 26 of the Fire Services Act 1947<sup>(2)</sup>; or
- (b) to injury benefits under regulations made in accordance with section 27 of the Police (Scotland) Act 1967.

(4) For the purposes of this Part, if a person—

- (a) sustains an injury while travelling as a passenger by vehicle to or from his place of work with his employer’s permission (whether express or implied); and

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(1) 1967 c. 77.

(2) 1947 c. 41 (10 and 11 Geo 6 c.41). Section 26 was amended by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65), section 42; the Fire Services Act 1951 (c. 27, section 1(3)); the Theft Act 1968 (c. 60) section 33; the Superannuation Act 1972 (c. 11), Schedule 8; the Social Security Act 1973 (c. 38), Schedule 27, paragraph 6; S.I.1976/551.

- (b) at the time of the injury the vehicle was being operated (otherwise than in the course of a public transport service) by or on behalf of, or pursuant to arrangements made by, his employer.

he shall be treated as having sustained the injury as a result of a requirement of carrying out his work.

### **Loss of employment through permanent incapacity**

**39.**—(1) If—

- (a) as a result of anything he was required to do in carrying out his work a person who is employed in a relevant employment—
  - (i) sustains an injury; or
  - (ii) contracts a disease; and
- (b) he ceases to be employed in that or any other relevant employment as a result of an incapacity which is likely to be permanent and was caused by the injury or disease,

he shall be entitled to an annual allowance not exceeding 85 per cent of his annual rate of remuneration in respect of the employment when he ceased to be employed.

(2) The allowance is to be paid by the relevant employer and, subject to paragraph (1), is to be of such amount as that employer may from time to time determine.

(3) In ascertaining for the purposes of paragraph (1) a person's annual rate of remuneration when he ceased to be employed—

- (a) the annual rate of any fluctuating element included in 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 as at the date on which he ceased to be employed;
- (c) if at that date—
  - (i) he had no remuneration; or
  - (ii) his remuneration was reduced,  
because of absence from duty, the annual rate is that which would have applied if he had not been absent;
- (d) if at that date he was entitled to an allowance under regulation 40 by reason of a reduction in his remuneration (whether as a result of the same or another injury or disease), the annual rate is that which would have applied if his remuneration had not been reduced;
- (e) if his remuneration is calculated by reference to a rate which is not annual, the annual rate is to be derived from the applicable rate at that date; and
- (f) if his remuneration is retrospectively altered as a result of a pay award, the annual rate is that based on the award.

(4) The relevant employer may suspend or discontinue the allowance under this regulation if the person becomes capable of working again.

### **Reduction in remuneration**

**40.**—(1) If—

- (a) as a result of anything he was required to do in carrying out his work a person who is employed in a relevant employment—
  - (i) sustains an injury; or
  - (ii) contracts a disease,

and suffers a reduction in his remuneration while he is employed in that or any other relevant employment; and

- (b) regulation 39 does not apply,

he shall be entitled to an allowance while the reduction continues.

(2) For the purposes of paragraph (1), a person's remuneration is to be treated as reduced at any time when it is lower than it would have been but for the injury or disease.

(3) The allowance under paragraph (1) is to be paid by the relevant employer and is to be of such amount as the employer may from time to time determine, but must not in any year exceed the shortfall between—

- (a) the person's remuneration in the relevant employment; and
- (b) the remuneration he would have been paid if he had not sustained the injury or, as the case may be, contracted the disease.

### **Allowances for pensioners**

**41.**—(1) Where a person ceases to be employed in a relevant employment, if—

- (a) immediately before so ceasing he was entitled to an allowance under regulation 40;
- (b) on so ceasing regulation 39 does not apply, but he becomes entitled under Part E of the Superannuation Regulations to receive payments in respect of an annual retirement pension and regulation E22(4) of those Regulations (different relevant period for calculating pensionable remuneration where a material reduction has been certified) does not apply; and
- (c) the annual rate of the retirement pension in any year falls short of what it would have been if the amount of the allowance paid under regulation 40 during the period which is the relevant period for the purposes of regulation E22 of the Superannuation Regulations had been part of his remuneration in the relevant employment,

the relevant employer may pay him an allowance (but not of an amount in any year exceeding that shortfall).

(2) An allowance under this regulation continues for such period as the relevant employer may determine.

### **Death benefits**

**42.**—(1) If—

- (a) as a result of anything he was required to do in carrying out his work a person who is employed in a relevant employment—
  - (i) sustains an injury; or
  - (ii) contracts a disease; and
- (b) he dies as a result of the injury or disease,

then—

- (i) subject to paragraph (2), if the deceased leaves a surviving spouse or spouses, the surviving spouse or all of them shall be entitled to an annual allowance or lump sum; and
- (ii) if the deceased leaves a dependant, the dependant shall be eligible for an annual allowance or lump sum.

(2) A surviving spouse shall not be entitled to an annual allowance or lump sum if at the date of death he was cohabiting with another person outside marriage.

(3) The allowance or lump sum is to be paid by the relevant employer and is to be of such amount as the employer may from time to time determine.

(4) Subject to paragraph (5), an allowance to a surviving spouse shall cease if he remarries or cohabits with another person outside marriage, but if that marriage is dissolved or the cohabitation ceases the relevant employer may restore the allowance for such period as the employer may determine.

(5) Where the person whom the surviving spouse marries or with whom he cohabits is also a surviving spouse entitled to an allowance under this regulation, they may determine which of them is to be entitled to the allowance and the other shall cease to be entitled to it until the dissolution of the marriage or, as the case may be, the ending of the cohabitation.

(6) An allowance to a dependant shall continue for such period as the relevant employer may determine.

### **Considerations in determining amount of benefits**

**43.**—(1) In determining the amount of an allowance under regulation 39 or 40 or of an allowance or a lump sum under regulation 42, the relevant employer is to have regard to all the circumstances of the case, including the matters specified in paragraph (2) (except in so far as they are excluded by paragraph (3)).

(2) The matters mentioned in paragraph (1) are—

- (a) any right to benefit under Part V of the Social Security Contributions and Benefits Act 1992<sup>(3)</sup>;
- (b) any other statutory right to benefit or compensation;
- (c) any right to receive pension benefit (whether payable under an enactment or otherwise); and
- (d) any damages recovered and any sum received by virtue of a contract of insurance.

(3) In the case of an allowance or a lump sum which is payable by virtue of a person having sustained an injury, no regard shall be had—

- (a) to any benefit payable periodically which the person was entitled to be paid before the injury was sustained;
- (b) to any right which accrued before that time; or
- (c) to any damages or sum received by virtue of such a right.

### **Application of Part V in respect of injury or disease before commencement date**

**44.**—(1) Subject to the following provisions of this regulation, this Part applies even if the injury or disease was sustained or contracted before the date on which these Regulations come into force.

(2) Regulations 39 and 41 do not apply if the cessation of employment occurred before 31st March 1972, regulation 40 does not apply if the reduction of remuneration occurred before that date and regulation 42 does not apply if the death occurred before that date.

(3) Any injury benefit treated by virtue of regulation L9(6) of the Superannuation Regulations as having been paid under Part L of those Regulations shall be treated as if it were an allowance or lump sum, as the case may be, paid under this Part.

(4) If adequate provision has already been made for a person under regulation 7 of the Benefits Regulations, this Part does not apply to him.

(5) Where—

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(3) 1992 c. 4.

- (a) by virtue of paragraph (2) regulation 39, 40, 41 or 42 applies in a case where the cessation of the employment, the reduction of remuneration or, as the case may be, the death occurred before 21st December 1987; and
- (b) paragraphs (3) and (4) do not apply,

the relevant employer shall decide what allowance or lump sum (if any) is to be granted in accordance with this Part for any past or future period (but in making that decision the relevant employer shall take into account any allowance to which the person is or was entitled under regulation 8 of the Benefits Regulations).

(6) Regulation 43(2)(c) has effect in cases where the cessation of employment, reduction in remuneration or death in question occurred before 6th April 1988 with the insertion after the word “otherwise)” of the words “out of any fund to which any body which employed him in relevant employment has made any contributions in respect of him or out of any fund to which assets of any such fund were transferred”.