STATUTORY INSTRUMENTS

1990 No. 521

EDUCATION, ENGLAND AND WALES
LOCAL GOVERNMENT, ENGLAND AND WALES
PENSIONS

The Local Government Reorganisation (Superannuation and Compensation) Regulations 1990

Made - - - -	*7th March 1990*
Laid before Parliament	*9th March 1990*
Coming into force	*1st April 1990*

The Secretary of State for the Environment, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(**a**), after consultation with such associations of local authorities as appeared to him to be concerned, the local authorities with whom consultation appeared to him to be desirable and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate, of the powers conferred on him by section 24 of that Act, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government Reorganisation (Superannuation and Compensation) Regulations 1990 and shall come into force on 1st April 1990, but regulation 2 shall have effect as from 14th July 1989 and regulation 6 shall have effect as from 28th February 1986.

(2) In these Regulations, unless the context otherwise requires–

"the 1988 Act" means the Education Reform Act 1988(**b**);

"the principal Regulations" means the Local Government Superannuation Regulations 1986(**c**);

"former employer" means the former employer within the meaning of section 174 of the 1988 Act;

"new employer" means the new employer within the meaning of section 172 or, as the case may be, section 174 of the 1988 Act;

and any expression which is also used in the principal Regulations has the same meaning as in those Regulations.

Continuity of employment in certain cases

2.—(1) This regulation applies–

(a) to any person who is designated for the purposes of section 172 of the 1988 Act (power to transfer staff), if the new employer is a scheduled body, and

(**a**) 1972 c.11.
(**b**) 1988 c.40.
(**c**) S.I. 1986/24, amended by S.I. 1986/380, 1987/293, 1579, 2110, 1988/466, 1989/371, 372, 1462, 1624, 1815.

(b) to any person to whom section 174 of that Act (continuity of employment in certain cases of voluntary transfer) applies, if–

(i) the new employer is a scheduled body, and

(ii) where the former employer is the London Residuary Body, the termination of the person's employment is not attributable to an order under section 187(5) of that Act giving effect to a scheme for the winding-up of that body.

(2) The principal Regulations shall have effect in relation to a person to whom this regulation applies as if on the relevant date he had been transferred as mentioned in paragraph (a)(vi) of the definition of "transferred employee" in regulation H1 of those Regulations (certain transfers under the Local Government Act 1972(**a**)).

(3) In paragraph (2), "on the relevant date" means–

(a) where paragraph (1)(a) applies, on 1st April 1990, and

(b) where paragraph (1)(b) applies, immediately after the person concerned ceased to be employed by the former employer.

Determination of questions

3.—(1) Any question concerning the application of regulation 2 to a person shall be decided in the first instance by the scheduled body which is his new employer.

(2) The scheduled body shall notify the person in writing of its decision, and in its notification it must–

(a) give reasons for its decision, and

(b) inform the person of his right under paragraph (3) to institute proceedings and of the address to which any application instituting such proceedings should be sent.

(3) If–

(a) the person is dissatisfied with the scheduled body's decision in his case, or

(b) the scheduled body has not, within 6 months after 1st April 1990 or, as the case may be, after his ceasing to be employed by his former employer, notified him of a decision,

he may institute proceedings for the determination of the question by an industrial tribunal established in pursuance of the Industrial Tribunals (England and Wales) Regulations 1965(**b**).

(4) The right conferred by paragraph (3) above is without prejudice to any right to make such a reference to an industrial tribunal as is mentioned in section 101(1)(c) of the Employment Protection (Consolidation) Act 1978(**c**) (reference of question as to right to or amount of redundancy payment).

Election to retain preserved benefits

4.—(1) This regulation applies to a person who, but for regulation 2 above, would become entitled to preserved benefits on ceasing to hold his employment under the former employer.

(2) A person to whom this regulation applies may elect to be treated for the purposes of the principal Regulations as if–

(a) regulation 2 above did not apply to him and he had accordingly become entitled to preserved benefits, and

(b) he had elected under regulation E2(9)(c) of the principal Regulations to remain so entitled.

(3) An election under this regulation must be made by giving notice in writing to the appropriate administering authority, within 3 months after the person commences employment under the new employer or within 3 months after 1st April 1990, whichever is the later, unless the appropriate administering authority or, where there is a change of fund, the administering authorities of both funds, allow a longer period.

(**a**) 1972 c.70.
(**b**) S.I. 1965/1101, amended by S.I. 1967/301, 1970/941, 1977/1473.
(**c**) 1978 c.44.

Right to opt out

5. Regulation 2 above shall not apply to any person to whom at any time before 1st April 1990 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 or might have become payable if–

(a) he is placed by that regulation in a worse position than he would have been in if it had not applied in relation to that benefit, and

(b) that regulation applies in relation to a benefit paid or payable in respect of a person who–

(i) ceased before 1st April 1990 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 first-mentioned person, by notice in writing given to the appropriate administering authority within 3 months after 1st April 1990, elects that regulation 2 shall not apply to him.

Compensation for loss or diminution of emoluments

6. Regulation 7 of the Local Government Reorganisation (Compensation) Regulations 1986(**a**) is amended–

(a) in paragraph (2)(b), by substituting for the words from "for" to "service" the words "throughout the previous 3 years by one or more of the employers referred to in the Appendix to Schedule 2 to the Redundancy Payments (Local Government) (Modification) Order 1983(**b**)";

(b) in paragraph (2)(d), by the substitution for the words "in relevant local government service consisting of service with" of the word "by".

Signed by authority of the Secretary of State

David Hunt
Minister of State,
Department of the Environment

7th March 1990

(**a**) S.I. 1986/151, amended by S.I. 1988/466.
(**b**) S.I. 1983/1160, amended by S.I. 1985/1872, 1988/907, 1989/532.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for matters connected with the Education Reform Act 1988 ("the 1988 Act") and the Local Government Act 1985 (c.51) ("the 1985 Act").

Regulation 2 provides for continuity of employment, for the purposes of the Local Government Superannuation Regulations 1986, for ILEA non-teaching staff and London Residuary Body employees who are transferred by order under section 172 of the 1988 Act to scheduled bodies (as defined in those Regulations), and for employees who transfer voluntarily between scheduled bodies in circumstances to which section 174 of that Act (which provides continuity of employment for certain other purposes) applies.

Regulation 3 provides for the determination of questions as to the application of regulation 2, and regulation 4 allows persons to elect to be treated as if regulation 2 did not apply and they had instead acquired and retained rights to preserved benefits.

Regulation 2 is by virtue of section 12 of the Superannuation Act 1972 made retrospective to the earliest day of transfers to which section 174 of the 1988 Act applies, but where rights in relation to ex-employees could be adversely affected, provision is made for opting out (regulation 5).

Regulation 6 amends the Local Government Reorganisation (Compensation) Regulations 1986 ("the 1986 Regulations") so as to make part-time employees eligible for compensation under Part III of those Regulations in respect of loss or diminution of emoluments attributable to any provision made by or under the 1985 Act.

Regulation 6 is by virtue of section 24 of the Superannuation Act 1972 made retrospective to the date on which the 1986 Regulations came into force.

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