STATUTORY INSTRUMENTS

1986 No. 214 (S. 15)

PENSIONS

The Local Government Superannuation (Scotland) Amendment Regulations 1986

Made - - - -	*6th February* 1986
Laid before Parliament	*26th February* 1986
Coming into Operation	
Part I *and Part* III	*18th March* 1986
Part II	*1st April* 1986

In exercise of the powers conferred on me by sections 7 and 12 of the Superannuation Act 1972 (**a**) and of all other powers enabling me in that behalf, after consultation with such associations of local authorities as appeared to me to be concerned and such representatives of other persons likely to be affected by the regulations as appeared to me to be appropriate in accordance with section 7(5) of that Act, I hereby make the following regulations:—

Citation and commencement

1.—(1) These regulations may be cited as the Local Government Superannuation (Scotland) Amendment Regulations 1986 and the Local Government Superannuation (Scotland) Regulations 1974–84 (**b**) and these regulations may be cited together as the Local Government Superannuation (Scotland) Regulations 1974 to 1986.

(2) *(a)* Parts I and III of these regulations shall come into operation on 18th March 1986 except regulation 10 which shall have effect from 1st January 1985, regulations 11 and 13 which shall have effect from 6th April 1978 and regulations 12, 16 and 17 which shall have effect from 5th April 1983.

(b) Part II of these regulations shall come into operation on 1st April 1986.

Interpretation

2. In these regulations a reference to "the principal regulations" is a reference to the Local Government Superannuation (Scotland) Regulations 1974 (**c**).

PART I

Transfers between England and Wales and Scotland

3. After regulation A8 of the principal regulations there shall be added the following regulations:—

(**a**) 1972 c.11.
(**b**) S.I. 1974/812, 1975/638, 1978/425, 1378, 1794, 1926, 1980/198, 342, 1885, 1981/1892, 1982/385, 1303, 1983/1421, 1984/254, 1232.
(**c**) S.I. 1974/812; the relevant amending instruments are S.I. 1975/638, 1978/425, 1378, 1794, 1926, 1980/198, 1885, 1981/1892, 1982/385, 1303, 1983/1421, 1984/1232.

"Transfers from England and Wales to Scotland

A9.—(1) In this regulation "previous local government employment" means employment or employments in England and Wales—

(a) in relation to any time before 1st April 1974, as a contributory employee within the meaning of the Local Government Superannuation Act 1937 **(a)** or as a local Act contributor within the meaning of that Act, and

(b) in relation to any time after 31st March 1974, by virtue of which the person was, or was deemed to be, a pensionable employee within the meaning of the Local Government Superannuation Regulations 1974 **(b)** or by virtue of which the person was a contributor to the local Act superannuation fund within the meaning of the Local Government Superannuation (City of London) Regulations 1977 **(c)**.

(2) This regulation shall apply to a person who was in previous local government employment and to whom Part II of the Local Government Superannuation (England and Scotland) Regulations 1948 to 1970 **(d)** did not apply and who entered employment with a scheduled body on or after 1st April 1974, or who had ceased to be in previous local government employment on or after 1st April 1972, and who more than a year after so ceasing became a contributing employee or local Act contributor.

(3) Where this regulation applies—

(a) "appointed day" for the purposes of these regulations shall be 1st April 1974;

(b) these regulations shall apply as if any period of previous local government employment was service with a scheduled body;

(c) except in regulation A10 any reference in these regulations to an enactment, rule or regulation shall be deemed to include a reference to the corresponding provisions which applied or which apply in England and Wales.

Transfers from Scotland to England and Wales

A10.—(1) This regulation shall apply to a person who on or after 31st March 1972 ceases to be employed in a local government employment and subsequently enters employment with a scheduled body within the meaning of the Local Government Superannuation Regulations 1974 **(e)** hereinafter referred to as "the new employment", and to whom Part III of the Local Government Superannuation (England and Scotland) Regulations 1948 to 1970 did not apply.

(2) Part Q of these regulations shall apply to a person to whom this regulation applies as if on the date of entry to the new employment he had become employed by a scheduled body within the meaning of these regulations and any references to "new local government employment" and "new fund authority" in that part of these regulations shall be treated as if they included a reference to the corresponding terms in Part P of the Local Government Superannuation Regulations 1974 **(f)**.".

(a) 1937 c.68.
(b) S.I. 1974/520; the relevant amending instruments are S.I. 1977/1341, 1978/822 and 1979/1534.
(c) S.I. 1977/1341, to which there are amendments not relevant to these regulations.
(d) S.I. 1948/1131, 1949/631, 1954/1250, 1970/1126.
(e) S.I. 1974/520; the relevant amending instrument is S.I. 1977/1341.
(f) S.I. 1974/520; the relevant amending instrument is S.I. 1981/1250.

Use and investment of superannuation fund's moneys

4. The following regulation shall be substituted for regulation B6(2) of the principal regulations:—

"(2) For the purposes of this regulation and of regulation B5*(c)*, investment includes—

(a) any contract which by virtue of section 45 of the Finance Act 1984 **(a)** (extension of pension schemes' tax exemptions to dealings in financial futures and traded options) is to be regarded as an investment for the purposes of the enactments referred to in that section, and

(b) use by the administering authority for any purpose for which they have a statutory borrowing power.".

Return of employee's contributions in certain cases

5. After regulation C8(8) of the principal regulations there shall be added the following:—

"(9) Where the service in respect of which a payment under this regulation may be made is restricted by paragraph (4)*(b)* or *(d)*, paragraph (8) has effect as if—

(a) in sub-paragraph *(e)*, the words "or under regulation C1A", and

(b) sub-paragraph *(f)*,

were omitted.".

Entitlement to widow's short-term pension and widow's long-term pension

6.—(1) In regulation E5(1) of the principal regulations for the words "his widow shall be entitled" there shall be substituted the words "or widows, she is, or as the case may be they are jointly, entitled"; and

(2) For paragraph *(a)* (i) of the proviso to the said regulation E5(1) there shall be substituted the following:—

"(i) by virtue of sub-paragraph *(a)* or *(c)* unless she was her husband's wife at some time while he was in local government employment after 31st March 1972 and before the date on which he became entitled to the retirement pension; or".

Amount of widow's short-term pension and widow's long-term pension

7. In regulation E6 of the principal regulations the words "the widow of" shall be deleted, wherever they occur.

Amount of children's short-term pension and children's long-term pension

8. The following regulation shall be substituted for regulation E9(2) of the principal regulations:—

"(2) Subject to paragraph (3), the annual amount of children's long-term pension shall be—

(a) where there is one eligible child and he is in the care of a widow of the deceased person, one quarter of the deceased person's retirement pension,

(a) 1984 c.43.

(b) where there is one child and he is not in the care of such a widow, one third of the retirement pension,

(c) where there are two or more eligible children and—

(i) half or more of them are in the care of such a widow, or

(ii) fewer than half of them are in the care of such a widow but a widow's pension under regulation E5 is for the time being payable,

one half of the retirement pension, and

(d) where there are two or more eligible children and fewer than half of them are in the care of such a widow and no such widow's pension is payable, two thirds of the retirement pension.".

Combined benefits in the case of certain re-employed local government pensioners

9. After regulation E16(1) of the principal regulations there shall be inserted the following paragraph:—

"(1A) In relation to a person who—

(a) before 1st April 1972—

(i) became entitled to a superannuation allowance under Part I of the Act of 1937 or to an annual pension under the former regulations, and

(ii) again became a contributory employee, and

(b) has not since he again became a contributory employee had a disqualifying break of service,

this regulation has effect as if—

(i) the references in paragraph (1)*(a)* and *(d)* to a retirement pension were references to that superannuation allowance or annual pension;

(ii) any local government employment which he ceased to hold were the further pensionable employment specified in paragraph (1)*(b)*, and

(iii) references to a retiring allowance were references to a retirement grant under the former regulations.".

Provision as to protection of pensions

10. After regulation L11A of the principal regulations there shall be inserted the following regulation:—

"Provision as to protection of pensions

L11B. Any increase in a pension which is required by virtue of sections 41A to 41C (protection of pensions) of the Social Security Pensions Act 1975 **(a)** shall be paid out of the appropriate superannuation fund.".

Persons transferring to approved non-local government employment

11.—(1) At the beginning of regulation P2(2) of the principal regulations there shall be inserted the words "Subject to paragraph (3A)".

(a) 1975 c.60; sections 41A to 41C were inserted by the Health and Social Security Act 1984 (c.48), Schedule 6, and were modified by the Contracting-out (Protection of Pensions) Regulations 1984 (S.I. 1984/1921); sections 41A and 41B were amended by the Social Security Act 1985 (c.53), section 6 and Schedule 3, paragraph 3.

(2) In regulation P2(2)*(d)* (ii) of the principal regulations, after the words "non-local government employment" there shall be inserted the words "(other than employment with an institution of the Communities)".

(3) After regulation P2(3) of the principal regulations there shall be added the following:—

"(3A) Notwithstanding paragraph (2)*(a)* a transfer value may be paid in the case of any person who left local government employment on or after 16th May 1975 and who—

(a) was entitled to reckon an aggregate of not less than 5 years' reckonable service, and

(b) received a refund of part of his contributions,

in relation to service in respect of which he is entitled to benefits under regulation E2(1)*(c)*.".

(4) After regulation P2(4) of the principal regulations there shall be added the following:—

"(5) For the purposes of this regulation the term institution of the Communities has the meaning given by regulation P6(3).".

Persons transferring from non-local government employment

12. In regulation P7(3)*(b)* of the principal regulations after the words "transfer value" there shall be inserted the words "together with the amount of any limited revaluation premium under section 45 of the Pensions Act repaid to the fund authority by the Secretary of State.".

Exclusion from crediting of reckonable service and qualifying service

13.—(1) For regulation P8A(1)*(b)* of the principal regulations there shall be substituted the following:—

"*(b)* a transfer value would not secure a resultant pension at least equal to the aggregate of—

(i) the annual equivalent of his guaranteed minimum at the commencement of his local government employment in respect of service to which the transfer value relates, and

(ii) where equivalent pension benefits were, but would not remain, assured by his non-local government scheme, the annual rate of those benefits,".

(2) For regulation P8A(2) of the principal regulations there shall be substituted the following regulation:—

"(2) A person's resultant pension shall be calculated in accordance with the formula—

$$R = \frac{N}{80} \times S$$

where—

R is the annual amount of the resultant pension;

N is the period of reckonable service expressed in years and fractions of a year which the person would, but for the provisions of this regulation, be entitled to reckon if the fund authority received the transfer value required by regulation P7(3)*(b)*; and

S is the annual rate of remuneration on the day on which he became a pensionable employee, such annual rate in the case of a weekly wage earner being 52.18 times the rate of his weekly wage.".

Funds out of which combined benefits are to be paid

14. After regulation Q6(4) of the principal regulations there shall be added the following:—

"(5) Where after the combined benefit becomes payable the first fund authority make any payment in respect of the retirement pension to a person appearing to them to be entitled to it, the amount of that payment shall be deducted—

(a) by the second fund authority from the combined benefit payable to the pensioner, and

(b) by the first fund authority from the amount to be paid by them under paragraphs (2) and (3).".

Provisions applicable as respects additional contributions while any amount remains outstanding

15.—(1) For paragraph 3 of Schedule 5 to the principal regulations there shall be substituted—

"3. If the employee ceases to hold his employment other than on the ground that he is incapable of discharging efficiently the duties of the employment by reason of permanent ill-health or infirmity of mind or body or dies or does not become entitled to benefits under regulation E2(1)*(b)* (iii) and any payment made to him under regulation C8 does not include the amount already paid by him under the relevant regulation, then, subject to paragraph 6, he shall be entitled to reckon such an additional period as is determined in accordance with the formula in paragraph 4.".

(2) For paragraph 6 of the said Schedule 5 there shall be substituted—

"6. If the employee ceases to hold his employment under the employing authority other than in the circumstances mentioned in paragraphs 2 or 2A and within 12 months after so ceasing, without in the meantime having become entitled to receive payment of any benefit under these regulations in respect of that employment or any payment under regulation C8 which includes the amount already paid by him under regulation D10 or D13, again becomes a pensionable employee in the employment of any employing authority and does not give such a notice as is mentioned in regulation E2(4)*(e)*, then if, within 3 months after the date on which he again becomes a pensionable employee, he pays to the employing authority or, as the case may be, the employing authorities by whom he is employed, an amount equal to the additional contributions (if any) which would have been payable by him during the period between so ceasing to hold his employment and again becoming a pensionable employee, if during that period he had remained in his former employment, paragraph 3 shall cease to apply and his election under regulation D10 or, as the case may be, D13 shall continue to have effect.".

Calculation of transfer values

16.—(1) For paragraph 1*(a)* (iii) of Schedule 20 to the principal regulations there shall be substituted the following paragraph:—

"(iii) in the case of a person in relation to whom, when he ceases to be employed in local government employment a contributions equivalent premium is paid under section 42 of the Pensions Act, or a limited revaluation premium is paid under section 45 of that Act otherwise than by the scheme managers of his approved non-local government scheme, a sum equal to the amount of the premium or premiums,".

(2) In paragraph 3 of the said Schedule 20 in the definition of "accrued pension" there shall be inserted after the words "pension (however named) to which" the words "having regard to regulations E20 and F19".

Calculation of reckonable service to be credited under regulation P8

17. In paragraph 1 of Schedule 21 to the principal regulations for the words from "of the amount" to the end there shall be substituted the following:—

"*(a)* of the amount which that authority accepted in respect of him under regulation P7, or

(b) where—

(i) the person became employed in his local government employment after 4th April 1983, and

(ii) a limited revaluation premium was paid under section 45 of the Pensions Act and has been repaid to the fund authority by the Secretary of State,

of the total of the amount mentioned in sub-paragraph *(a)* and the amount of the premium.".

PART II

Definitions

18.—(1) In regulation A3(1) of the principal regulations after the definition of "contracted-out employment" there shall be inserted the following definitions:—

" "contractual hours" and "contractual weeks" have the meanings given by regulation B2A(5);".

(2) In the said regulation A3(1) for the definition of pensionable employee there shall be substituted the following definition:—

" "pensionable employee" means a person who is for the time being entitled under regulation B2 or by virtue of an election under regulation B2A to participate in the benefits of the appropriate superannuation fund;".

Superannuation funds

19.—(1) At the beginning of regulation B1 of the principal regulations there shall be inserted the figure "—(1)".

(2) At the end of the said regulation B1 there shall be added the following:—

"(2) Except where the contrary intention appears, any benefit payable under these regulations shall be paid out of the appropriate superannuation fund and in the case of a benefit by way of annual payments shall be made at such interval, not being longer than 3 months, as the appropriate administering authority may determine.".

Pensionable employees

20.—(1) In regulation B2(1)*(b)*(i) of the principal regulations after the words "employing authority" there shall be added the words "or has entered or re-entered the employment of that body less than 12 months after completing at least 12 months' continuous whole-time employment with a scheduled body;".

(2) In regulation B2(1)*(b)*(ii) of the principal regulations—

(a) the words "without a disqualifying break in service," shall be deleted; and

(b) after the words "return of" there shall be inserted the words "the whole of his".

(3) In regulation B2(1)*(b)* of the principal regulations after the words "other than" there shall be inserted the words ", but subject to paragraph (1A),".

(4) At the end of regulation B2(1) of the principal regulations there shall be added the following:—

"*(h)* subject to regulation B2B(1), every pensionable employee employed by a scheduled body who before 1st April 1986 ceased to be a whole-time employee but who continued without a break of service in the employment of that body in the same post and who was notwithstanding the provisions of these regulations in force before that date regarded as a pensionable employee by that scheduled body and, where that body was not an administering authority, by the administering authority.".

(5) After regulation B2(1) of the principal regulations there shall be inserted the following:—

"(1A) A person who—

(a) elected under paragraph 3 of Schedule 4 to the Act of 1937 not to become a contributory employee, and

(b) had he not so elected, would be a pensionable employee by virtue of paragraph (1)*(b)*,

may at any time, notwithstanding anything in paragraph (1)*(b)*, by notice in writing to the body by whom he is employed elect to become a pensionable employee from the date on which the notice is given.".

(6) In regulation B2(3) of the principal regulations after the words "paragraph (1)*(a)*, *(b)* or *(c)*" there shall be inserted the words ", paragraph (1A) or regulation B2A(1)".

(7) After regulation B2(4)*(e)* of the principal regulations there shall be added the following:—

"*(f)* a person who may elect under regulation B2A to become entitled to participate in the benefits of the appropriate superannuation fund.".

Relevant employment and pensionability

21.—(1) After regulation B2 of the principal regulations there shall be inserted the following regulations:—

"Persons who may elect to be pensionable employees

B2A.—(1) Subject to regulation B2B and paragraph (6), 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.

(2) In this regulation and in regulation B2B, "relevant employment" means, subject to paragraphs (3) and (4), employment by a scheduled body in which in every period of 12 months—

(a) the contractual weeks are 35 or more but fewer than 45 and the contractual hours are 30 or more, or

(b) the contractual weeks are 35 or more and the contractual hours are 15 or more but fewer than 30.

(3) If a person is in two or more employments under a single scheduled body, and—

(a) none of those employments is an employment falling within paragraph (2)*(b)*, but

(b) in each of the employments the contractual weeks in every period of 12 months are 35 or more, and

(c) the total of the contractual hours in all the employments is 15 or more,

then each of the employments is a relevant employment, but an election under this regulation in respect of any one of them is of no effect unless elections are made in respect of all of them.

(4) If a person is in two or more employments under a single scheduled body of which—

(a) one at least is an employment falling within paragraph (2)*(b)*, and

(b) one at least is an employment in which the contractual weeks in every period of 12 months are 35 or more but the contractual hours are fewer than 15,

then every employment falling within sub-paragraph *(b)* is a relevant employment, but an election under this regulation in respect of such an employment is of no effect unless an election is made in respect of an employment falling within sub-paragraph *(a)*.

(5) In paragraphs (2), (3) and (4), "the contractual weeks" means the number of weeks the employee is regularly or usually required to work by the scheduled body, and "the contractual hours" means the number of hours the employee is regularly or usually required to work by the scheduled body in each of those weeks.

(6) Paragraph (1) shall not apply to—

(a) a person who falls within regulation B2(4)*(a)* to *(e)*, or

(b) a person who—

(i) was on 15th May 1974 a contributory employee or local Act contributor, and

(ii) on 16th May 1974 became a pensionable employee,

if there has since been no period of a day or more during which he was not a pensionable employee, or

(c) any other person who was a pensionable employee on 31st March 1986 if there has since been no period of a day or more during which he was not a pensionable employee, or

(d) a manual worker unless—

(i) he has completed 12 months' continuous employment with his employing body, or

(ii) he entered or re-entered the employment of that body less than 12 months after completing at least 12 months' continuous employment with a scheduled body, or

(iii) he became employed by that body after ceasing to be employed in a non-local government employment and within the period of 12 months beginning with the date on which he became so employed, by notice in writing given to the administering authority appropriate to pensionable employees under the aforesaid body, elected that he shall become a pensionable employee and within that period, he has given an undertaking to the aforesaid administering authority that, if he becomes a pensionable employee under the aforesaid body, he will apply to have his pension rights relating to his non-local government scheme transferred to them or preserved in the non-local government scheme;

(e) an employee of a scheduled body who are not a body described in Part I of Schedule 1, unless they have by a statutory resolution as defined in regulation B2(5) specified him as a person, or specified a class of persons to which he belongs as a class of persons, to whom paragraph (1) is to apply.

(f) a part-time member of a fire brigade maintained under the Fire Services Act 1947 **(a)** .

(7) An election under this regulation may be made at any time by giving notice to the employing body, and—

(a) subject to paragraphs (3) and (4), has effect from the date on which it is made, and

(b) subject to regulation B2B, continues to have effect so long as the person who made it remains in an employment in respect of which it was made.

Other elections as to pensionability

B2B.—(1) A person may by notice in writing to the employing authority elect to cease to be a pensionable employee if—

(a) he is in a relevant employment or relevant employments, and

(i) he was a pensionable employee on the day before the date of coming into operation of Part II of the Local Government Superannuation (Scotland) Amendment Regulations 1986, and

(ii) there has since been no period of a day or more during which he was not a pensionable employee, and

(a) 1947 c.41.

(iii) he is not a person who falls within regulation B2A(6)*(b)*, or

(b) he has made an election under regulation B2A while in a relevant employment falling within regulation B2A(2)*(a)*, and—

(i) is in a single relevant employment falling within regulation B2A(2)*(b)* of that definition and is not in any relevant employment falling within regulation B2A(4)*(b)*, or

(ii) is in relevant employments falling within regulation B2A(3).

(2) An election under paragraph (1) has effect from the date on which it is made, and for so long as the person who made it continues to be in a relevant employment or relevant employments.

(3) While an election under paragraph (1) has effect the person who made it is not entitled—

(a) under regulation B2 to participate in the benefits of any superannuation fund maintained under these regulations, or

(b) to make any election under regulation B2A.

(4) If—

(a) a person became entitled by virtue of an election or elections under regulation B2A to participate in the benefits of the appropriate superannuation fund in relation to one or more employments, and

(b) the contractual hours, or as the case may be the total of the contractual hours, have become fewer than 15, or the contractual weeks have become fewer than 35,

he may elect to cease to be a pensionable employee.

(5) An election under paragraph (4) must be made in writing to the employing authority within 6 months from the date on which the contractual hours or as the case may be the total of the contractual hours, became fewer than 15, or the contractual weeks became fewer than 35.

(6) For the purposes of these regulations other than regulation C8 a person who makes an election under paragraph (1) or paragraph (4) shall be treated as if he had, on the date on which the election was made, ceased to hold the employment or employments in which he was a pensionable employee.".

Actuary's Certificates

22. After regulation B8(4) of the principal regulations there shall be added the following:—

"(5) If—

(a) the rate specified under paragraph (2)*(a)* for the first year of the period to which an actuary's certificate relates ("the new rate") is less than the rate for the last year of the period immediately preceding the period to which the certificate relates ("the preceding period"), and

(b) the certificate has been obtained more than 6 months before the end of the preceding period,

the new rate shall, if the actuary and the administering authority so agree, have effect for the whole or part of the last year of the preceding period.".

Qualifying Service

23. At the end of regulation D2 there shall be added the following :—

"*(e)* in the case of a person who was at any time from 1st April 1974 until 31st March 1986 or in the case of a manual worker, at any time from 1st April 1973 until 31st March 1986, in relevant employment as defined in regulation B2A(2), any period of service during that time in which the employee was employed for at least 15 hours in a week except—

(i) any period of reckonable service,

(ii) where the employee's relevant employment was interrupted for 12 months or more, any period of relevant employment occurring before the interruption, and

(iii) in the case of a manual worker, the first 12 months of any period of relevant employment not otherwise excepted.".

Calculation of part-time service

24. For regulation D17 of the principal regulations there shall be substituted the following regulation:—

"**D17.** For the purposes of calculating the amount of any benefit under these regulations other than regulation E3(4) which is or will become payable to or in respect of a pensionable employee who—

(a) has served as a part-time employee, or

(b) who has made an election under regulation B2A but is not an employee whose contract of employment requires him to serve for less than 45 weeks in every period of 12 months;

the period of part-time service shall be treated as though it were whole-time service for a proportionately reduced period.".

Calculation of service in certain other cases

25. After regulation D17 of the principal regulations there shall be added the following regulation:—

"*Calculation of service in certain other cases*

D17A.—(1) For the purposes of calculating the amount of any benefit under these regulations which is or will become payable to or in respect of a pensionable employee, the period of service in each income tax year during which he was a pensionable employee by virtue of an election under regulation B2A being an employee whose contract of employment requires him to serve for fewer than 45 weeks in every period of 12 months, shall be multiplied by $\frac{A}{B}$, where—

A is the remuneration he would have received during the income tax year on the assumption that there had been no discontinuance or reduction of remuneration during any absence from duty owing to illness or injury, and

B is the remuneration that would, on that assumption, have been paid during the income tax year in respect of a single comparable whole-time employment under a scheduled body in which remuneration was payable for 52 weeks in every period of 12 months.

(2) For the purposes of paragraph 1 "service" includes any period of time covered by the contract of employment but not a period of absence without leave.".

Pensionable remuneration

26.—(1) At the beginning of regulation E1(3)*(b)* of the principal regulations there shall be inserted the words "subject to regulation E3(10)*(c)* and sub-paragraph *(bb)*,".

(2) After regulation E1(3)*(b)* there shall be added the following :—

"*(bb)* subject to regulation E3(10)*(c)* where immediately before ceasing to be a pensionable employee a person was in the employment in respect of which he was an employee and was required to serve for fewer than 45 weeks in every period of 12 months, his remuneration shall be deemed to be the remuneration which would have been paid for a single comparable whole-time employment in which remuneration was payable for 52 weeks in every period of 12 months;".

Entitlement to retirement pension and retiring allowance

27.—(1) In regulation E2(1)*(c)* of the principal regulations for the words "regulation G4(3)*(b)*" there shall be substituted the words "regulation B2B(6) or G4(3)*(b)*".

(2) The following regulation shall be substituted for regulation E2(4)*(a)* (iv) of the principal regulations:—

"(iv) unless he has attained the age of 60 years and has, on or after but not more than 3 months after the date of his attaining that age or of his so ceasing to be employed, whichever is the later, by notice in writing to the employing authority elected to receive payment from that date;".

Amount of retirement pension and retiring allowance

28. The following regulation shall be substituted for regulation E3(9) of the principal regulations:—

"(9) Where a pensionable employee becomes entitled to benefits under these regulations by virtue of regulation E2(1)*(c)* or *(d)* and—

(a) in the case of a male pensionable employee, elects as mentioned in regulation E2(4)*(a)* (iv) or, as the case may be, regulation E2(5)*(b)* to be entitled to receive benefits from the date on which he ceased to hold his employment or on which he attained the age of 60 years; or

(b) in the case of the female pensionable employee to whom regulation E2(4)*(b)* (ii) or, as the case may be, regulation E2(5)*(c)* applies:

the amount of any benefit calculated under the preceding provisions of this regulation shall be reduced by the percentage shown in the

appropriate column of the table set out in Schedule 10 opposite to the number of years between the date from which the person became entitled to receive benefits and the date on which, if he had remained a pensionable employee without any break of service, he would have become entitled to benefits by virtue of regulation E2(1)*(a)* or *(b)* (ii) on ceasing to be employed:

Provided that a retirement pension payable in respect of any period of reckonable service shall not be reduced under this paragraph below the minimum rate of equivalent pension benefits applicable in respect of that period under the Insurance Acts or below, in the case of a female pensionable employee, an annual rate determined by multiplying one eightieth of her pensionable remuneration by the length in years of the whole period of service in contracted-out employment.".

29.—(1) At the end of regulation E3(10)*(a)* of the principal regulations the word "and" shall be deleted.

(2) At the end of regulation E3(10)*(b)* the full stop shall be deleted and there shall be added the following:—

"and

(c) to the extent, if any, that the benefit is attributable to any added years or additional period reckonable under regulation D10, D12 or D13, regulation E1(3)*(b)* and *(bb)* does not apply.".

Decisions to be taken by scheduled bodies as to status of employees

30. In regulation L2(3)*(d)* of the principal regulations after the word "employment", in the second place where it occurs, there shall be inserted the words, "other than a person who is a pensionable employee by virtue of an election under regulation B2A,".

Certificates as to reduction in remuneration

31. In regulation L10(1) of the principal regulations after the words "pensionable employee" there shall be inserted the words ", other than a person who is a pensionable employee by virtue of an election under regulation B2A,".

Gratuities

32. After Part S of the principal regulations there shall be added the following Part:—

"PART T

GRATUITIES

Interpretation

T1. In this Part, unless the context otherwise requires—

"annual pay" means the remuneration received by an employee in respect of his employment with an employing authority during the final year of his employment, except that if the annual remuneration in either of the 2 consecutive preceding years was higher, then the pay received in either of those years, whichever is the greater, shall be deemed to be the annual pay received by the employee in the final year of his employment with an employing authority;

"benefits" means any allowance or lump sum payable under this Part;

"employing authority" means a scheduled body or the Scottish Special Housing Association in whose employment the employee was immediately before he ceased to be employed under the terms of regulation T2;

"lower earnings limit" means the lower earnings limit prescribed for the purposes of section 4(1) of the Social Security Act 1975 **(a)** applying at the time the employee ceases to be employed or if earlier at the end of the period used to determine annual pay;

"upper earnings limit" means the upper earnings limit prescribed for the purposes of section 4(1) of the Social Security Act 1975 applying at the time the employee ceases to be employed or if earlier at the end of the period used to determine annual pay;

"war service" means 50% of any period between 2nd September 1939 and before 30th June 1950 during which the employee concerned was over 18 years of age and was serving in the armed forces of the Crown, the merchant navy or mercantile marine, or in any of the women's services specified in Schedule 25 and after which the employee concerned before 1st July 1950 entered the employment of an employing authority and remained in the employment of such a body, without there having been a continuous period of 12 months or more during which he was not employed by an employing authority, but does not include any war service of a kind specified in regulation R2(1) or taken into account for the purposes of Part R of these regulations.

Persons to whom Part T applies

T2.—(1) This Part shall apply to an employee who ceases to be employed by an employing authority who:—

(a) has not attained the age of 60 but has completed not less than 5 years service; or

(b) has not attained the age of 60 but has completed not less than one year's service and is incapable of discharging efficiently the duties of that employment by reason of permanent ill-health or infirmity of mind or body; or

(c) has attained age 60 and completed not less than one year's service;

or where an employee dies while in the employment of an employing authority, to his widow or any other dependant provided that the employee was a person to whom this regulation would have applied had he remained in service to age 60, or where at the time of his death his age exceeded 60 and he had completed at least one year's service.

(2) With consent of the Secretary of State this Part may apply to a former employee of an employing authority or to the widow or any other dependant of such an employee.

Payment of benefit

T3.—(1) An employing authority may pay to any person to whom this Part applies a benefit of an amount not exceeding that determined in accordance with regulation T4.

(a) 1975 c.14.

(2) Any benefit payable under paragraph (1) may take the form of—

(a) a lump sum; or

(b) an annuity the capital value of which does not exceed the amount specified in paragraph 1.

(3) Where an employing authority have granted a benefit to an employee under paragraph (1) by way of an annuity, and the employee dies before receiving an aggregate amount equal to the capital value of the annuity, the authority may grant a benefit to the widow or any other dependant of the employee and for that purpose regulation T2 shall have effect as if the employee had died while in the employment of the authority but as if for the amount specified in paragraph 2 there were substituted the difference between the capital value of the annuity and the aggregate amount of the payments made to the employee before his death.

Calculation of benefit

T4.—(1) Where an employing authority have granted a benefit in respect of an employee under regulation T3 subject to paragraph (2) the amount of that benefit shall not exceed the aggregate of—

(a) 5% of his annual pay for each year of service, including war service, prior to 1st April 1986 with an employing authority in respect of which he is not entitled to receive a benefit under a public service scheme, and—

(b) 5% of either his annual pay or the lower earnings limit, whichever is the lower, for each year of service after 31st March 1986 with an employing authority in respect of which—

(i) he is not entitled to receive a benefit under a public service scheme; and

(ii) he, not having attained the age of 55 on 1st April 1986 could not have exercised an option under regulations B2(1A), B2A, B2B(1) or B2B(4); and

(c) 5% of the excess of his annual pay over the upper earnings limit for each year of service after 1st April 1986 with an employing authority in respect of which—

(i) he was not entitled to receive a benefit under a public service scheme; and

(ii) he, not having attained the age of 55 on 1st April 1986, could not have exercised an option under regulations B2(1A), B2A, B2B(1) or B2B(4).

(2) For the purpose of this regulation—

(a) no account shall be taken of service before the age of 18 and after attaining age 70;

(b) no account shall be taken of service for which a payment has been made under the Act of 1953, the former regulations or this Part of these regulations;

(c) no account shall be taken of service after 1st April 1986 for which a return of contributions under the terms of regulation C8 has been made;

(d) no account shall be taken of service for which the employee has rights in a relevant policy scheme within the meaning of regulation P13(8);

(e) no account shall be taken of service exceeding 40 years in total and where actual service exceeds 40 years the period of service after 1st April 1986 shall be reduced by that excess; and

(f) no payment under this regulation shall exceed an amount equal to twice annual pay.

Financial

T5. Any benefit under this Part shall not be paid out of the superannuation fund.".

Reduction of benefits under regulation E3(9)

33. In Schedule 10 to the principal regulations for the words from "during to" to "in order to" there shall be substituted the words "between the date from which the person became entitled to receive benefits and the date on which, if he had remained a pensionable employee without any break of service, he would have".

Modifications to the regulations in their application to employees of the Scottish Special Housing Association

34. In Schedule 15 to the principal regulations paragraph 5 shall be deleted and paragraphs 6, 7 and 8 shall be renumbered 5, 6 and 7.

Amendment of Schedule 17 to the principal regulations

35.—(1) In column (2) of Part 1 of Schedule 17 to the principal regulations in the entry relating to the Local Government Superannuation (Scotland) Act 1937 **(a)** the words "except sections" and the figures "13, 24, 25(3), 30, 31(6), 34(1), 36 and 37" shall be deleted.

(2) In column (2) of the said Part 1 of Schedule 17 in the entry relating to the Local Government Superannuation Act 1953 **(b)** the words "except sections" and the figures 1(5), 18, 21, 27 and 29 shall be deleted.

Revocations

36. The provisions of the enactments set out in columns 1 and 2 of the Schedule to these regulations are revoked to the extent indicated in column 3.

PART III

Incidental and transitional

37.—(1) Regulations 5 and 15 of these regulations apply only where the person entitled to receive a payment under regulation C8 of the principal regulations becomes so entitled by reason of his ceasing to be employed on or after the date of coming into operation of Part I of the Local Government Superannuation (Scotland) Amendment Regulations 1986.

(2) Where regulation E16 of the principal regulations became applicable to a person before the date of coming into operation of Part I of the Local Government Superannuation (Scotland) Amendment Regulations 1986 by virtue only of regulation 9 of these regulations, notice of an election under regulation E16(2) of the principal regulations for entitlement to a combined benefit may be given within 3 months after the date of coming into operation of the said Part I.

(a) 1937 c.69. **(b)** 1953 c.25.

Right to opt out

38.—(1) No provision of these regulations shall apply to any person to whom at any time before the coming into operation of Part I of the Local Government Superannuation (Scotland) Amendment Regulations 1986 (hereinafter referred to as the 'operative date') any benefit (including a return of contributions and any pension payable to a widow or any dependant by virtue of a surrender) was being paid or became or might have become payable if—

(a) he is placed by that provision in a worse position than he would have been in 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 operative date 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 the operative date, elects that that provision shall not apply to him.

(2) The provisions of Part H of the principal regulations (determination of questions 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.

Malcolm Rifkind,
One of Her Majesty's Principal Secretaries of State.

New St. Andrew's House,
Edinburgh.
6th February 1986.

Regulation 36

SCHEDULE

REVOCATIONS

Column 1 *Regulations revoked*	*Column 2* *References*	*Column 3* *Extent of revocation*
The Local Government Superannuation (Scotland) Act 1937 to the extent that that enactment has effect as regulations under section 7 of the Act of 1972 by virtue of Schedule 7 to that Act of 1972 and regulation A4 of and Schedule 17 to the principal regulations.	1937 c.69.	So far as unrevoked.
The Local Government Superannuation Act 1953 so far as applying to Scotland and to the extent that that enactment has effect as regulations under section 7 of the Act of 1972 by virtue of Schedule 7 to that Act of 1972 and regulation A4 of and Schedule 17 to the principal regulations.	1953 c.25.	So far as unrevoked.
The Local Government Superannuation (England and Scotland) Regulations 1948 so far as applying to Scotland.	S.I. 1948/1131.	The whole regulations.
The Local Government Superannuation (England and Scotland) (Amendment) Regulations 1949 so far as applying to Scotland.	S.I. 1949/631.	The whole regulations.
The Local Government Superannuation (England and Scotland) (Amendment) Regulations 1954, so far as applying to Scotland.	S.I. 1954/1250.	The whole regulations.
The Local Government Superannuation (Transfer Value) (Scotland) Regulations 1954.	S.I. 1954/1256.	So far as unrevoked.
The Local Government Superannuation (England and Scotland) (Amendment) Regulations 1970 so far as applying to Scotland.	S.I. 1970/1126.	The whole regulations.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations amend the Local Government Superannuation (Scotland) Regulations 1974 to 1984—

PART I

(1) to allow the transfer of the pension rights of local authority staff to Scotland from England and Wales on the same basis as transfers between Scottish local authorities. The regulations also make provision for similar transfers to England and Wales from Scotland (regulation 3);

(2) to extend the definition of "investment" in regulation B6 of the principal regulations to include certain dealings in financial futures and traded options which are covered by section 45 of the Finance Act 1984 (regulation 4);

(3) to provide that refunds of contributions in respect of service before 6th April 1975 comply with the terms of the Social Security Act 1973 (regulations 5 and 15);

(4) to allow the widows of polygamous marriages, lawfully contracted outside this country, to be entitled to a pension shared equally between them (regulation 6);

(5) to provide that where a man is married on or after 31st March 1972, then is divorced, before or after retirement and remarries the same woman a widow's pension based on total service will be payable on his death (regulation 6);

(6) to provide that the amount of the pension payable to a child on its father's death shall be determined by the identity of the person responsible for its care (regulation 8);

(7) to allow people who became entitled to retirement benefits prior to 1st April 1972 and who re-entered pensionable employment before that date to opt for combined benefits (regulation 9);

(8) to enable any increase in pensions which have to be made because of sections 41A to 41C of the Social Security Pensions Act 1975 to be paid out of the superannuation fund (regulation 10);

(9) to enable persons who have received a refund for pre-April 1975 or pre-April 1978 service to transfer their post-1975 preserved pension rights to another pension scheme (regulation 11);

(10) to allow, on receipt of a transfer value, for any service credit to be based on the aggregate of the transfer value and limited revaluation premium where applicable (regulations 12 and 17);

(11) to ensure that administering authorities may not accept a transfer value unless it covers the liabilities incurred (regulation 13);

(12) to allow for adjustment of pension in payment and inter-authority payments where following re-employment a pensioner opts to have combined benefits for both periods of service (regulation 14);

(13) to enable administering authorities to deduct, where necessary, Limited Revaluation Premiums from transfer values paid to other contracted-out schemes (regulation 16);

(14) to clarify the definition of "accrued pension" (regulation 16).

PART II

(1) to ensure that except where the regulations otherwise provide benefits will be paid out of the appropriate superannuation fund and at such intervals not exceeding 3 months as the administering authority determine (regulation 19);

(2) to ensure that where a manual worker has completed a 12 month qualifying period to become pensionable and then transfers without a disqualifying break to another scheduled body he is not required to undergo a further qualifying period (regulation 20);

(3) to admit to the scheme without a further qualifying period manual workers who are re-employed after a break in service or after receiving a refund of contributions in respect of part of their earlier employment (regulation 20);

(4) to allow manual workers who elected not to join the superannuation scheme in 1973 a further option to become pensionable employees (regulation 20);

(5) to make provision for (i) employees working not less than 15 hours per week for at least 35 weeks per year and (ii) employees whose contracts require them to work 30 hours or more per week for between 35 and 45 weeks per year, to elect to become pensionable employees (regulations 21 and 23);

(6) to make provision for part-time employees who have already become superannuable since 15th May 1974 and employees who have elected as described in paragraph (5) to become superannuated, to elect to cease to be superannuated (regulations 20 and 21);

(7) to allow an employee who elected under (5) to become superannuated and whose hours of employment are reduced below a total of 15 hours per week or whose contractual weeks fall below 35 to elect to cease to be superannuated (regulation 21);

(8) to introduce special provision for the treatment of service in relation to the calculation of benefits payable to certain employees who make an election described in paragraph (5) (regulations 24 and 25);

(9) to ensure that benefits in relation to added years purchased on remuneration at a part-time rate are not based on the whole-time equivalent remuneration which is used for the calculation of benefits in respect of the actual service of a part-time employee (regulation 26);

(10) to provide that an employee who leaves with an entitlement to preserved benefits may, if he wishes, elect on reaching the age of 60 for those benefits to be put into payment with the appropriate actuarial reduction (regulations 27(2), 28 and 33);

(11) to provide that where an employee of a scheduled body or the Scottish Special Housing Association is not entitled to become a pensionable employee a gratuity may be paid (regulation 32);

(12) to provide that where the 5 yearly actuary's certificate as to employers contributions has been obtained more than 6 months before the beginning of the 5 year period and specifies a lower rate for the first year of the period than was specified for the last year of the preceding period, the lower rate may be substituted as the rate for that last year or part of that year (regulation 22);

(13) to make consequential amendments (regulations 7, 18, 27(1), 29, 30, 31, 34, 35 and 36).

PART III

Provision is made for opting out if a person is placed in a worse position as a result of the retrospective effect of any of the regulations (regulation 38).

Regulations 3, 10, 11, 12, 16, 17 and 20(4) of these regulations have retrospective effect as authorised by section 12 of the Superannuation Act 1972.

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