
STATUTORY INSTRUMENTS

1989 No. 802 (S. 80)

PENSIONS

**The Local Government Superannuation
(Scotland) Amendment Regulations 1989**

<i>Made</i>	- - - -	<i>3rd May 1989</i>
<i>Laid before Parliament</i>		<i>19th May 1989</i>
<i>Coming into force</i>	- -	<i>9th June 1989</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 1989.

(2) These Regulations shall come into force on 9th June 1989 and shall have effect from 6th April 1988, except for regulations 11, 32, 33, 34, 35, 41 and 42 which shall have effect from 9th June 1989.

Interpretation

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

Pensionable employees

3.—(1) For regulation B1 of the principal Regulations there shall be substituted the following:—

“Pensionable employees

B1.—(1) As from 6th April 1988 a person is a pensionable employee if—

(1) 1972 c. 11
(2) S.I.1987/1850, amended by S.I. 1988/625 and 1989/422

- (a) he is an eligible employee as defined in regulations B2 and B3, and
- (b) he has made an election, which has not been revoked, in accordance with regulation B4.

(2) A person who was a pensionable employee under these Regulations immediately prior to 6th April 1988 shall be deemed to have elected at that date to be a pensionable employee under this regulation.

(3) A person who in his last employment was a pensionable employee under the Local Government Superannuation Regulations 1986(3) shall on the date of becoming an eligible employee under these Regulations be deemed to have elected at that date to be a pensionable employee under this regulation.”.

(2) For regulation B2 of the principal Regulations there shall be substituted the following:—

“Eligible employees

B2.—(1) Subject to paragraphs (2) and (3), the following persons are eligible employees:—

- (a) a whole-time officer of a body described in Part I of Schedule 3 (“a Part I scheduled body”);
- (b) a whole-time manual worker employed by a Part I scheduled body who—
 - (i) has completed 12 months continuous employment with that body, or
 - (ii) has entered or re-entered the employment of that body less than 12 months after completing at least 12 months continuous employment with a Part I scheduled body or after having been in other local government employment and without having applied for a return of the whole of his contributions, or
 - (iii) satisfies the requirements of Part III of Schedule 3;
- (c) a variable-time employee of a Part I scheduled body who is also an eligible employee in a whole-time or part-time employment with any such body and where such an employee ceases to hold that whole-time or part-time employment but continues without break of service in the variable-time employment he shall continue to be an eligible employee;
- (d) an employee described in Part II of Schedule 3 if the body employing him have by a statutory resolution—
 - (i) specified him as an eligible employee, or
 - (ii) specified a class of employees, to which he belongs, as being eligible employees;
- (e) a whole-time member of a passenger transport executive if that executive have, with the consent of the passenger transport authority for which they are the executive, by a statutory resolution specified him as an eligible employee;
- (f) a whole-time director of a subsidiary of a passenger transport executive if that executive have by a statutory resolution specified him as an eligible employee;
- (g) a person who immediately before 16th May 1974—
 - (i) was a member of a passenger transport executive or a director of a subsidiary of a passenger transport executive, and
 - (ii) was in that position a contributory employee,
 for as long as he continues without break in service in that position;

- (h) a person who immediately before 21st December 1987 was a pensionable employee by virtue of regulation B2(1)(g) of the 1974 Regulations⁽⁴⁾ (certain former contributory employees continuously employed by same body) for as long as he continues without break in service in employment with the same body;
- (i) a person 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 the Local Government Superannuation (Scotland) Regulations 1974-86 in force before that date, regarded as a pensionable employee by that scheduled body and, where the body was not an administering authority, by the administering authority.

(2) A Part I scheduled body may resolve that a person who falls within paragraph (1)(a), (b) or (c) or regulation B3 shall not become an eligible employee unless he has undergone a medical examination to their satisfaction; and a resolution under this paragraph may apply to any specified person or to any specified class of persons.

(3) Notwithstanding anything in paragraph (1) or (2), the following are not eligible employees—

- (a) a person who has not attained the age of 18 years;
- (b) a person who has attained the age of 65 years and has completed not less than 45 years' reckonable service;
- (c) any other person who has attained the age of 65 years, unless—
 - (i) there has become payable to him a pension which is liable to be reduced or suspended under regulation E15, an ill-health lump sum retiring allowance under regulation E4, or a short service grant under the Benefits Regulations, or
 - (ii) if he were to become a pensionable employee, he would immediately become entitled to reckon any period as reckonable service or qualifying service, or
 - (iii) under any enactment he has received or is entitled to receive compensation for loss of employment or loss or diminution of emoluments attributable to the provisions of an enactment, and the compensation is liable to be reduced or suspended, in consequence of his taking up employment with a scheduled body, in the like manner and to the like extent as it would have been reduced or suspended if he had remained subject to the pension scheme to which he was subject immediately before suffering the loss;
- (d) a person who is, in the same employment, entitled to participate in the benefits of any other superannuation scheme provided by or under any enactment (including an enactment in a local Act), other than section 7 of the Act of 1972;
- (e) an employee of a scheduled body in respect of whom contributions to the Merchant Navy Officers Pension Fund are made.

(4) In this regulation “statutory resolution” means, in relation to a scheduled body, a resolution passed in the manner in which an ordinary resolution of the body may be passed, except that 28 days' notice of the meeting at which the resolution is passed and of the terms of the resolution and of the fact that it is to be proposed at that meeting must have been given in the manner in which notice for convening ordinary meetings of the body may be given.”

Other eligible employees

4. In regulation B3 of the principal Regulations—

(4) S.I. 1974/812; the relevant amending instrument is S.I. 1982/1303

- (a) for the heading there shall be substituted “Other eligible employees”;
- (b) in paragraph (1), for the words “paragraph (6) and regulation B4”, there shall be substituted the words “paragraphs (6) and (7) and regulations B4 and B4A”, and for the words from “may elect to become” to the end there shall be substituted the words “is an eligible employee”;
- (c) in paragraph (2), the words “and in regulation B4” shall be deleted;
- (d) in paragraph (3), for the words “this regulation”, there shall be substituted the words “regulation B4 or B4B or notification under regulation B4A” and, after the word “elections”, there shall be inserted the words “or notifications”;
- (e) in paragraph (4), for the words “this regulation”, there shall be substituted the words “regulation B4 or B4B or notification under regulation B4A” and, after the words “unless an election”, there shall be inserted the words “or notification”;
- (f) in paragraph (6)(a), for the words “regulation B1(12)(a) to (g)”, there shall be substituted the words “regulation B2(3)(a) to (e)”;
- (g) paragraphs (6)(b) and (c), (7) and (8) shall be deleted; and
- (h) at the end of the regulation there shall be inserted the following:—

“(7) If—

- (a) a person became entitled by virtue of an election under regulation B4 or B4B (or under this regulation before its amendment by the Local Government Superannuation (Scotland) Amendment Regulations 1989⁽⁵⁾) to be a pensionable employee 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 shall continue to be a pensionable employee unless he gives a notification under regulation B4A; but where he has given such a notification, a subsequent election to become a pensionable employee under regulation B4B shall not come into effect unless he is in a qualifying part-time employment (or falls within some other description of eligible employee in regulation B2 or this regulation).”.

Options relating to pensionable employment

- 5. For regulation B4 of the principal Regulations there shall be substituted the following:—

“Opting into pensionable employment

B4.—(1) Without prejudice to regulation B1(2) and (3), an eligible employee may elect to become a pensionable employee by making an election in accordance with this regulation.

(2) An election under paragraph (1) shall be made by an eligible employee by giving notice in writing to his employer.

(3) Subject to paragraphs (4) and (5), where an eligible employee gives notice of election on or before the relevant date the election shall have effect from the date on which he commences employment unless the notice specifies otherwise, and in any other case it shall have effect from the day following the end of the relevant period or such later date as may be specified in the notice.

(4) 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.

(5) 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.

(6) In paragraph (3)—

“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; and

“the relevant period” means the period of service to which the person’s payment of wages or salary due from his employer next after the day on which the notice of election is given relates.

Opting out of pensionable employment

B4A.—(1) A pensionable employee may at any time notify his employing authority in writing that he does not wish to be such for the purposes of these Regulations.

(2) A person giving a notification under paragraph (1) shall cease to be a pensionable employee from the day following the end of the relevant period, or such later date as may be specified in the notification.

(3) A person giving a notification under paragraph (1) shall not again become a pensionable employee in that or another employment unless he makes an election in accordance with regulation B4B.

(4) In paragraph (2), “the relevant period” means the period of service to which the person’s payment of wages or salary due from the employing authority next after the day on which the notification under paragraph (1) is given relates, or the period of 2 months beginning on that day, whichever ends first.

Rejoining pensionable employment

B4B.—(1) A person who would be a pensionable employee in accordance with these Regulations but for a notification under regulation B4A may, notwithstanding the giving of that notification but subject to paragraphs (3), (4) and (5), subsequently elect so to become a pensionable employee.

(2) An election under paragraph (1) shall be made by notice given in writing to his employer.

(3) A person who has made an election under paragraph (1) and who subsequently gives another notification under regulation B4A(1) may, subject to paragraph (4), make no further election under paragraph (1).

(4) Notwithstanding paragraph (3), a person may elect under paragraph (1) whenever he begins a new employment under which he may become a pensionable employee, provided

the notice of election is given to the new employer before or within the period of 3 months beginning with the day on which he begins that employment.

(5) Paragraphs (3) to (6) of regulation B4 shall apply to an election under paragraph (1) of this regulation as they apply to an election under regulation B4(1).”.

Power to admit employees of other bodies

6. In regulation B6 of the principal Regulations—
- (a) in paragraph (2), for the words “a pensionable employee”, there shall be substituted “an eligible employee”;
 - (b) in paragraph (4)(b), for the words “regulation B1(12)(e)”, there shall be substituted “regulation B2(3)(c)”; and
 - (c) in paragraph (5), for the words “a pensionable employee”, there shall be substituted “an eligible employee” and, for the words “regulation B1”, there shall be substituted “regulation B2”.

Continuation of certain payments

7. After regulation C9 of the principal Regulations there shall be added the following regulations:

“Additional voluntary contributions

C9A.—(1) A pensionable employee may at any time elect to pay contributions under this regulation in addition to those provided for by the foregoing provisions of this Part of these Regulations.

(2) Schedule 7A shall apply in relation to such an election and in relation to contributions payable under this regulation.

(3) An administering authority may pay out of fund monies any costs, charges and expenses incurred by them in the discharge of their functions under this regulation.

Effect of opting out of pensionable employment on certain additional payments

C9B.—(1) This regulation applies where a pensionable employee who—

- (a) has elected under regulation C6 or C8 (including those regulations as applied by regulation C9(1)) to make payments by way of additional contributions; or
- (b) is making such payments under regulations D10 or D11 of the 1974 Regulations by virtue of regulation C9(2) of these Regulations; or
- (c) is making payments under regulations D6, D7 or D8 of the 1974 Regulations by virtue of regulation C9(2) of these Regulations,

gives notification in accordance with regulation B4A.

(2) In a case mentioned in paragraph (1)(a) or (b), no further payments by way of additional contributions shall be payable from the day on which the person giving the notification ceases to be a pensionable employee; and the benefits to which he is entitled in relation to those contributions shall be calculated as if the payments had been discontinued under paragraph 4A of Schedule 5 to the 1974 Regulations, or regulation C6(5) or C8(11) of these Regulations, as the case may be.

(3) In a case mentioned in paragraph (1)(c), paragraphs 5 and 6 of Schedule 7 shall apply as if the pensionable employee had ceased to hold a local government employment on the

day on which he ceased to be a pensionable employee, and if on that assumption he would become entitled to preserved benefits he may give notice under paragraph 6 of Schedule 7.

(4) Paragraph (2) shall not preclude a person who has given a notification under regulation B4A making a further election under regulation C6 or C8 after again becoming a pensionable employee.”.

Deduction and recovery of employee’s contributions

8. In regulation C11(1) of the principal Regulations—
- (a) at the end of paragraph (b) the word “and” shall be deleted; and
 - (b) after paragraph (c) there shall be added the following:—
 - “, and
 - (d) any contributions payable under regulation C9A.”.

Return of employee’s contributions in certain cases

9. In regulation C12 of the principal Regulations—
- (a) for paragraphs (1) and (2) there shall be substituted the following:—
 - “(1) Subject to paragraphs (3) and (12), and regulation C13, as appropriate, this regulation applies to a pensionable employee of an employing authority who is entitled to reckon an aggregate of less than 2 years’ reckonable service and qualifying service and who, before becoming entitled to any benefit under these Regulations, (other than a retirement pension under regulation E2(2))—
 - (a) ceases to be employed by that authority and does not, within one month after ceasing to be so employed, enter further employment with any scheduled body and become a pensionable employee; or
 - (b) ceases to be a pensionable employee while continuing to be employed by that authority and does not, within one month after so ceasing, again become a pensionable employee.
 - (2) Subject to paragraph (3)—
 - (a) a person to whom paragraph (1)(a) of this regulation applies shall be entitled to receive a refund of contributions calculated in accordance with paragraph (4);
 - (b) a person to whom paragraph (1)(b) applies shall be entitled to receive out of the appropriate superannuation fund a sum equal to the aggregate of his contributions to the fund.”;
 - (b) after paragraph (3)(b) there shall be inserted the following:—
 - “; or
 - (c) in respect of whom a transfer value from the trustees or managers of a personal pension scheme has been credited to the appropriate superannuation fund.”;
 - (c) in paragraph (4), after the words “to whom”, there shall be inserted the words “paragraph (1)(a) of”;
 - (d) in paragraph (12), for the words “5 years”, there shall be substituted the words “2 years” and, after the words “qualifying service”, there shall be inserted the words “and has ceased to be employed by an employing authority”.

Guaranteed minimum pension for certain pensionable employees and their widows or widowers

10. In regulation E1 of the principal Regulations—

- (a) at the end of the heading there shall be added the words “or widowers”;
- (b) at the end of paragraph (3)(b) the word “and” shall be deleted;
- (c) in paragraph (3)(c), for the word “he”, there shall be substituted “the pensionable employee is a man and” and, for the words “and leaves”, there shall be substituted “leaving”;
- (d) after paragraph (3)(c) there shall be inserted the following:—
 - “and
 - (d) if the pensionable employee is a woman and dies on or after 6th April 1989 leaving a widower, unless he is entitled to a widower’s pension at a higher rate, he is entitled to a pension at a weekly rate equal to half of that part of the pensionable employee’s guaranteed minimum which is attributable to earnings factors for the tax year 1988/89 and subsequent tax years.”; and
- (e) after paragraph (3) there shall be inserted the following:—
 - “(4) The guaranteed minimum pensions referred to in paragraph (3) shall, insofar as they are attributable to earnings factors in the tax years from (and including) 1988/89, be increased in accordance with the requirements of section 37A of the Pensions Act(6) and to the extent of any orders made thereunder.”.

Revaluation of guaranteed minimum in certain cases

11. After regulation E1 of the principal Regulations there shall be inserted the following regulation:—

“Revaluation of guaranteed minimum in certain cases

E1A.—(1) This regulation applies where a pensionable employee—

- (a) has ceased to be employed in local government employment or has ceased to be a pensionable employee by virtue of a notification under regulation B4A, and
- (b) has acquired a right to a transfer value under regulation J2, and
- (c) has taken that right by exercising the option conferred by paragraph 13(2) of Schedule 1A to the Pensions Act(7) in the way specified in sub-paragraph (b) of that paragraph,

and where his guaranteed minimum, and where appropriate, that of his widow, are appropriately secured within the meaning of section 52C(4) of that Act(8).

(2) Where this regulation applies—

- (a) for the purposes of section 35(2) of the Pensions Act(9) (amount of guaranteed minimum) the person’s earnings factors shall be determined without reference to any order that comes into force under section 21 of that Act after the relevant year in which his employment was terminated or in which he ceased to be a pensionable employee, and

(6) The Social Security Pensions Act 1975 (c. 60); section 37A was inserted by the Social Security Act 1986 (c. 50), section 9(7).
 (7) Schedule 1A was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 3, and amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraphs 29 and 30 and Schedule 11; paragraph 13 of Schedule 1A was further amended by S.I. 1987/1116, Schedule 6.

(8) Section 52C was inserted by the Social Security Act 1985, Schedule 1, paragraph 2, and was amended by the Social Security Act 1986, Schedule 10, paragraph 26.

(9) Section 35(2) was amended by the Social Security Act 1986, Schedule 8, paragraph 8.

- (b) thereafter the weekly equivalent mentioned in section 35(2) of that Act shall be increased—
 - (i) in accordance with any additional requirements for the time being prescribed for the purposes of section 45(1)(b) of that Act, or
 - (ii) by the minimum rate of increase provided for in section 35(7) of that Act, whichever provides the greater increase.
- (3) In this regulation “relevant year” has the meaning given in section 35(9) of the Pensions Act.”.

Entitlement to retirement pension and retiring allowance

- 12.** In regulation E2 of the principal Regulations—
- (a) in paragraphs (1)(b) and (1)(c)(i), for the words “5 years”, there shall be substituted the words “2 years”; and
 - (b) after paragraph (1)(c)(ii) there shall be inserted the following paragraph:—
 - “(iii) he is a person to whom regulation C12(3)(c) applies; or”.

Amount of retirement pension and retiring allowance

13. The following paragraph shall be substituted for regulation E3(12) of the principal Regulations:—

- “(12) Where—
- (a) regulation E2(1)(b)(i) (permanent ill-health etc) applies,
 - (b) the person has not given a notification under regulation B4A, or having given such a notification, has again by the date of cessation of employment become a pensionable employee by virtue of an election under regulation B4B, and
 - (c) the total of the person’s reckonable service and any qualifying service is not less than 5 years,
- he is to be treated for the purposes of this regulation as being entitled to reckon as reckonable service an additional period calculated in accordance with Schedule 10.”.

Ill-health lump sum retiring allowance

14. In regulation E4(1)(b)(i) of the principal Regulations, for the words “one or more but less than 5 years”, there shall be substituted the words “at least one but less than 2 years”.

Entitlement to widow’s short-term and long-term pensions

- 15.** In regulation E5 of the principal Regulations—
- (a) in paragraph (1)(c)(i), for the words “5 years”, there shall be substituted the words “2 years”;
 - (b) in paragraph (1), for the words “paragraphs (3) to (5)”, there shall be substituted the words “paragraphs (1A) and (3) to (5)”; and
 - (c) after paragraph (1) there shall be inserted the following:—
 - “(1A) Where paragraph (1)(c)(i) applies and the total of the man’s reckonable service and any qualifying service when added together amounted to less than 5 years, his widow is, or as the case may be his widows are jointly, entitled to a widow’s special short-term

pension under regulation E7 and not to a widow's short-term pension under regulation E6(1).

(1B) Where paragraph (1A) applies, a widow's long-term pension shall not be payable until payment of the widow's special short-term pension ceases."

Entitlement to children's short-term and long-term pensions

16. In regulation E8 of the principal Regulations—

- (a) in paragraph (1)(c), for the words "5 years", there shall be substituted the words "2 years";
- (b) in paragraph (3), after the words "children's short-term pension", there shall be inserted the words "or long-term pension" and, after the words "widow's short-term pension", there shall be inserted the words "or special short-term pension"; and
- (c) after paragraph (5) there shall be inserted the following paragraph:—

"(6) A children's short-term pension or long-term pension shall not be payable in respect of the death of more than one parent but shall be payable in respect of the death of whichever parent would result in the larger payment."

Children's special short-term pension

17. In regulation E10(1)(a) of the principal Regulations, for the words "5 years", there shall be substituted the words "2 years".

Death gratuity

18. In regulation E11 of the principal Regulations—

- (a) in paragraph (1), for sub-paragraph (a), there shall be substituted the following:—
 - "(a) was a pensionable employee, or";
- (b) after sub-paragraph (d) of paragraph (1) there shall be inserted the following:—
 - "or
 - (e) was in a local government employment and was entitled to reckon at least 2 years' reckonable service but was not a pensionable employee by virtue of a notification under regulation B4A,";
- (c) in paragraph (8), after the words "paragraph (1)(d)", there shall be inserted the words "or (e)";
- (d) in paragraph (9)(a), for the words "paragraph (1)(a) or (d)", there shall be substituted the words "paragraph (1)(a), (d) or (e)"; and
- (e) after paragraph (13) there shall be inserted the following:—
 - "(14) Where a person qualifies for a death gratuity under more than one sub-paragraph of paragraph (1) in respect of the same period of service, he shall be treated as having qualified under the sub-paragraph which would, in accordance with the preceding paragraphs, result in the highest amount of gratuity being paid."

Pensions of widowers etc

19. In regulation E12 of the principal Regulations—

- (a) in paragraph (1), for the word "Where", there shall be substituted "In respect of any service before 6th April 1988, where"; and
- (b) after paragraph (2) there shall be inserted the following:—

“(2A) Notwithstanding any other provision in these Regulations, in respect of any service after 5th April 1988, regulations E5 to E11 shall apply in respect of a woman who is a pensionable employee as they apply in respect of a man and, where she is married, shall apply in respect of her husband as they apply in respect of a wife.”.

Adjustment of superannuation rights on death of certain re-employed pensioners

20. In paragraphs (2) and (3) of regulation E18 of the principal Regulations, for the word “widow's”, there shall be substituted the words “widow’s or widower's”.

Power to compound certain small pensions

21. In regulation E21 of the principal Regulations—

(a) for paragraph (1)(ii) there shall be substituted:—

“(ii) the widow’s or widower’s long-term pension which, in the event of the pensionable employee dying and leaving a widow or widower, would be payable to that widow or widower in respect of all or part of the pensionable employee’s reckonable service, and

(iii) the children’s long-term pension which, in the event of the pensionable employee dying and leaving an eligible child or eligible children, would be payable to or for the benefit of his or her eligible child or eligible children in respect of his or her reckonable service;”;

(b) in paragraph (3), for the word “widow's”, there shall be substituted the words “widow’s or widower's” and, for the word “widow”, in both places in which it occurs, there shall be substituted the words “widow or widower”.

Pensionable remuneration

22. The following paragraph shall be substituted for regulation E22(2) of the principal Regulations:—

“(2) Subject to paragraphs (3), (4) and (5), for the purposes of this regulation the relevant period is the year ending with—

(a) the day on which the person ceases to hold the employment or, if earlier, the day on which he becomes entitled to reckon 45 years as reckonable service in relation to the employment, disregarding reckonable service before attaining the age of 60 years beyond a total of 40 years; or

(b) if on the day specified in sub-paragraph (a) the person was not a pensionable employee by virtue of a notification under regulation B4A, the day on which he ceased to be a pensionable employee by virtue of that notification.”.

Outwards transfers

23. In regulation J2 of the principal Regulations—

(a) for paragraphs (1) to (4) there shall be substituted the following:—

“(1) Subject to paragraphs (5) and (6), where a person has ceased—

(a) to be employed in local government employment, or

(b) to be a pensionable employee by virtue of a notification under regulation B4A,

and the conditions in paragraph (2) are satisfied, the fund authority shall, in respect of that person, pay a transfer value to be used in accordance with paragraph 13 of Schedule 1A

to the Pensions Act at the person's option in one or more of the ways set out in sub-paragraph (2) of that paragraph.

(2) The conditions are that—

- (a) he ceased to be employed in local government employment, or to be a pensionable employee by virtue of a notification under regulation B4A, before he attained the age of 65 years, or, where paragraph (7) applies, the age of 64 years;
- (b) he is a person who—
 - (i) has completed 2 or more years' reckonable service and qualifying service; or
 - (ii) after leaving his local government employment has taken up non-local government employment in which he participates in a superannuation scheme and he has, within 12 months after taking up that employment, made an application, such as is mentioned in sub-paragraph (c), for a transfer value to be paid; or
 - (iii) after ceasing to be employed in local government employment, or to be a pensionable employee by virtue of a notification under regulation B4A, participates in a personal pension scheme or a self-employed pension arrangement and has within 12 months of beginning to so participate made an application, such as is mentioned in sub-paragraph (c), for a transfer value to be paid;
- (c) subject to paragraph (3), he has before attaining—
 - (i) the age of 65 years, or
 - (ii) where paragraph (7) applies, the age of 64 years or 6 months after the date on which he ceased to be employed in local government employment, or to be a pensionable employee by virtue of a notification under regulation B4A, whichever is later,

made an application in writing to his fund authority for a transfer value to be paid, and has not subsequently withdrawn it in accordance with paragraph (10) (a);
- (d) where paragraph (7) applies he has ceased to be employed in local government employment, or to be a pensionable employee by virtue of a notification under regulation B4A, after completing 2 or more years' service;
- (e) in the case of a person who ceased to be employed in his local government employment before 31st March 1972, his local government employer has consented to the payment of the transfer value; and
- (f) in the case of a person who received a return of contributions in relation to his local government employment (other than a person falling within paragraph (6)), he has within 3 months of making his request under sub-paragraph (c) paid to his fund authority for the credit of their superannuation fund—
 - (i) a sum equal to the contributions returned to him (together with any interest which he was paid);
 - (ii) a sum equal to any deduction made on account of tax chargeable under paragraph 2 of Part II of Schedule 5 to the Finance Act 1970⁽¹⁰⁾ or section 598(1) of the Income and Corporation Taxes Act 1988⁽¹¹⁾; and

⁽¹⁰⁾ 1970 c. 24; paragraph 2 was substituted by the Finance Act 1971 (c. 68), Schedule 3, paragraph 7.

(iii) compound interest on both those sums calculated in accordance with regulation J7 for the period beginning with the date on which he received the return of contributions and ending on the date of his request under sub-paragraph (c) (but no interest is to be paid if that period is less than 6 months).

(3) The local government employer may in any particular case extend the period of 12 months referred to in paragraphs (2)(b)(ii) and (iii).”;

(b) in paragraph (5), sub-paragraphs (c) and (f) shall be deleted;

(c) the following paragraphs shall be inserted after paragraph (6):—

“(7) This paragraph applies where a person opts to have his transfer value, or any portion of it, paid to one or more insurance companies to purchase an appropriate policy.

(8) Subject to paragraph (9), the fund authority shall, if an application under paragraph (2)(c) is received by them, pay a transfer value by whichever is the earlier of the following:—

- (a) the date 12 months from the date on which the application is received by them; or
- (b) the date on which the person in respect of whom the transfer value is paid attains the age of 65 where—
 - (i) he ceased to be employed in local government employment, or to be a pensionable employee by virtue of a notification under regulation B4A, on a date prior to his attaining the age of 64 years; and
 - (ii) made his application for payment of a transfer value within 6 months of that date.

(9) Where proceedings before a court have been commenced against a person at any time before the expiry of the period of 12 months beginning with the date on which he ceased to be employed in local government employment, or to be a pensionable employee by virtue of a notification under regulation B4A, and it appears to the fund authority that the proceedings may lead to all or any of the benefits payable under these Regulations to or in respect of that person being forfeited under regulation M1, the date by which the fund authority shall pay a transfer value shall be—

- (a) the date by which they would be required to do so under paragraph (8) or,
- (b) the end of the period of 3 months after the conclusion of the court proceedings (including any proceedings on appeal),

whichever is the later.

(10) An application for a transfer value to be paid may be withdrawn by a person giving notice in writing to his fund authority, but such a notice will be of no effect if prior to the date of receiving it the fund authority has entered into an agreement with a third party to use the whole or any part of the person’s transfer value in one of the ways set out in paragraph 13 of Schedule 1A to the Pensions Act.

(11) A person who in accordance with paragraph (10) withdraws an application may make another.”.

Additional transfer value for certain persons transferring to public service pension schemes

24. In regulation J3(3)(a)(ii) of the principal Regulations, for the words “Part V”, there shall be substituted “Part II”.

Amount of transfer value

25. In regulation J4 of the principal Regulations—

- (a) in paragraph (1), for the words “Parts I to III”, there shall be substituted “Part I”;
- (b) in paragraph (2), for the words “Part V”, there shall be substituted “Part II”.

Compound interest on certain sums

26. In regulation J7 of the principal Regulations, for the words “J2(3)(e)(iii)”, there shall be substituted “J2(2)(f)(iii)” and, for the words “Parts I (paragraph 1(2)) and V”, there shall be substituted “Part II”.

Inward transfers

27. In regulation J8 of the principal Regulations—

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

“(1) Where a person, to whom Part Q does not apply, becomes a pensionable employee and has accrued rights to benefit under a superannuation scheme, a personal pension scheme or a self-employed pension arrangement (whether or not his rights are preserved in such scheme or arrangement or have been transferred to and are held under one or more such schemes or arrangements or are appropriately secured for the purposes of section 52C of the Pensions Act(12) by one or more appropriate policies) the person may within 12 months of entering local government employment (subject to paragraph (4)) or of making an election under regulation B4 or B4B, as the case may be, give written notice to his fund authority that he wishes the fund authority to accept a transfer value in respect of those accrued rights from—

- (a) the trustees or managers of the superannuation scheme, personal pension scheme or self-employed pension arrangement, in which his accrued rights are preserved (in this regulation referred to as “the previous scheme”), or
- (b) the trustees or managers of the superannuation scheme, personal pension scheme or self-employed pension arrangement, or the insurance company, to which a payment in respect of his accrued rights or any part thereof has been made.

(2) Where notice is given in accordance with paragraph (1), the transfer value shall, subject to paragraphs (5) and (6) and provided that the conditions specified in paragraph (3) are satisfied, be accepted by the fund authority and credited to their superannuation fund.”;

- (b) sub-paragraphs (a) and (b) of paragraph (3) shall be deleted;
- (c) in paragraph (4), for the words “paragraph (3)(b)”, there shall be substituted “paragraph (1)”;
- (d) in paragraph (5), for the words “Part V”, there shall be substituted “Part II”;
- (e) for paragraphs (6), (7) and (8) there shall be substituted the following:—

“(6) The fund authority shall not be required to accept a payment in accordance with paragraph (1) if it does not exceed the annual amount of the guaranteed minimum pension to which the person would have become entitled under these Regulations as a result of it being accepted, multiplied by the factor appropriate to that person, as set out in column (2) of the following Table opposite his age, as at the date when the person’s fund authority is requested to accept the payment, as set out in column (1)—

(12) The Social Security Pensions Act 1975 (c. 60); section 52C was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 2, and was amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraph 26.

TABLE

(1) Age	(2) Appropriate factor
29 or under	8
30 to 39	9
40 to 49	10
50 or over	12”.

Right to reckon service

28. In regulation J9 of the principal Regulations—

- (a) in paragraph (1)(a), the words from “for all purposes” to “regulation E2(2)” shall be deleted;
- (b) for paragraph (1)(b) there shall be substituted the following:—
 - “(b) he shall be entitled to reckon as qualifying service all of the service in respect of which he has accrued rights to benefits under his previous superannuation scheme, as certified by the trustees or managers of that scheme—
 - (i) where that service would not otherwise be qualifying service; and
 - (ii) whether the transfer value relates to some or all of those accrued rights.”;
- (c) paragraph (2) shall be deleted.

Calculation of benefits

29. In regulation K4(2) of the principal Regulations—

- (a) at the end of sub-paragraph (e) the word “and” shall be deleted; and
- (b) after sub-paragraph (f) there shall be added the following:—
 - “; and
 - (g) no account shall be taken of service during which an employee is not a pensionable employee by virtue of a notification under regulation B4A or a failure to elect under regulation B4.”.

Allowances for pensioners

30. In regulation L5(1) of the principal Regulations, after the words “relevant body may”, there shall be inserted the words “(if there is such a shortfall as is mentioned in paragraph (2)(a))”.

Rights and payments to be taken into account in determining amount of benefit

31. In regulation L8(c) of the principal Regulations, the words from “out of any fund” to “transferred” shall be deleted.

Use and investment of superannuation funds' monies

32. In regulation P6(2) of the principal Regulations, for the words “regulation P5(c)”, there shall be substituted the words “regulation P5(1)(c)”.

Periodical valuation of superannuation funds

33. In regulation P8(1) of the principal Regulations, for the word “fifth”, there shall be substituted the word “third”.

Actuary’s certificates

34. In regulation P9(1) of the principal Regulations, for the words “5 years”, there shall be substituted the words “3 years”.

Employer’s contributions

35. In regulation P12(1) of the principal Regulations, for the words “5 years”, there shall be substituted the words “3 years”.

Payments by employing authorities to administering authorities

36. After regulation P15(4)(b) there shall be added the following:—

- “(bb) which of the employees referred to in paragraph (a) are paying, and what amounts referred to in paragraph (b) represent deductions in respect of, additional contributions under regulation C9A.”.

Change of local government employment and fund authority

37. In regulation Q2 of the principal Regulations—

- (a) in paragraph (1)(c), after the words “he is”, there shall be inserted the words “a pensionable employee and is”;
- (b) paragraph (1)(d) shall be deleted;
- (c) in paragraph (1), for the words “Part IV”, there shall be substituted “Part I”;
- (d) for paragraphs (2) and (3) there shall be substituted—

“(2) Subject to paragraphs (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 in accordance with section 216 of that Act⁽¹³⁾ and the number of persons changing superannuation funds is more than 9 but less than 100, and 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 of the fund at that time, an adjustment shall be made to the total sum of the transfer values payable under paragraph (1).”;

- (e) in paragraph (5), for “(3)”, there shall be substituted “(2)”.

Partial forfeitures

38. Regulation Q3 of the principal Regulations shall be deleted.

Glossary of expressions

39. In Schedule 1 to the principal Regulations—

- (a) after the definition of “Appropriate administering authority” there shall be inserted the following definitions:—

(13) 1973 c. 65; section 216 was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 4, Part I.

““Appropriate personal pension scheme”

A personal pension scheme for which there is in force a certificate issued in accordance with regulations made under section 2 of the Social Security Act 1986(14).

“Appropriate policy”

A policy of insurance or annuity contract which provides an annuity which satisfies requirements prescribed under paragraph 13(2)(b) of Schedule 1A to the Pensions Act(15)

- (b) after the definition of “Disqualifying break of service” there shall be inserted the following definition:—

““Earning factor”

Has the same meaning as in section 13 of the Social Security Act 1975(16).”;

- (c) after the definition of “Eligible child” there shall be inserted the following definition:—

““Eligible employee”

Has the meaning given to it by regulations B2 and B3.”;

- (d) after the definition of “The former Regulations” there shall be inserted the following definition:—

““Free-standing additional voluntary contribution scheme”

A scheme, other than one to which contributions are payable under regulation C9A, which is a scheme approved by the Board of Inland Revenue under section 591 of the Income and Corporation Taxes Act 1988, which provides benefits additional to those provided under Part E of these Regulations and to which no contributions are made by the pensionable employee’s employing authority.”;

- (e) in the definition of “Local government employment”, for the words “is, or is deemed to be,” there shall be substituted the words “is or has been, or is or has been deemed to be,”;
- (f) after the definition of “The Pensions Act” there shall be inserted the following definition:—

““Personal pension scheme”

Has the same meaning as in section 84(1) of the Social Security Act 1986(17).”;

- (g) after the definition of “Scheme managers” there shall be inserted the following definition:—

(14) 1986 c. 50

(15) Schedule 1A was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 3, and amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraphs 29 and 30 and Schedule 11; paragraph 13 of Schedule 1A was further amended by S.I. 1987/1116, Schedule 6.

(16) 1975 c. 14; section 13 was amended by the Social Security Pensions Act 1975 (c. 60), Schedule 4, Part I, paragraph 38; the Social Security Act 1979 (c. 18), Schedule 3, paragraph 5; the Social Security Act 1980 (c. 30), section 5; the Social Security (No. 2) Act 1980 (c. 39), Schedule; the Social Security Act 1985 (c. 53), Schedule 5, paragraph 6; and the Social Security Act 1986 (c. 50), Schedule 8, paragraph 2 and Schedule 11.

(17) 1986 c. 50

““Self-employed pension arrangement”

A person pension scheme within the meaning of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 which is approved by the Inland Revenue under that Chapter; but which is neither a personal pension scheme within the meaning of the Social Security Act 1986 nor a contract or a scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988(18).”; and

- (h) after the definition of “Statutory scheme” there shall be inserted the following definitions:

—

““Superannuation scheme”

An occupational pension scheme within the meaning of section 66(1) of the Pensions Act.

“Tax year”

The 12 months beginning with 6th April in any year.”.

Eligible employees

40. In Schedule 3 to the principal Regulations—

- (a) for the word “Pensionable” in the heading there shall be substituted the word “Eligible”;
- (b) in paragraph 1 of Part II, after the words “whole-time” there shall be inserted the words “or part-time”; and
- (c) in Part III after paragraph 2 there shall be inserted the following paragraph:—

“**3.** A person electing under paragraph 1(b) need not, before becoming a pensionable employee, make a further election under regulation B4.”.

Amount to be paid for additional period

41. In Table II of Part II of Schedule 5 to the principal Regulations, in the seventh column for the figure “0.93” there shall be substituted the figure “0.95”.

Payment to avoid reduction of retiring allowance

42. In paragraph 14(1) of Part IV of Schedule 6 to the principal Regulations, for the words “the actuarial equivalent of the balance of contributions or instalments outstanding”, there shall be substituted “an amount calculated by the fund’s actuary to represent the capital value of the instalments or additional contributions remaining to be paid,”.

Additional voluntary contributions

43. After Schedule 7 to the principal Regulations there shall be added the Schedule set out in Schedule 1 to these Regulations.

Calculation of transfer values

44.—(1) For Parts I to IV of Schedule 16 to the principal Regulations there shall be substituted Part I set out in Schedule 2 to these Regulations.

(2) Part V of that Schedule shall be renumbered Part II, and for paragraph 2 of that Part there shall be substituted the following paragraphs:—

“2. Subject to paragraph 3, in ascertaining for the purposes of paragraph 1 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.

3. 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 2, 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.”.

Calculation of reckonable service to be credited under regulation J9(1)(a)

45. For Schedule 17 to the principal Regulations there shall be substituted the Schedule set out in Schedule 3 to these Regulations.

Transitional provisions

46.—(1) Notwithstanding the amendments made by regulations 3, 4 and 5, any election made, or notification given, before 6th April 1988 to become, or to cease to be, a pensionable employee pursuant to the provisions amended by those regulations shall have effect as if those amendments had not been made; and in particular—

- (a) if a person has elected before 6th April 1988 to become a pensionable employee under one of those provisions, but that election has not before that date come into effect, no further election under regulation B4 of the principal Regulations shall be required, and
 - (b) if a person has elected before 6th April 1988 to cease to be a pensionable employee under one of these provisions, and after so ceasing subsequently becomes employed in another employment in which he may become such, regulation B4(1) of the principal Regulations shall apply as if on 5th April 1988 he was not a pensionable employee whether or not his election had effect by that date.
- (2) The amendments made by regulations 9(a) and (d), 12(a), 14, 15(a), 16(a) and 17 shall apply only where the person ceased to hold the employment concerned, or (in relation to regulations 15(a), 16(a) and 17) where the death concerned occurred, on or after 6th April 1988.
- (3) Regulations 23, 25, 37, 38 and 44 shall not have effect—
- (a) in relation to any person who has completed 5 or more years' service as a pensionable employee and whose local government employment ceased before 1st January 1986 (or who ceased to be subject to the principal Regulations before that date), so as to allow him to exercise an option under regulation J2 of the principal Regulations which would not have been available to him had these Regulations not been made; or
 - (b) in relation to—
 - (i) payments of transfer values made by the fund authority to statutory schemes, or schemes which fall to be treated as statutory schemes for the purposes of Schedule 16 to the principal Regulations, where an application was received by that authority before 6th April 1988; and
 - (ii) payments of transfer values made by such schemes to the fund authority before that date.
- (4) Where the whole, or any part, of a transfer value paid in respect of a person—
- (a) falls to be calculated by reference to service reckoned by him before the coming into force of these Regulations;
 - (b) is to be used by the fund authority, at that person's option, to acquire transfer credits in an occupational pension scheme which is not a statutory scheme and does not fall to be treated as a statutory scheme; and
 - (c) would as a consequence of the amendments made to the principal Regulations by regulations 23, 25, 37, 38 and 44 of these Regulations result in the amount or value of those transfer credits being reduced;
- that transfer value, or that part of it, shall be calculated as if regulations 23, 25, 37, 38 and 44 of these Regulations had not been made.
- (5) The amendment made by regulation 31 shall apply only where the person ceased to hold the employment concerned, or suffered the reduction in his remuneration or died (as the case may be) on or after 6th April 1988.

Right to opt out

47.—(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 dependant 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.

St Andrew's House,
Edinburgh
3rd May 1989

Michael B Forsyth
Parliamentary Under Secretary of State, Scottish
Office

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SCHEDULE 1

Regulation 43

SCHEDULE TO BE INSERTED AFTER SCHEDULE 7 TO THE PRINCIPAL REGULATIONS

“SCHEDULE 7A

Regulation C9A

ADDITIONAL VOLUNTARY CONTRIBUTIONS

1.—(1) An election to pay contributions under regulation C9A shall be made by notice given in writing to the pensionable employee’s employing authority, and shall specify—

- (a) the amount of the additional contributions which are to be paid, expressed either as a percentage of his remuneration in his local government employment or as a sum payable at the times mentioned in sub-paragraph (2); and
- (b) the proportion (if any) of the contributions which he wishes to be used to provide benefits payable in the event of death.

(2) The additional contributions shall be payable on the pensionable employee’s usual pay day, and for that purpose shall be deductible by the employing authority, or be otherwise recoverable by the appropriate administering authority, under regulation C11.

2. With respect to any election under paragraph 1—

- (a) the appropriate administering authority may require, before any contributions are first made pursuant to the notice given under paragraph 1(1), that (until discontinued) the amount of the additional contributions payable in any tax year shall be not less than the amount specified in regulation 2(8) of the Pension Schemes (Voluntary Contributions Requirements and Voluntary and Compulsory Membership) Regulations 1987(19);
- (b) the amount of additional contributions payable in any tax year shall, when aggregated with the amount of any other contributions payable under these Regulations or under a free-standing additional voluntary contribution scheme, not exceed the amount allowed to be deducted under section 592(7) of the Income and Corporation Taxes Act 1988 as specified in or under subsection (8) of that section;
- (c) subject to paragraphs (a) and (b), the pensionable employee may at any time elect by notice given in writing to his employing authority to vary his additional contributions (both as to the amount and as to the proportion of those he is to continue to pay which are to be used to provide benefits payable on death) or to discontinue those contributions; and
- (d) no additional contributions shall be payable with respect to periods during which the person contributing is not a pensionable employee under these Regulations, or (subject to paragraph 6) with respect to any period after he ceases to be employed by the employing authority to which notice was given under paragraph 1(1).

3.—(1) Where a notice under paragraph 1(1) or 2(c) specifies that all or part of the additional contributions are to be used to provide benefits payable in the event of death, the appropriate administering authority shall make arrangements for the provision of those benefits under a pension policy with respect to which the authority are to make payments to the insurance company with which the policy is entered into of the same amounts as the contributions to be so used within one month of the day on which they are payable by the pensionable employee under paragraph 1(2).

(2) The policy shall be subject to the conditions mentioned in paragraph 2, and make provision for the arrangements mentioned in paragraph 6 in the event of a change of employment by the pensionable employee.

4.—(1) The administering authority shall invest any additional contributions which are not to be used to provide benefits payable in the event of death with a relevant body.

(2) Subject to sub-paragraph (3) and paragraphs 6, 7 and 8, upon the pensionable employee ceasing to be employed by the employing authority to which notice was given under paragraph 1(1) or ceasing to be a pensionable employee by virtue of a notification under regulation B4A, the appropriate administering authority shall, as soon as reasonably practicable after his benefits under Part E become, or would become, payable, apply the accumulated value of the additional contributions invested, as mentioned in sub-paragraph (1), to the provision of additional pension benefits under a pension policy.

(3) If the pensionable employee dies before such a policy is entered into, the accumulated value shall be payable to his executors.

(4) The additional contributions invested in accordance with sub-paragraph (1) shall not be used to provide benefits in lump sum form except where the aggregate of the pension benefits provided under Part E and the additional pension benefits provided by the pension policy mentioned in sub-paragraph (2) do not exceed the annual rate or amount referred to in regulation E21 and the pension benefits provided under Part E are being compounded in accordance with that regulation.

5.—(1) As soon as an employing authority receives a notice under paragraph 1(1) or 2(c) they shall forward it to the appropriate administering authority.

(2) The appropriate administering authority shall give effect to a notice under paragraph 1(1) or 2(c) as soon as reasonably practicable, and in any event—

- (a) in the case of a notice under paragraph 1(1), so that the pensionable employee may begin to pay his additional contributions under paragraph 1(2) within 6 months of his giving that notice; and
- (b) in the case of a notice under paragraph 2(c), so that the pensionable employee may pay his contributions at the varied amount or proportions, or cease to pay his contributions (as the case may be), within 3 months of his giving that notice.

(3) The benefits under a pension policy entered into under paragraph 3(1) or 4(2) shall be money purchase benefits the value of which is reasonable having regard to the amount of the contributions paid.

(4) Before entering into such a policy, the administering authority shall consult the pensionable employee and shall give effect, so far as is practicable and subject to sub-paragraph (3), to his wishes with respect to the benefits to be provided under it.

6.—(1) If, after ceasing to be employed by the employing authority to which notice was given under paragraph 1(1)—

- (a) the pensionable employee within one month and one day of the cessation enters a new employment in which he is also a pensionable employee;
- (b) his appropriate administering authority in both the former and new employments are the same; and
- (c) he was making payments of additional contributions up to the date of cessation,

he may elect by notice given in writing to his new employing authority before or within one month of beginning the new employment that his election to pay contributions under regulation C9A shall continue to have effect.

(2) In the event of an election under sub-paragraph (1)—

- (a) as soon as the new employing authority receive the notice of election they shall forward it to the appropriate administering authority;

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- (b) no payment of additional contributions shall be made with respect to the period (if any) between the two employments, but subject to that the pensionable employee shall, with effect from the pay day next after the day notice was given under sub-paragraph (1), make payments of additional contributions in his new employment under his notice under paragraph 1(1) as from time to time varied under paragraph 2(c);
- (c) the appropriate administering authority shall continue to invest all additional contributions paid by the pensionable employee not specified to be used to provide benefits payable in the event of death in the manner mentioned in paragraph 4(1) and apply any continuing additional contributions which are so specified towards the pension policy mentioned in paragraph 3(1);
- (d) paragraphs 4(2), 6 and 7 shall have effect in relation to a cessation of the new employment as if the new employment were the one in relation to which notice was given under paragraph 1(1).

7. Where a pensionable employee has ceased—

- (a) to be employed by the employing authority to which notice was given under paragraph 1(1); or
- (b) to be a pensionable employee without ceasing to be employed by the employing authority to which notice was given under paragraph 1(1);

he may elect to have the accumulated value of the invested additional contributions, mentioned in paragraph 4(1), used in one or more of the following ways:—

- (i) to subscribe to a superannuation scheme;
- (ii) to subscribe to a personal pension scheme;
- (iii) to subscribe to a self-employed pension arrangement;
- (iv) to purchase an appropriate policy from one or more insurance companies; or
- (v) to subscribe to a scheme approved by the Board of Inland Revenue under section 591 of the Income and Corporation Taxes Act 1988(20), to which an employer is not a contributor and which provides benefits additional to those provided by a superannuation scheme.

8. Where a pensionable employee has ceased—

- (a) to be employed by an employing authority; or
- (b) to be a pensionable employee without ceasing to be employed by an employing authority;

and has as a consequence become entitled to receive a refund of contributions under regulation C12 he may receive immediate payment of the accumulated value of the invested additional contributions, mentioned in paragraph 4(1).

9. Paragraph 2(d) shall not preclude a pensionable employee who has again become employed by a scheduled body (and has not elected under paragraph 6(1)), or a person who has made an election under regulation B4B(1), from making a new election by notice under paragraph 1(1).

10.—(1) Regulations C12 to C15 (return of contributions), P5 (management of superannuation funds) and P15(3) do not apply to contributions (or interest on late payments which relate to contributions) payable under regulation C9A.

(2) The making of contributions under regulation C9A, and any rights or liabilities arising under a pension policy entered into under paragraphs 3(1) or 4(2), shall be left out of account in calculating

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the amount of a transfer value payable under Parts J or Q; and Parts M (forfeiture etc) and N (decisions and appeals) do not apply in relation to benefits under such a policy.

11. In this Schedule—

“insurance company” means—

- (a) a person authorised under section 3 or 4 of the Insurance Companies Act 1982⁽²¹⁾ to carry on long term business and acting through a branch or agency in the United Kingdom, or
- (b) a society registered as a friendly society under the Friendly Societies Act 1974⁽²²⁾ or the Friendly Societies Act (Northern Ireland) 1970⁽²³⁾;

“money purchase benefits” has the same meaning as in the Social Security Act 1986⁽²⁴⁾;

“pension policy” means a contract entered into on behalf of the pensionable employee by the appropriate administering authority with an insurance company for the payment by the company of pension benefits to the intended recipients of those benefits which are in addition to those payable under Part E;

“relevant body” means—

- (a) a person for the time being operating a scheme which is an approved scheme for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988, and which provides benefits in relation to people who have paid contributions to it which are in addition to those provided in relation to those people under an occupational pension scheme; or
- (b) a building society within the meaning of the Building Societies Act 1986⁽²⁵⁾; and

“remuneration” has the same meaning as in Chapter I of Part XIV of the Income and Corporation Taxes Act 1988.”.

SCHEDULE 2

Regulation 44(1)

PART I TO BE SUBSTITUTED FOR PARTS I TO IV OF
SCHEDULE 16 TO THE PRINCIPAL REGULATIONS

“PART I

1. Subject to the provisions of paragraphs 2, 3, 5 and 6, a transfer value to be made in accordance with the provisions of regulation J2, J3(1), J14 or Q2 in respect of a person shall be—

(1) the capitalised value of his accrued rights under these Regulations at the material date, and any associated rights under the Pensions (Increase) Act 1971⁽²⁶⁾ and the Pensions (Increase) Act 1974⁽²⁷⁾, less a sum, if any, in respect of any state scheme premium which has been paid and not recovered in respect of a period of service included in the valuation of those rights; together with

(21) 1982 c. 50
(22) 1974 c. 46
(23) 1970 c. 31 (N.I.).
(24) 1986 c. 50
(25) 1986 c. 53
(26) 1971 c. 56
(27) 1974 c. 9

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(2) where the transfer value is, without reasonable cause or excuse, not paid within 6 months of the material date and it is not to be paid to a statutory scheme (or any other scheme which is for the time being specified by the Secretary of State as a scheme which is to be treated as a statutory scheme for the purposes of this Schedule)—

- (a) interest, if any, calculated on a daily basis over the period from the material date to the date on which the transfer value is paid, at the rate set out in regulation 4(4)(a) of the Occupational Pension Schemes (Transfer Values) Regulations 1985(28), or, if it is greater
- (b) the amount by which the transfer value falls short of what it would have been if the material date had been the date on which the transfer value was paid.

2. Where, prior to the last date on which the fund authority is required to pay a transfer value under these Regulations, the employing authority has directed under regulation M1 or any corresponding provision of earlier Regulations or a local Act scheme that all or any of the benefits payable under these Regulations shall be forfeited, any transfer value payable in respect of that person shall be reduced in proportion to the reduction in the total value of the benefits or shall be withheld as the case may be.

3. Where a person requests that a transfer value be paid—

- (a) (1) to a superannuation scheme which is not contracted-out within the meaning of section 32 of the Pensions Act(29), or
- (b) to a personal pension scheme which is not an appropriate personal pension scheme, or
- (c) to a self-employed pension arrangement;

(2) the trustees or managers of the superannuation scheme, personal pension scheme or self-employed pension arrangement are able or willing to have transferred to it only the liability for a member's accrued rights other than his and his surviving spouse's rights to guaranteed minimum pensions; and

(3) he does not require that portion of his transfer value that represents his guaranteed minimum pensions to be used in one of the ways specified in regulation J2(1),

then his transfer value shall be reduced by the amount of a state scheme premium sufficient to meet the liability in respect of that person's and his surviving spouse's guaranteed minimum pensions.

4.—(1) Subject to sub-paragraph (2), where a person has ceased to be a pensionable employee by virtue of a notification under regulation B4A, the person shall be entitled to a transfer value under regulation J2(1)(b) only in respect of the following:—

- (a) where the person is a man, that part of his accrued rights which bears the same proportion to his total accrued rights as his reckonable service after 5th April 1988 bears to his total reckonable service;
- (b) where the person is a woman, the aggregate of—
 - (i) that part of her accrued rights, other than a widower's pension, which bears the same proportion to the total of those accrued rights as her reckonable service after 5th April 1988 bears to her total reckonable service; and

(28) S.I. 1985/1931, to which there are amendments not relevant to these Regulations.

(29) The Social Security Pensions Act 1975 (c. 60); section 32 was amended by the Social Security and Housing Benefits Act 1982 (c. 24), Schedule 4, paragraph 20, and by the Social Security Act 1986 (c. 50), Schedule 2, paragraph 5, Schedule 10, paragraph 16 and Schedule 11.

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(ii) that part of her accrued rights, relating to a widower's pension, credited to her after 5th April 1988.

(2) This paragraph shall not apply to a person whose reckonable service before 6th April 1988 amounts to less than 2 years.

(3) Where—

- (a) a transfer value limited in accordance with sub-paragraph (1), has been paid in respect of a person; and
- (b) that person has subsequently ceased to be employed in local government employment before attaining the age of 65 years or, where regulation J2(7) applies, the age of 64 years;

a right to a transfer value in respect of any part of his accrued rights to which, but for the operation of sub-paragraph (1), he would have been entitled on ceasing to be a pensionable employee, shall accrue to the person on the date on which he ceases to be employed and shall be valued accordingly.

(4) In relation to any person to whom sub-paragraph (3) above applies—

- (a) regulation J2(2)(c)(ii) shall have effect as if the words “or to be a pensionable employee” were deleted; and
- (b) the definition of “material date” in paragraph 5 shall have effect as if the words “or to be a pensionable employee” were deleted.

(5) For the purposes of this paragraph, where a person ceases to be employed in local government employment but that person enters again into local government employment, then, if there is between those two employments—

- (a) an interval not exceeding one month; or
- (b) an interval of any length if the second of the employments results from the exercise of a right to return to work under section 45(1) of the Employment Protection (Consolidation) Act 1978(30) (right to return to work following pregnancy or confinement),

they shall be treated as a single employment.

5. In this Schedule—

“accrued rights” means the rights which have accrued in respect of a person under these Regulations at the material date, or which would have accrued in respect of him if the period of service necessary to satisfy the requirements of regulation E2(1)(c) had been the period which he had completed at that date;

“capitalised value” means the capitalised value at the material date as determined by the fund authority, in such manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose, having regard to investment conditions and the contingencies on which benefits are, or are to be, payable under these Regulations;

“material date” means the date on which the person ceased to be employed in local government employment or to be a pensionable employee, as described in regulation J2(1) or, if it is later, the date of his application for payment of a transfer value which he has not subsequently withdrawn; and

“state scheme premium” means a state scheme premium or a transfer premium under Part III of the Pensions Act.

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6. Where one or more transfer values have been paid to a fund authority in respect of a person, any transfer value paid by that fund authority shall be at least equal to the aggregate of those transfer values and any contributions made by that person under Part C, except where it falls to be paid to a statutory scheme (or any other scheme which is for the time being specified by the Secretary of State as a scheme which is to be treated as a statutory scheme for the purposes of this Schedule).

7. A transfer value paid under this Schedule shall be at least equal in amount to the cash equivalent, if any, to which a person would otherwise be entitled under Part II of Schedule 1A to the Pensions Act.”.

SCHEDULE 3

Regulation 45

SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 17 TO THE PRINCIPAL REGULATIONS

“SCHEDULE 17

Regulation J9(1)(a)

CALCULATION OF RECKONABLE SERVICE TO BE CREDITED UNDERREGULATION J9(1)(a)

1. Where a transfer value has been paid to, and accepted by, the fund authority, there shall be credited to the person in respect of whom the payment was made a period of reckonable service calculated in accordance with paragraph 2.

2. For the purpose of paragraph 1—

(1) where the transfer value—

- (a) is paid by the trustees or managers of a statutory scheme, or any other scheme which is at the appropriate date specified by the Secretary of State as a scheme which is to be treated as a statutory scheme for the purpose of this Schedule,
- (b) represents all of the person’s accrued rights in that scheme, and
- (c) has been calculated in a manner consistent with the methods adopted and assumptions made by the fund authority in determining the amount of transfer values to be paid to schemes which are, or which fall to be treated as, statutory schemes under Schedule 16;

the period of reckonable service to be credited to the person shall be equal to the period of service which if used to calculate a transfer value to be paid to a superannuation scheme which is, or which falls to be treated as, a statutory scheme under Schedule 16 would produce an amount equal to the transfer value received by the fund authority, and in making the calculation regard shall be had to the person’s age, rate of pensionable remuneration, marital status and, in addition, to any other factor notified to the fund authority by the trustees or managers of the scheme making the payment as having been taken into account in determining its amount; and

(2) in any other case the period of reckonable service credited to the person shall be calculated in a manner consistent with the methods adopted and assumptions made by the fund authority in determining the amount of transfer values to be paid to superannuation schemes (which do not fall to be treated as statutory schemes) under Schedule 16, due allowance being given for the expected increase in the pensionable remuneration of a local government employee between the appropriate date and the date on which the person in respect of whom the transfer value was paid would attain pensionable age.

(3) In this Schedule “appropriate date” means the date on which the person in respect of whom the transfer value is paid became a pensionable employee, or if the transfer value is received more than 12 months after that date, the date on which it is received.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Superannuation (Scotland) Regulations 1987 (“the principal Regulations”) as follows:—

- (1) to take account of the relevant provisions of the Social Security Act 1986—
 - (a) new regulations (B1, B2, B4, B4A and B4B) are inserted into Part B of the principal Regulations, to provide that those who were not pensionable employees on 5th April 1988 shall not subsequently become such unless they so elect; to give those who at any time are pensionable employees the opportunity to opt out of the local government superannuation scheme established under the principal Regulations; and to give those who have opted out of the scheme the opportunity to opt back in (regulations 3 and 5);
 - (b) amendments are made which are consequential on the new right to elect not to be a pensionable employee, particularly in relation to—
 - (i) certain existing rights of election available to part-time employees, which are being replaced (regulations 3, 4 and 5);
 - (ii) certain additional payments (regulation 7);
 - (iii) refunds of contributions (regulation 9);
 - (iv) benefits on retirement due to ill-health (regulation 13);
 - (v) death gratuities (regulation 18);
 - (vi) gratuities for non-superannuable local government employees (regulation 29); and
 - (vii) injury allowances (regulations 30 and 31);
 - (c) a new regulation C9A and Schedule 7A are inserted to allow a pensionable employee to elect to make additional voluntary contributions, up to certain limits, under the local government superannuation scheme. The new Schedule provides that the additional contributions are to be used by the administering authority to provide money purchase benefits under a scheme approved for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988. The new Schedule also makes provision, amongst other matters, for changes of employment by the pensionable employee and for the making of new elections (regulations 7 and 43);
 - (d) the period of reckonable or qualifying service after which a pensionable employee becomes entitled to preserved benefits (instead of a refund of contributions) has been reduced from 5 years to 2 years (regulations 9(a) and (d), 12(a), 14, 15(a), 16(a) and 17);
 - (e) provision is made for the payment of benefits to dependants of deceased female local government employees in respect of service after 5th April 1988 on the same basis as is currently provided for dependants of male employees (regulations 10, 16(c) and 19);
- (2) to take account of the relevant provisions of the Social Security Act 1985—

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- (a) provision is made for the method of revaluation of a pensionable employee's guaranteed minimum, and where appropriate that of his widow, to be altered where the pensionable employee, on ceasing employment, or otherwise ceasing to be a pensionable employee, has elected to use his transfer value to purchase an annuity which meets certain requirements (regulation 11);
- (b) revised arrangements and conditions are introduced relating to—
 - (i) payment of transfer values to occupational pension schemes, personal pension schemes, self-employed pension arrangements and insurance companies representing the cash equivalent of the accrued pension benefits being transferred; and
 - (ii) the amount of reckonable service to be credited upon receipt of a transfer value calculated in a manner consistent with the methods and assumptions made in determining a transfer value (regulations 23, 25, 27, 28, 37, 38, 44 and 45);
- (c) allowance is made for the calculation of transfer values in respect of reckonable service undertaken before 6th April 1988 to be made under previous provisions where this proves to be more favourable (regulation 46(3) and (4));
- (3) the period between valuations of a superannuation fund is reduced from 5 years to 3 years (regulation 33);
- (4) the meaning of paragraph 14(1) of Part IV of Schedule 6 to the principal Regulations is clarified (regulation 42);
- (5) a number of consequential and technical amendments are also made (regulations 6, 8, 12(b), 15(b) and (c), 16(b), 20, 21, 22, 24, 26, 32, 34, 35, 36, 39, 40 and 41);
- (6) transitional provisions are contained in regulation 46.

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 47).

These Regulations (except for regulations 11, 32, 33, 34, 35, 41 and 42) have retrospective effect as authorised by section 12 of the Superannuation Act 1972.