

STATUTORY INSTRUMENTS

1975 No. 1800 (S. 248)

LOCAL GOVERNMENT, SCOTLAND

The Fire Services (Compensation) (Scotland) Regulations 1975

Made - - - 31st October 1975

Laid before Parliament 21st November 1975

Coming into Operation 12th December 1975

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In exercise of the powers conferred on me by section 219 of the Local Government (Scotland) Act 1973(a) and of all other powers enabling me in that behalf I hereby make the following regulations:—

PART I

PRELIMINARY

Title and commencement

1. These regulations may be cited as the Fire Services (Compensation) (Scotland) Regulations 1975 and shall come into operation on 12th December 1975.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

“the Act” means the Local Government (Scotland) Act 1973;

“age of compulsory retirement” means, in relation to a regular fireman, the age at which he would become liable to be required to retire on account of age under the Firemen’s Pension Scheme;

“annual rate”, in relation to the emoluments of an employment which has been lost or emoluments which have been diminished, means the annual rate of those emoluments immediately before the loss or diminution, as the case may be;

“compensating authority”, in relation to any person who suffers loss of employment or loss or diminution of emoluments as specified in regulation 4, means the fire authority by whom he was last employed prior to the loss or diminution or, if that authority has ceased to exist, the relevant new fire authority within the meaning of article 4(2) of the Police etc. and Fire Pensions (Transfer of Liabilities) (Scotland) Order 1975(b);

“compensation question” means a question arising under these regulations—

(a) as to a person’s entitlement to compensation for loss of employment, or for loss or diminution of emoluments; or

(b) as to the manner of a person’s employment or the comparability of his duties;

“emoluments” has the meaning given by regulation 36(1);

“enactment” means any Act or any instrument made under an Act;

“Firemen’s Pension Scheme” means the Scheme from time to time in force under section 26 of the Fire Services Act 1947(c);

“fund authority”, in relation to any person, means the authority maintaining the superannuation fund or account in relation to that person;

“instrument” includes an Order in Council, regulation, order, rule, scheme, direction or agreement;

“interchange rules” means rules made under section 2 of the Superannuation (Miscellaneous Provisions) Act 1948(d) (which provides for the pensions of persons transferring to different employment) and includes any similar instrument made, or having effect as if made, under any other Act which makes similar provision;

(a) 1973 c. 65.

(b) S.I. 1975/676 (1975 I, p. 2401).

(c) 1947 c. 41.

(d) 1948 c. 33.

“local authority” means—

- (a) (i) the council of a county, county of city, large burgh, small burgh or district referred to in section 1(5) of the Act, or
- (ii) a regional, islands or district council established by or under the Act;
- (b) any joint board or joint body constituted by or under any enactment for the purpose of exercising any of the functions of two or more authorities described in paragraph (a) above;
- (c) any other authority or body, not specified in paragraphs (a) or (b) above, established by or under any enactment for the purpose of exercising any of the functions of, or advising, one or more of the authorities specified in paragraphs (a) or (b) above;
- (d) any committee (including a joint committee) established by or under any enactment for the purpose of exercising any of the functions of, or advising one or more authorities described in paragraphs (a), (b) or (c) above; or
- (e) any two or more authorities described in paragraphs (a), (b), (c) or (d) above acting jointly or as a combined authority;

“long-term compensation” means compensation payable in accordance with the provisions of Part IV of these regulations for loss of employment or loss or diminution of emoluments;

“material date” means—

- (a) in relation to any person affected by any provision of the Act, 16th May 1975 or the date on which the loss of employment or loss or diminution of emoluments occurred, whichever is the earlier;
- (b) in relation to a person affected by any provision of an instrument made under the Act, the date on which the instrument was made or, if some other date is specified therein, that other date;

“national service”, in relation to any person, means compulsory national service and service which is relevant service within the meaning of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(a) and any similar service immediately following such service entered into with the consent of the authority or person under whom he held his last relevant employment, or, where appropriate, the authority by whom he was appointed, and service otherwise than as a member of a fire brigade maintained under the Fire Services Act 1947 which is pensionable under the Firemen’s Pension Scheme;

“pensionable pay” and “average pensionable pay” have the same meanings, respectively, as in the Firemen’s Pension Scheme;

“pension scheme”, in relation to any person, means any form of arrangement associated with his employment for the payment of superannuation benefits, whether subsisting by virtue of any enactment, trust, contract or otherwise;

“pensionable service” has the same meaning as in the Firemen’s Pension Scheme;

(a) 1951 c. 65.

“reckonable service”, in relation to any person, means any period of whole-time or part-time employment in any relevant employment and includes any period of war service or national service undertaken on his ceasing to hold such an employment, but does not include employment in respect of which he has become entitled to receive a benefit from a pension scheme other than the Firemen’s Pension Scheme;

“regular fireman” means a member of a fire brigade of a class prescribed by the Firemen’s Pension Scheme for the purposes of section 2 of the Fire Services Act 1951(a);

“relevant employment” means employment—

- (a) under the Crown or in the service of a local authority or of a local authority as defined in the Local Government (Compensation) Regulations 1974(b);
- (b) by any regional water board or water development board within the meaning of the Water (Scotland) Act 1967(c) or by any water authority as defined in the Local Government (Compensation) Regulations 1974;
- (c) by any river purification board referred to in section 135(1) of the Act or established under the Act;
- (d) by any local authority association;
- (e) by or under (and for the purpose of the functions of) any person engaged in employment described in the foregoing subparagraphs;
- (f) preceding any of the foregoing employments which was reckonable for the purposes of the Firemen’s Pension Scheme; or
- (g) in such other service as the Secretary of State may, in the case of any named officer, approve

but except for national service and war service does not include service in the armed forces of the Crown;

“resettlement compensation” means compensation payable in accordance with Part III of these regulations for loss of employment;

“retirement compensation” means compensation payable in accordance with the provisions of regulation 19, 20 or 21;

“tribunal” means a tribunal established under section 12 of the Industrial Training Act 1964(d);

“war service” means war service within the meaning of the Local Government Staffs (War Service) Act 1939(e), the Teachers’ Superannuation (War Service) Act 1939(f), the Education (Scotland) (War Service Superannuation) Act 1939(g) or the Police and Firemen (War Service) Act 1939(h) or employment for war purposes within the meaning of the Superannuation Schemes (War Service) Act 1940 (i), if such service or employment immediately followed a period of relevant employment and was undertaken either compulsorily or with the permission of the employer in that employment.

(a) 1951 c. 27.

(b) S.I. 1974/463 (1974 I, p. 1563).

(c) 1967 c. 78.

(d) 1964 c. 16.

(e) 1939 c. 94.

(f) 1939 c. 95.

(g) 1939 c. 96.

(h) 1939 c. 103.

(i) 1940 c. 26.

(2) The holder of any office, appointment, place, situation or employment shall, for the purposes of these regulations, be regarded as an officer employed in that office, appointment, place, situation or employment, and the expressions "officer" and "employment" shall be construed accordingly.

(3) Where under any provision of these regulations an annual value is to be assigned to a capital sum or a capital value to an annual amount, the annual or capital value shall be calculated by the Government Actuary.

(4) In these regulations, unless the context otherwise requires, references to any enactment shall be construed as references thereto as amended, re-enacted, applied or modified by any subsequent enactment.

(5) References in these regulations to a numbered regulation shall, unless the reference is to a regulation of specified regulations, be construed as references to the regulation bearing that number in these regulations.

(6) References in any regulation of these regulations to a numbered paragraph shall, unless the reference is to a paragraph of a specified regulation, be construed as references to the paragraph bearing that number in the first mentioned regulation.

(7) The Interpretation Act 1889(a) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

PART II

ENTITLEMENT TO COMPENSATION

Persons to whom the regulations apply

3. These regulations shall apply to any person who—

- (a) was serving immediately before the material date as a regular fireman;
or
- (b) would have been so serving at that time but for any national service on which he was then engaged.

Grounds of entitlement to compensation

4.—(1) Subject to the provisions of these regulations, any person to whom these regulations apply and who suffers loss of employment or loss or diminution of emoluments which is attributable to any provision of the Act or of any instrument made under the Act shall be entitled to have his case considered for the payment of compensation under these regulations, and such compensation shall be determined in accordance with these regulations.

(2) Without prejudice to the generality of these regulations, paragraph (1) shall apply to a person who—

- (a) for the purposes of entering an employment described in sub-paragraph (b) of this paragraph, terminated his employment as a regular fireman;
- (b) at any time before 16th May 1975 entered the employment of a local authority described in section 2 of the Act; and
- (c) would, but for his entry into the employment described in the said sub-paragraph (b), have been transferred on 16th May 1975 in accordance with the provisions of section 216 of the Act to the employment of a local authority;

(a) 1889 c. 63.

and in determining the compensating authority for the purposes of these regulations, any loss or diminution of emoluments suffered by him which is attributable thereto shall be assumed to have occurred on the day after that on which he enters the employment described in the said sub-paragraph (b).

National service

5.—(1) Where any person to whom these regulations apply would have been serving immediately before the material date as a regular fireman but for any national service on which he was then engaged, then if before the expiry of two months after ceasing to be so engaged, or if prevented by sickness or other reasonable cause, as soon as practicable thereafter, he gives notice to the compensating authority that he is available for employment, that person shall be entitled to have his case considered for the payment of compensation on the ground—

- (a) if he is not given or offered re-employment as a regular fireman in his former rank or in any reasonably comparable employment, of loss of employment;
- (b) if he is so re-employed with reduced emoluments as compared with the emoluments which he would have enjoyed had he continued to serve as a regular fireman in his former rank, of diminution of emoluments.

(2) The loss of employment which is the ground of a claim for compensation under paragraph (1)(a) shall be treated as having occurred on the earlier of the two following dates, that is to say, the date of the refusal of re-employment or a date one month after the date on which the person gave notice that he was available for employment, and the claimant shall be deemed to have been entitled to the emoluments which he would have enjoyed at such earlier date had he continued to serve as a regular fireman in his former rank.

PART III

RESETTLEMENT COMPENSATION

Resettlement compensation for loss of employment

6. The compensating authority shall, subject to the provisions of these regulations, pay resettlement compensation to any person to whom these regulations apply and who satisfies the conditions set out in regulation 7.

Conditions for payment of resettlement compensation

7.—(1) Without prejudice to any other requirement of these regulations, the conditions for the payment of resettlement compensation to any person are that—

- (a) he has suffered loss of employment attributable to any provision of the Act or of any instrument made under the Act not later than 10 years after the material date;
- (b) he had not at the date of the loss attained the age of compulsory retirement;
- (c) he had been for a period of 2 years immediately before the material date continuously engaged (disregarding breaks not exceeding in the aggregate 6 months) for the whole or part of his time in relevant employment;
- (d) he has made a claim for such compensation in accordance with the provisions of Part VII of these regulations not later than 13 weeks after the loss of employment which is the cause of his claim, or 13 weeks after the coming into operation of these regulations,

whichever is the later, or within any longer period which the compensating authority allow in any particular case where they are satisfied that the delay in making the claim was due to ill-health or other circumstances beyond the claimant's control;

- (e) the loss of employment which is the cause of his claim has occurred for some reason other than misconduct or incapacity to perform the duties that, immediately before the loss, he was performing or might reasonably have been required to perform;
- (f) he has not, subject to paragraphs (2) and (3), after the employer either informed him in writing that his employment was to be terminated or was likely to be terminated or gave him written notice of termination of his employment, been offered in writing—
 - (i) any relevant employment which is reasonably comparable with the employment which he has lost; or
 - (ii) any employment by a fire authority which is suitable for him and is at the same place or in the same locality as that where he was employed immediately before the loss.

(2) In ascertaining for the purposes of this regulation whether a person has been offered employment which is reasonably comparable with the employment which he has lost, no account shall be taken of the fact that the duties of the employment offered are in relation to a different service from that in connection with which his employment was held or are duties which involve a transfer of his employment from one place to another within Scotland.

(3) For the purposes of this regulation, where the compensating authority are satisfied—

- (a) that acceptance of an offer would have involved undue hardship to the person;
- (b) that he was prevented from accepting an offer by reason of ill-health or other circumstances beyond his control; or
- (c) that, before the commencement of these regulations, an offer—
 - (i) has not been accepted by him; and
 - (ii) has lapsed or otherwise terminated;

no account shall be taken of that offer.

Amount of resettlement compensation

8. The amount of resettlement compensation which may be paid to a person shall, subject to the provisions of regulation 9, be the amount described in paragraph (a) or (b) of this regulation whichever is the greater—

- (a) an amount equal to 13 weeks' emoluments and, in the case of a person who has attained the age of 45 years, one additional week's emoluments for every year of his age after attaining the age of 45 years and before the loss of employment, subject to a maximum addition of 13 such weeks;
- (b) an amount equal to—
 - (i) 1½ weeks' emoluments for each completed year of reckonable service in which the person was not below the age of 41 years;
 - (ii) 1 week's emoluments for each completed year of reckonable service (not falling within (i) of this paragraph) in which the person was not below the age of 22 years; and
 - (iii) ½ week's emoluments for each completed year of reckonable service not falling within either (i) or (ii) of this paragraph.

Special factors relating to calculation of amount of resettlement compensation

9.—(1) For the purposes of regulation 8(a), if the loss of employment takes place within 3 years of the date on which he would have become entitled to retire with an ordinary pension under the Firemen's Pension Scheme, the amount shall be reduced by the fraction of which—

- (a) the denominator is 6, and
- (b) the numerator is the number of complete periods of 6 months in the period beginning with the date 3 years before that on which he would have become so entitled and ending on the date of loss of employment;

but the amount payable to a person who, on the material date, has not been continuously engaged in relevant employment as described in regulation 12(1)(c) shall not by this paragraph be reduced to less than the equivalent of 13 weeks' emoluments.

(2) For the purposes of regulation 8(b)—

- (a) in the case of a person who has completed more than 20 years' reckonable service, only the period of 20 years immediately prior to the loss of employment shall be taken into account; and
- (b) if the loss of employment takes place within the period of one year prior to the date on which the person would have attained the age of compulsory retirement, the amount shall be reduced by the fraction of which the denominator is 12 and of which the numerator is the number of whole months in the period commencing at the beginning of the said period of one year and ending with the date of loss of employment.

(3) For the purposes of regulation 8 and this regulation, the weekly rate of emoluments shall be deemed to be seven 365ths of the annual rate of emoluments.

Adjustment of resettlement compensation

10. A person who is entitled to—

- (a) a redundancy payment under the Redundancy Payments Act 1965(a); or
- (b) any similar payment in consequence of the loss of his employment under any other enactment or under any contract or arrangement with the authority by whom he was employed (other than payments by way of a return of contributions under a pension scheme); or
- (c) any payment under or by virtue of the provisions of any enactment relating to the reinstatement in civil employment of persons who have been in the service of the Crown;

shall—

- (i) if the amount of any resettlement compensation that would, apart from this regulation, be payable exceeds the payment or payments specified in (a), (b) or (c) above, be entitled to resettlement compensation equal to that excess; or
- (ii) if the amount of any resettlement compensation that would apart from this regulation be payable is equal to or less than the said payment or payments, not be entitled to resettlement compensation.

(a) 1965 c. 62.

PART IV

LONG-TERM COMPENSATION

Long-term compensation for loss of employment or loss or diminution of emoluments

11. The compensating authority shall, subject to the provisions of these regulations, pay long-term compensation to any person to whom these regulations apply and who satisfies the conditions set out in regulation 12.

Conditions for payment of long-term compensation

12.—(1) Without prejudice to any other requirement of these regulations, the conditions for the payment of long-term compensation to any person are that—

- (a) he has suffered loss of employment or loss or diminution of emoluments attributable to any provision of the Act or of any instrument made under the Act not later than 10 years after the material date;
- (b) he had not at the date of the loss or diminution attained the age of compulsory retirement;
- (c) he had been, for a period of not less than 5 years immediately before the material date, continuously engaged (without a break of more than 12 months at any one time) for the whole or part of his time in relevant employment;
- (d) he has made a claim for such compensation in accordance with the provisions of Part VII of these regulations not later than 2 years after the loss or diminution which is the cause of the claim or 2 years after the coming into operation of these regulations whichever is the later; and
- (e) if the cause of the claim for compensation is loss of employment—
 - (i) the loss has occurred for some reason other than misconduct or incapacity to perform such duties as, immediately before the loss, he was performing or might reasonably have been required to perform; and
 - (ii) he has not, subject to paragraph (2), after the employer either informed him in writing that his employment was to be terminated or was likely to be terminated or gave him written notice of termination of his employment, been offered in writing any relevant employment which is reasonably comparable with the employment which he has lost.

(2) Regulation 7(2) and (3) (which relate to offers of employment) shall apply for the purposes of this regulation in ascertaining whether a person has been offered reasonably comparable employment.

(3) Claims for long-term compensation for loss of employment shall in all respects be treated as claims for such compensation for the loss of emoluments occasioned thereby and the provisions of these regulations shall apply to all such claims accordingly.

Factors to be considered in determining payment of long-term compensation

13.—(1) For the purpose of determining whether long-term compensation for loss or diminution of emoluments should be paid to any person and, if so, the amount of the compensation (subject to the limits set out in these

regulations) the compensating authority shall, subject to the provisions of paragraphs (2) and (3), have regard to such of the following factors as may be relevant, that is to say:—

- (a) the conditions upon which the person held the employment which he has lost, including in particular its security of tenure, whether by law or practice;
- (b) the emoluments and other conditions, including security of tenure, whether by law or practice, of any work or employment undertaken by the person as a result of the loss of employment;
- (c) the extent to which he has sought suitable employment and the emoluments he might have acquired by accepting other suitable employment which, after the employer either informed him in writing that his employment was to be terminated or was likely to be terminated or gave him written notice of termination of his employment, has been offered to him in writing; and
- (d) all the other circumstances of his case;

but, subject to the provisions of regulation 37, no account shall be taken of the fact that he entered the employment which he has lost or the emoluments of which have been diminished after—

- (i) 25th October 1973 where the loss or diminution was attributable to any provision of the Act, or
- (ii) the making of any instrument under the Act, where the loss or diminution was attributable to any provision of that instrument.

(2) In ascertaining for the purposes of paragraph (1)(b) and (1)(c) the emoluments in respect of any work or employment that gives the employee or his widow, child or other dependant the right to benefit under a pension scheme under which the employee is not under an obligation to pay contributions, the amount of emoluments shall be increased by the amount of contributions which the employee would have to pay to secure equivalent benefits under a pension scheme in respect of which both the employer and employee are under an obligation to pay equal contributions.

(3) Regulation 7(3) shall apply for the purposes of this regulation in ascertaining whether a person has been offered suitable employment.

Amount of long-term compensation payable for loss of emoluments

14.—(1) Long-term compensation for loss of emoluments shall, subject to the provisions of these regulations be payable until the age of compulsory retirement or death of a person to whom it is payable, whichever first occurs, and shall not exceed a maximum annual sum calculated in accordance with the provisions of paragraphs (2) to (4).

(2) The said maximum annual sum shall, subject as hereinafter provided, be the aggregate of the following sums, namely—

- (a) for every year of the person's reckonable service, one sixtieth of the annual rate of the emoluments which he has lost; and
- (b) in the case of a person who has attained the age of 40 years at the date of the loss, a sum calculated in accordance with the provisions of paragraph (3) appropriate to his age at that date;

but the said maximum annual sum shall in no case exceed two-thirds of the annual rate of the emoluments which the person has lost.

- (3) The sum referred to in paragraph (2)(b) shall be—
- (a) in the case of a person who has attained the age of 40 years but has not attained the age of 50 years at the date of the loss, the following fraction of the annual rate of the emoluments which he has lost—
 - (i) where his reckonable service is less than 10 years, one-sixtieth for each year of that service after attaining the age of 40 years; or
 - (ii) where his reckonable service amounts to 10 years but is less than 15 years, one-sixtieth for each year of that service after attaining the age of 40 years and an additional one-sixtieth; or
 - (iii) where his reckonable service amounts to 15 years but is less than 20 years, one-sixtieth for each year of that service after attaining the age of 40 years and an additional two-sixtieths; or
 - (iv) where his reckonable service amounts to 20 years or more, one-sixtieth for each year of that service after attaining the age of 40 years and an additional three-sixtieths;but the sum so calculated shall not in any case exceed one-sixth of the annual rate of the said emoluments;
 - (b) in the case of a person who has attained the age of 50 years but has not attained the age of 60 years at the date of the loss, one-sixtieth of the annual rate of the said emoluments for each year of his reckonable service after attaining the age of 40 years, up to a maximum of 15 years.
- (4) The amount of long-term compensation calculated in accordance with paragraphs (2) and (3) shall be reduced by the amount by which the aggregate of the annual rates of—
- (a) the emoluments of any work or employment undertaken by him as a result of the loss of employment; and
 - (b) the long-term compensation which, apart from this paragraph and any reduction under regulation 26 would be payable to him;
- exceeds the annual rate of the emoluments of the employment which has been lost.
- (5) Long-term compensation shall be payable to a person at intervals equivalent to those at which the emoluments of his employment were previously paid or at such other intervals as may be agreed between the person and the compensating authority.

Long-term compensation for diminution of emoluments

15.—(1) Long-term compensation for the diminution of emoluments in respect of any employment shall, subject to the provisions of these regulations consist of an annual sum calculated in accordance with the provisions of paragraph (2).

(2) The said annual sum shall not exceed the sum that would be the annual sum under the provisions of regulations 14(1) to (4) calculated on the assumptions—

- (a) that there was a loss of employment; and
- (b) that emoluments after diminution were emoluments of any work or employment undertaken as a result of a loss of employment within the meaning of regulation 13(1)(b).

(3) Long-term compensation for diminution of emoluments shall be payable to a person at intervals equivalent to those at which the emoluments of his employment are or were previously paid or at such other intervals as may be agreed between the person and the compensating authority.

Period during which long-term compensation is to be payable

16.—(1) Long-term compensation shall be payable with effect from the date of the claim or from any earlier date permitted by the succeeding provisions of this regulation.

(2) Where a claim for long-term compensation is duly made within 13 weeks of the commencement of these regulations or occurrence of the loss or diminution which is the cause of the claim (whichever is the later), the award shall be made effective from the date on which the loss or diminution occurred.

(3) Where a claim for long-term compensation is made after the expiry of the period mentioned in paragraph (2), the compensating authority may—

- (a) at their discretion make the award effective from a date not earlier than 13 weeks prior to the date on which the claim was made; or
- (b) if they are satisfied that the failure to make the claim within the period mentioned in paragraph (2) was due to ill-health or other circumstances beyond the claimant's control, make the award effective from a date not earlier than that on which the loss or diminution occurred.

(4) Long-term compensation shall not be payable to a person for any period in respect of which compensation under Part V of these regulations is payable to him.

PART V

RETIREMENT COMPENSATION AND PAYMENTS ON DEATH

Entitlement to retirement compensation and other payments

17.—(1) The compensating authority shall, subject to the provisions of these regulations, pay retirement compensation to any person to whom these regulations apply and who satisfies the conditions set out in regulation 12, and shall make the other payments for which provision is made in regulation 24.

(2) Regulation 13 shall apply in relation to compensation under this part of these regulations as it applies in relation to compensation under Part IV.

Additional factors governing payment of retirement compensation

18.—(1) Where retirement compensation is payable under any one of regulations 19, 20 and 21, compensation shall not be payable under any other of those regulations.

(2) If a person has attained the age of 40 years at the date on which he lost his employment or suffered a diminution of his emoluments, the compensating authority, in calculating the amount of the retirement compensation payable to him, shall credit him with an additional period of service on the following basis, namely—

- (a) 2 years, whether or not he has completed any years of service after attaining the age of 40 years;
- (b) 2 years for each of the first 4 years of his reckonable service between the date when he attained the age of 40 years and the date of the loss or diminution; and

- (c) 1 year for each year of that reckonable service after the fourth but the additional period so credited shall not exceed the shortest of the following periods, namely—
- (i) the number of years that, when added to his pensionable service, would amount to the maximum period of service which would have been reckonable by him had he continued in his employment until attaining the age of compulsory retirement; or
 - (ii) the period of his reckonable service; or
 - (iii) 15 years;

and in calculating the amount of any retirement compensation payable to him he shall be regarded as having served as a regular fireman, for the additional period so credited and, for the purpose of determining the reduction (if any) falling to be made in that pension beyond the age of 65 years, as if he had paid pension contributions as a regular fireman, in respect of that period at a rate related to 6p a week less than the appropriate percentage of his pensionable pay.

In this paragraph the expression “reckonable service” includes any period of service or employment which has been taken into account for the purposes of any award under the Firemen’s Pension Scheme to which the person concerned has become entitled.

(3) The benefit in respect of the additional period described in paragraph (2) shall be calculated at the same rate as is applicable for the day immediately preceding the loss or diminution.

(4) When retirement compensation is awarded, or when an award is reviewed under regulation 30, the additional compensation payable in consequence of any period credited to a person under paragraph (2) may be reduced or withheld to the extent that the compensating authority may think reasonable having regard to the pension scheme (if any) associated with any further employment obtained by him.

(5) The provisions of the Firemen’s Pension Scheme relating to the allocation of a pension, that is to say to the surrender by a regular fireman of a portion of his pension in favour of his wife or such other person as is substantially dependent on him, shall, subject to any necessary modifications have effect in relation to any retirement compensation as they have effect in relation to an ordinary or ill-health pension under the Firemen’s Pension Scheme; and without prejudice to the generality of the preceding provisions of this paragraph—

- (a) where before the date of the loss or diminution a regular fireman has, under the Firemen’s Pension Scheme, allocated an ordinary pension and the allocation has taken effect, the said provisions shall apply as if the retirement compensation were an ordinary pension; and
- (b) the said provisions shall apply as if any reference to the fire authority included a reference to the compensating authority and as if any reference to retirement included a reference to a person becoming entitled to retirement compensation.

(6) In calculating for the purpose of regulation 19 or 20 the amount of a pension under the Firemen’s Pension Scheme, no account shall be taken of any reduction falling to be made in that pension by reason of the provisions of any enactment relating to National Insurance until the person concerned reaches the age at which under the Firemen’s Pension Scheme the pension would have been so reduced.

Retirement compensation for loss of emoluments payable to a person on attainment of the age of compulsory retirement

19. Subject to the provisions of these regulations, when a person to whom these regulations apply reaches the age of compulsory retirement the retirement compensation payable to him for loss of emoluments shall be an annual sum equal to the amount of the short service pension which would have been payable under the provisions of the Firemen's Pension Scheme calculated in accordance with regulation 18(2).

Retirement compensation payable to a person who would have become entitled to a pension

20.—(1) Where a person to whom these regulations apply and who has suffered loss of employment before attaining what would have been the age of compulsory retirement—

- (a) becomes incapacitated in circumstances in which, if he had continued to serve as a regular fireman, he would have become entitled to retire with an ill-health pension under the Firemen's Pension Scheme; or
- (b) attains the age at which, had he continued to serve as a regular fireman, he would have been entitled to retire with an ordinary pension;

he shall be entitled on the happening of either event to claim—

- (i) in the case mentioned in head (a) of this paragraph, an annual sum equal to the amount of the ill-health pension which would have been payable under the Firemen's Pension Scheme calculated in accordance with regulation 18(2); and
- (ii) in the case mentioned in head (b) of this paragraph, an annual sum equal to the amount of the ordinary pension which would have been payable under the Firemen's Pension Scheme calculated in accordance with regulation 18(2);

in both cases calculated by reference to his average pensionable pay (or where appropriate pensionable pay) immediately before he ceased to serve as a regular fireman, subject however to paragraph (7).

(2) On receipt of a claim under paragraph (1) the compensating authority shall consider whether the claimant is a person to whom that paragraph applies, and within 13 weeks after the date of the receipt of the claim—

- (a) if they are satisfied that he is not such a person, they shall notify him in writing accordingly; or
- (b) if they are satisfied that he is such a person, they shall assess the amount of compensation payable to him and notify him in writing accordingly;

and notification as described in (a) or (b) above shall, for the purposes of these regulations, be deemed to be a notification by the authority of a decision on a claim for compensation.

(3) A compensating authority may require any person who makes a claim under paragraph (1)(a) to submit himself to a medical examination by a registered medical practitioner selected by that authority, and if they do so, they shall also offer the person an opportunity of submitting a report from his own medical adviser as a result of an examination by him, and the authority shall take that report into consideration together with the report of the medical practitioner selected by them.

(4) If a person wishes to receive compensation under this regulation, he shall so inform the compensating authority in writing within one month from the receipt of a notification under paragraph (2) or, where the claim has been the subject of an appeal, from the decision of the tribunal thereon; and the compensation shall be payable as from the date on which the compensating authority received the claim.

(5) If the compensating authority so agree, in the case of a person who would have become entitled to retire with an ordinary pension, as aforesaid, if his notice of retirement were given with the permission of the fire authority, it shall be assumed for the purposes of this regulation that he would have obtained such permission.

(6) If the compensating authority so agree, in the case of a person in whose case the Firemen's Pension Scheme had effect subject to the modifications set out in section 27(3) of the Fire Services Act 1947, no account shall be taken, for the purposes of this regulation, of any modification which has the effect that—

- (a) a person's entitlement to a pension is conditional on the chief officer of the fire brigade concerned giving a certificate that he has served with zeal and fidelity; or
- (b) the grant of a pension may be refused on account of misconduct or on account of any of the grounds on which the pension, if granted, would be liable to be forfeited or withdrawn.

(7) In calculating the amount of any compensation under this regulation, where the compensating authority, by virtue of regulation 18(2), have credited the person with an additional period of service, no account shall be taken of any additional period beyond the period which he could have served, had he not lost his employment, before the date on which the claim was received by the compensating authority.

Retirement compensation for diminution of emoluments

21.—(1) A person to whom these regulations apply and who has suffered a diminution of his emoluments shall be entitled to receive retirement compensation in accordance with the provisions of this regulation.

(2) The provisions of regulations 19 and 20 shall apply to any such person as if he had suffered loss of employment immediately before the diminution occurred; but the amount of retirement compensation payable shall be the amount which would have been payable in respect of loss of employment multiplied by a fraction of which—

- (a) the numerator is the amount by which his pensionable emoluments have been diminished; and
- (b) the denominator is the amount of his pensionable emoluments immediately before they were diminished;

but in calculating, for the purpose of regulation 19 or 20, the amount of a pension under the Firemen's Pension Scheme, no account shall be taken of any provision of that Scheme by which a pension would be reduced beyond the age of 65 years.

Superannuation contributions

22.—(1) A person entitled to retirement compensation under regulation 19 or 20 shall pay to the compensating authority an amount equal to any award by way of repayment of aggregate contributions received by him under the Firemen's Pension Scheme on ceasing to be a regular fireman but, where he has made the said payment to the compensating authority before becoming entitled to retirement compensation as aforesaid, that authority may, at his request before he becomes so entitled, refund the payment to him; and if the said payment is not made to the compensating authority, or is refunded by them, the compensation shall be reduced by an annual amount the capital value of which is equal to the amount of the said award under the Firemen's Pension Scheme.

(2) In the case of a person who undertook, for the purposes of the Firemen's Pension Scheme, to make payments by regular instalments in respect of previous service, the compensating authority shall be empowered to deduct the balance of the sum outstanding under the undertaking when he ceased to serve as a regular fireman, if any, from any payments to him of retirement compensation.

(3) Any sums paid to a compensating authority under this regulation, in respect of returned contributions under the Firemen's Pension Scheme shall be applied for the payment of compensation which the authority is liable to pay under this part of these regulations.

Retirement compensation of a person who obtains further pensionable employment

23.—(1) Where a person to whom these regulations apply, after suffering loss of employment or diminution of emoluments as a regular fireman, enters employment in which he is subject to a pension scheme and thereafter becomes entitled to reckon for the purposes of that scheme any service or period of contribution which falls to be taken into account for the purpose of assessing the amount of any retirement compensation payable to him, his entitlement to retirement compensation shall be reviewed, and, subject to the provisions of this regulation, no retirement compensation shall be payable in respect of that service or period unless the annual rate of the emoluments to which he was entitled immediately before the loss or diminution exceeds the annual rate on entry of the emoluments of the new employment, and any retirement compensation so payable to him shall, in so far as it is calculated by reference to remuneration, be calculated by reference to the difference between the said annual rates.

(2) The provisions of this regulation shall not operate to increase the amount of any retirement compensation payable in respect of diminution of emoluments beyond the amount which would have been payable if the person had attained the age of compulsory retirement immediately before he ceased to hold the employment in which he suffered the diminution of emoluments.

Compensation payable on the death of a claimant

24.—(1) Where a person to whom this part of these regulations applies dies, payments in accordance with this regulation shall be made to or for the benefit of his widow or child or to his personal representatives or, as the case may be, to trustees empowered by him to stand possessed of any benefit under the Firemen's Pension Scheme.

(2) Where the widow or child has become, or but for the person's loss of employment as a regular fireman would have become, entitled to benefits under the Firemen's Pension Scheme, the widow or child, as the case may be, shall (subject to the provisions of this regulation) be entitled to compensation calculated from time to time in accordance with the methods prescribed by the Firemen's Pension Scheme modified as follows:—

- (a) where the person dies before becoming entitled to receive retirement compensation, and the Firemen's Pension Scheme provides that when he dies in service his widow or child shall be entitled for any period to a benefit equal to his pensionable pay, the annual rate of compensation for that period shall be equal to the annual amount of his long-term compensation calculated in accordance with regulations 14(1) to (3);
- (b) where the person dies before becoming entitled to receive retirement compensation and the Firemen's Pension Scheme provides that when he dies in service his widow or child shall be entitled for any period to a benefit calculated by reference to the pension or ill-health pension which would have been payable to him if he had retired immediately before his death, the compensation for that period shall be calculated by reference to the retirement compensation to which he would have been entitled under regulation 20 if that regulation had been applied to him immediately before his death;
- (c) where a person dies after becoming entitled to receive retirement compensation and the Firemen's Pension Scheme provides that when he dies after having retired his widow or child shall be entitled for any period to a benefit equal to his pension, the annual rate of compensation for that period shall be equal to the annual amount of retirement compensation;
- (d) where a person dies after he has become entitled to receive retirement compensation and the Firemen's Pension Scheme provides that when he dies after having retired his widow or child shall be entitled for any period to a benefit calculated by reference to his pension, the annual rate of compensation for that period shall be calculated by reference to the annual amount of retirement compensation that would have been payable to him but for any reduction or suspension under regulation 28(1).

(3) Calculation of the amounts described in paragraph (2) shall be subject to the following adjustments, that is to say—

- (a) where any retirement compensation has been surrendered under regulation 18(5) or compounded under regulation 31 any sum payable under paragraph (2)(b) or (d) shall be calculated as if such surrender or compounding had not taken place;
- (b) if immediately before his death the person's long-term compensation was reduced under regulation 14(4) or 30 or his retirement compensation was reduced or suspended under regulation 28(1) by reason of employment in which he was subject to a pension scheme and the widow or child is entitled under that scheme for any period to a benefit equal to his pensionable remuneration, regard shall be had to any such reduction or suspension for the purpose of paragraph (2)(a) and (c).

(4) If the person in question suffered a diminution of emoluments, the provisions of paragraph (2) shall apply with the substitution of references to diminution of emoluments for references to loss of employment, and the sums payable to his widow or child shall be calculated, as if he had suffered loss of employment and as if the loss of emoluments occasioned thereby had been equivalent to the amount of the diminution.

(5) Compensation payable in accordance with this regulation shall be payable on the like conditions in all respects as a widow's pension or, as the case may be, a child's allowance under the Firemen's Pension Scheme and, accordingly, the provisions of that Scheme (including any provision for the commutation of a pension or allowance for a gratuity) shall apply, subject to any necessary modifications, in relation to such compensation as they apply in relation to such a pension or allowance.

(6) Except where retirement compensation payable to the deceased person has been reduced under regulation 22(1), the payments by way of compensation under this regulation shall, in the aggregate, be reduced by an amount the capital value whereof is equal to the amount of any award by way of repayment of aggregate contributions received by him under the Firemen's Pension Scheme and either not paid to the compensating authority in accordance with regulation 22(1) or refunded to him by that authority; and, where payments under this regulation are made to or for the benefit of two or more persons, the said reduction shall be apportioned between those payments according to the capital value thereof.

(7) Where a person to whom this part of these regulations applies dies and, but for his loss of employment as a regular fireman, the fire authority would have had discretion to grant a gratuity to a person who was substantially dependent on him immediately before his death, the compensating authority shall have a like discretion to grant a gratuity calculated in accordance with the methods prescribed by the Firemen's Pension Scheme.

(8) In this regulation and in regulation 26 the expression "child" has the same meaning as in the Firemen's Pension Scheme and related expressions shall be construed accordingly.

Intervals for payment of compensation under Part V

25. Any compensation awarded under this part of these regulations to or in respect of any person shall be payable in advance at intervals equivalent to those at which the corresponding benefit would have been payable under the Firemen's Pension Scheme or at such other intervals as may be agreed between the person entitled to receive the compensation and the compensating authority.

PART VI

ADJUSTMENT, REVIEW AND COMPOUNDING OF COMPENSATION

Abatement of compensation by award under the Firemen's Pension Scheme

26.—(1) Where compensation under these regulations is payable to a person who has lost employment as a regular fireman or to or for the benefit of his widow or child and a pension or allowance under the Firemen's Pension Scheme is also so payable, the annual amount of the compensation shall be abated by the annual amount of the corresponding pension or allowance.

(2) For the purposes of this regulation in its application to the payment of long-term compensation, where a pension has been reduced under the provisions of the Firemen's Pension Scheme—

- (a) relating to the allocation of a portion of a pension and mentioned in regulation 18(5); or
- (b) relating to the commutation of a portion of a pension for a lump sum; or
- (c) relating to payments under the Firemen's Pension Scheme for the purpose of qualifying for benefits in respect of previous service or for an improved widow's pension;

the annual amount of that pension shall be deemed to be the annual amount which would have been payable but for the said reduction.

(3) For the purposes of this regulation no account shall be taken of a pension payable to a widow or child under the Firemen's Pension Scheme by reason of the allocation by the husband or father of a portion of his pension.

Adjustment of compensation where superannuation benefit is also payable

27.—(1) Where any period of service of which account was taken in calculating the amount of any compensation payable under Part IV or V of these regulations is subsequently taken into account for the purpose of calculating the amount of any superannuation benefit payable to or in respect of any person in accordance with a pension scheme associated with any employment undertaken subsequent to the loss of employment or diminution of emoluments which was the subject of the claim for compensation, the compensating authority may in accordance with this regulation withhold or reduce the compensation payable.

(2) If the part of any superannuation benefit which is attributable to a period of service mentioned in paragraph (1) equals or exceeds the part of any compensation which is attributable to the same period, that part of the compensation may be withheld, or if the part of the superannuation benefit is less than the part of the compensation, the compensation may be reduced by an amount not exceeding that part of the superannuation benefit.

(3) In addition to any reduction authorised by paragraph (2), if, in the circumstances mentioned in paragraph (1), compensation is attributable in part to any provision of the Firemen's Pension Scheme for a minimum benefit, the compensation may be reduced by an amount not exceeding that part.

(4) Where any additional period of service has been credited to a person under regulation 18(2), and that period is equal to or less than the period spent in the subsequent employment mentioned in paragraph (1), the compensation may be reduced (in addition to any other reduction authorised by this regulation) by an amount not exceeding that attributable to the additional period of service credited or, if the period is greater than the period spent in the subsequent employment, by the proportion of that amount which the period spent in the subsequent employment bears to the additional period so credited.

(5) In making any reduction under paragraphs (2) to (4), the amount of pension to be taken into account relating to the subsequent employment shall be the amount of such pension reduced by a fraction of that pension, where—

- (i) the numerator of the fraction is equivalent to the aggregate of the amount of increases which would have been awarded under the provisions of the Pensions (Increase) Act 1971(a), during the period

(a) 1971 c. 56.

beginning with the day following loss of the employment for which compensation is payable and ending on the day the subsequent employment terminated, on an official pension (within the meaning of that Act) of £100 a year which commenced from the first mentioned day; and

- (ii) the denominator of the fraction is equivalent to the aggregate of an official pension of £100 a year and the amount of the increases so determined.

(6) Where compensation has been calculated in accordance with regulation 23, the provisions of this regulation shall apply only in relation to the part (if any) of the superannuation benefit which is attributable to annual emoluments in excess of those to which the person was entitled on entering the new employment referred to in regulation 23.

(7) Where compensation is payable in respect of diminution of emoluments, the provisions of this regulation shall apply only in relation to the part (if any) of the superannuation benefit which is attributable to annual emoluments in excess of those to which the person was entitled immediately prior to the diminution.

Reduction of compensation in certain cases

28.—(1) If under the Firemen's Pension Scheme any benefit payable to a person under the Scheme would have been subject to reduction or suspension on his taking up other specified employment, any retirement compensation to which he is entitled for loss of employment or diminution of emoluments shall, where such an employment is taken up, be reduced or suspended in the like manner and to the like extent.

(2) There shall be deducted from any long-term compensation or retirement compensation payable to any person any contributory payments remaining unpaid at the date when he suffered loss of employment that are not recovered in accordance with the provisions of the Firemen's Pension Scheme.

(3) Where in any week a person entitled to long-term compensation for loss or diminution of emoluments is also entitled to a National Insurance benefit, there shall be deducted from the long-term compensation payable in respect of that week a sum equal to the amount by which the aggregate of—

- (i) the National Insurance benefit that would be payable in respect of that week if calculated at the rate applicable at the date of loss or diminution; and
- (ii) the weekly rate at which the long-term compensation would be payable but for this regulation and for regulation 26;

exceeds two-thirds of the weekly rate of the emoluments of the employment which he has lost or in which the emoluments have been diminished.

(4) No deduction shall be made under paragraph (3) in so far as—

- (a) an equivalent sum is deducted from the emoluments of his current employment; and
- (b) that deduction from those emoluments has not occasioned an increase in his long-term compensation.

(5) (a) In paragraph (2) the expression "contributory payments" in relation to any person means any payments which he undertook to make under the Firemen's Pension Scheme for the purpose of qualifying for benefits in respect of previous service or for an improved widow's pension.

(b) In paragraph (3) the expression “weekly rate” means seven 365ths of the relevant annual rate, and the expression “National Insurance benefit” means any unemployment, sickness, invalidity or injury benefit or retirement pension payable under any enactment relating to National Insurance, other than a benefit claimable by him in respect of a dependant.

Notification of change of circumstances

29. Where a person to whom these regulations apply—

- (a) after suffering loss of employment or diminution of emoluments enters any employment referred to in regulation 23 or becomes entitled to any superannuation benefit on ceasing to hold such an employment; or
- (b) being entitled to long-term compensation, whilst that compensation is liable to review in accordance with the provisions of regulation 30, enters any employment, or ceases to hold an employment, or receives any increase in his emoluments in an employment; or
- (c) being entitled to retirement compensation, enters employment in which the compensation is subject to reduction or suspension under regulation 28 or ceases to hold such an employment; or
- (d) being entitled to long-term compensation, starts to receive any benefit, any increase in benefit or any further benefit, under any enactment relating to National Insurance;

he shall forthwith in writing inform the compensating authority of that fact.

Review of awards of long-term or retirement compensation

30.—(1) The compensating authority shall—

- (a) on the expiry of 6 months from the decision date; or
- (b) on the occurrence of any material change in the circumstances of the case;

whichever shall first occur, and thereafter within a period of 2 years after the decision date, or within any longer period specified in the subsequent provisions of this regulation, and at intervals of not more than 6 months, review their decision or, where the claim has been the subject of an appeal, the decision of the tribunal, and (subject to paragraph (7)) these regulations shall apply in relation to such a review as they apply in relation to the initial determination of the claim; and on such a review, in the light of any material change in the circumstances of the case, compensation may be awarded, or compensation previously awarded may be increased, reduced or discontinued, subject to the limits set out in these regulations.

(2) The person to whom the decision relates may require the compensating authority to carry out the review mentioned in paragraph (1) at any time mentioned in that paragraph if he considers that there has been a change in the circumstances of his case which is material for the purposes of these regulations.

(3) The compensating authority shall carry out a review in accordance with paragraph (1), notwithstanding the expiry of the period of 2 years mentioned in that paragraph, if—

- (a) the emoluments of employment or work undertaken as a result of the loss of employment had been taken into account in determining the amount of any compensation awarded; and

- (b) that employment or work has been lost or the emoluments thereof reduced, otherwise than by reason of misconduct or incapacity to perform the duties which the person might reasonably have been required to perform; and
- (c) the compensating authority is satisfied that the loss or reduction is causing him hardship;

and where any decision is so reviewed, the decision shall be subject to further review in accordance with paragraph (1) as if the review carried out under this paragraph had been the initial determination of the claim.

(4) Paragraphs (1) and (2) shall apply in relation to any decision on a claim for long-term or retirement compensation in respect of diminution of emoluments as they apply in relation to any decision mentioned in paragraph (1) and as if in paragraph (1) "decision date" means the date on which any decision on a claim for long-term compensation for diminution of emoluments is notified to the claimant, but—

- (a) where the person to whom the decision relates ceases to hold the employment in which his emoluments were diminished, a review shall be held within 3 months after that date, but no further review shall be held after the expiry of that period; and
- (b) while that person continues to hold that employment, there shall be no limit to the period within which a review may take place.

(5) Notwithstanding anything contained in the foregoing provisions of this regulation, the compensating authority shall review a decision, whether of the authority or the tribunal, on a claim for long-term compensation for loss of employment or diminution of emoluments after the expiry of any period within which a review is required to be made if at any time—

- (a) the person to whom the decision relates becomes engaged in any employment (hereinafter referred to as "his current employment") the emoluments of which are payable out of public funds and which he had undertaken subsequent to the loss or diminution; and
- (b) the aggregate of the emoluments of his current employment, any pension under the Firemen's Pension Scheme and the long-term compensation payable to him exceeds the emoluments of the employment which he has lost or, as the case may be, in which the emoluments have been diminished.

(6) The compensating authority shall further review any decision reviewed under paragraph (5) whenever the emoluments of the person's current employment are increased.

(7) If on any review under this regulation the compensation is reduced it shall not be reduced below the amount by which the emoluments of the work or employment undertaken as a result of the loss of employment or diminution of emoluments, together with any pension under the Firemen's Pension Scheme falls short of the emoluments of the employment which he has lost, or, as the case may be, in which the emoluments have been diminished.

(8) The compensating authority shall give to a person to whom a decision relates not less than 14 days' notice of any review of that decision to be carried out under this regulation unless the review is carried out at his request.

(9) In this regulation the expression “decision date” means the date on which any decision on a claim for long-term or retirement compensation for loss of employment is notified to a claimant under regulation 32.

(10) For the purpose of regulations 14(4), 23(1) and 27(6) and (7) and any review under this regulation, no account shall be taken of any increase in the emoluments of any work or employment undertaken as a result of the loss of employment or diminution of emoluments, or of any superannuation benefit attributable to such an increase, if any such increase is effective from any date after the date of the loss or diminution, and is attributable to a rise in the cost of living.

(11) Nothing in this regulation shall preclude the making of any adjustment of compensation required by regulation 27 or 28.

Compounding of awards

31.—(1) In the case where an annual sum which has been or might be awarded under these regulations does not exceed £35, the compensating authority may, at their discretion, compound their liability in respect thereof by paying a lump sum equivalent to the capital value of the annual sum.

(2) In any other case, if the person who has been awarded long-term or retirement compensation requests them to do so, the compensating authority may, after having regard to the state of health of that person and the other circumstances of the case, compound up to one quarter of their liability to make payments under the award (other than payments to a widow, child or other dependant under regulation 24) by the payment of an equivalent amount as a lump sum.

(3) The making of a composition under paragraph (2) in relation to an award of long-term or retirement compensation shall not prevent the subsequent making of a composition under paragraph (1) in relation to that award but, subject as aforesaid, not more than one composition may be made in relation to any award.

PART VII

PROCEDURE AND MISCELLANEOUS

Procedure on making claims

32.—(1) Every claim for compensation under these regulations and every request for a review of an award of long-term or retirement compensation shall be made in accordance with this regulation.

(2) Every such claim or request shall be made to the compensating authority in writing and shall state whether any other claim for compensation has been made by the claimant under these regulations.

(3) Resettlement compensation shall be claimed separately from any other form of compensation claimable under these regulations.

(4) The compensating authority shall consider any such claim or request in accordance with the relevant provisions of these regulations and shall notify the claimant in writing of their decision—

(a) in the case of a claim for resettlement compensation, not later than one month after the receipt of the claim;

- (b) in the case of a claim for, or request for the review of an award of, compensation under Part IV or V of these regulations, not later than one month after the receipt of the claim or request; and
- (c) in any other case, as soon as possible after the decision;

but the decision of the compensating authority shall not be invalidated by reason of the fact that notice of the decision is given after the expiry of the period mentioned in this paragraph.

(5) Every notification of a decision by the compensating authority (whether granting or refusing compensation or reviewing an award, or otherwise affecting any compensation under these regulations) shall contain a statement—

- (a) giving reasons for the decision;
- (b) showing how any compensation has been calculated and, in particular, if the amount is less than the maximum which could have been awarded under these regulations, showing the factors taken into account in awarding that amount; and
- (c) directing the attention of the claimant to his right under regulation 39, if he is aggrieved by the decision, to institute proceedings before a tribunal and giving him the address to which any application instituting those proceedings should be sent.

Claimants to furnish information

33.—(1) Any person claiming or receiving compensation or whose award of compensation is being reviewed shall furnish all such information that the compensating authority may at any time reasonably require; and he shall verify that information in such manner, including the production of documents in his possession or control, as may be reasonably so required.

(2) Such a person shall, on receipt of reasonable notice, present himself for interview at any place that the compensating authority may reasonably require; and any person who attends for interview may, if he so desires be represented by his adviser.

Procedure on death of claimant

34.—(1) In the event of the death of a claimant or of a person who, if he had survived, could have been a claimant, a claim for compensation under these regulations may be continued or made, as the case may be, by his personal representatives.

(2) Where any such claim is continued or made as aforesaid by personal representatives, the personal representatives shall, as respects any steps to be taken or thing to be done by them in order to continue or make the claim, be deemed for the purposes of these regulations to be the person entitled to claim, but, save as aforesaid, the person in whose right they continue or make the claim shall be deemed for the purposes of these regulations to be that person, and the relevant provisions of these regulations shall be construed accordingly.

(3) The compensating authority may in any case where a person who, if he had survived could have been a claimant, has died, extend the period within which a claim under regulation 7 or 12 is to be made by his personal representatives.

Calculation of service

35. For the purpose of making any calculation under these regulations in respect of a person's reckonable service, all periods of that service shall be aggregated by reference to completed years and completed days; and any provision in these regulations requiring compensation to be calculated by reference to a year of reckonable service shall (unless the provision specifically states that compensation is payable in respect of completed years) be construed as including completed days, each completed day over and above a completed year being expressed as one 365th of a year.

Emoluments

36.—(1) In these regulations, subject to the provisions of paragraph (2) and regulation 37 (temporary variation of emoluments) the expression "emoluments" means all salary, wages, fees and other payments paid or made to an officer as such for his own use, and also the money value of any accommodation or other allowances in kind appertaining to his employment, but does not include payments for overtime which are not a usual incident of his employment, or any allowances payable to him to cover the cost of providing office accommodation or clerical or other assistance, or any travelling or subsistence allowance or other moneys to be spent, or to cover expenses incurred, by him for the purposes of his employment.

(2) Where fees or other variable payments were paid to an officer as part of his emoluments during any period immediately preceding the loss or diminution, the amount in respect of fees or other variable payments to be included in the annual rate of emoluments shall be the annual average of the fees or other payments paid to him during the period of 5 years immediately preceding the loss or diminution, or such other period as the compensating authority may think reasonable in the circumstances.

Temporary variation of emoluments

37. In calculating for the purposes of these regulations the amount of any emoluments lost, or the amount by which any emoluments have been diminished and in determining the resettlement and long-term compensation of any person who has suffered such a loss or diminution—

- (a) no account shall be taken of any temporary increase or decrease in the amount of the person's emoluments which is attributable to the passing or making of any provision mentioned in regulation 4 and otherwise than in the ordinary course of his employment; and
- (b) in any case where an office becomes vacant by reason of the last holder thereof entering an employment to which article 6 of the Local Government (New Councils etc.) (Scotland) Order 1974(a) applies, any increase in the amount of a person's emoluments which is attributable to—
 - (i) his filling that office in an acting or temporary capacity; or
 - (ii) his performance of, or responsibility for, the duties of that office;

shall be disregarded.

(a) S.I. 1974/653 (1974 I, p. 2615).

Compensation not assignable

38.—(1) Subject to the provisions of any enactment in that behalf, any compensation under these regulations shall be paid by the compensating authority and (except in the case of compensation payable in accordance with regulation 24(5)) shall be payable to, or in trust for, the person who is entitled to receive it, and shall not be assignable.

(2) Without prejudice to any other right of recovery, any compensation paid in error may be recovered by the compensating authority by deduction from any compensation payable under these regulations.

Right of appeal from decision of compensating authority

39.—(1) Every person who is aggrieved by any decision of the compensating authority with respect to a compensation question or by any failure on the part of the compensating authority to notify him of any such decision within the appropriate time prescribed by these regulations, may within 13 weeks of the notification to him of the decision or the expiry of the prescribed time, as the case may be, institute proceedings for the determination of the question by a tribunal in accordance with the Industrial Tribunals (Labour Relations) (Scotland) Regulations 1974(a) and these regulations; and the tribunal shall determine the question accordingly.

(2) For the purpose of any proceedings described in paragraph (1) a person or persons may be appointed to sit with the tribunal as assessor or assessors.

(3) The compensating authority shall give effect to the decision of a tribunal subject to any modifications that may be required in consequence of any appeal from that decision on a point of law.

William Ross,
One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.

31st October 1975.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

1. These Regulations provide for the payment of compensation to or in respect of regular firemen who suffer loss of employment or loss or diminution of emoluments in consequence of the provisions of the Local Government (Scotland) Act 1973 or any instrument made thereunder.

(a) S.I. 1974/1387 (1974 II, p. 5342).

2. Part I of the Regulations contains definitions. Part II specifies the persons to whom the Regulations apply and the grounds of entitlement to compensation.

3. The compensation payable is—

- (a) resettlement compensation for loss of employment (Part III);
- (b) long-term compensation for loss of employment or loss or diminution of emoluments (Part IV);
- (c) retirement compensation for loss of employment or loss or diminution of emoluments (Part V);
- (d) compensation payable on the death of a claimant who was a regular fireman (Part V).

4. Resettlement compensation is payable in a lump sum to firemen with at least 2 years' service in relevant employment. The qualifying conditions and factors to be considered are set out in Regulation 7 and the methods of calculation are set out in Regulations 8, 9 and 10.

5. Long-term and retirement compensation is payable to officers with at least 5 years' service in relevant employment. The qualifying conditions and factors to be considered are set out in Regulations 12 and 13.

6. The method of calculating the amount of long-term compensation is laid down in Regulation 14 (loss of emoluments) and 15 (diminution of emoluments).

The compensation is payable from the date determined under Regulation 16, but is not payable for any period in respect of which retirement compensation is payable.

7. Retirement compensation payable to a regular fireman is based upon his accrued pension rights (Regulations 18 and 20) supplemented in the case of persons aged 40 years or over at the date of the loss or diminution by the addition of notional years of service (Regulation 18). Retirement compensation is ordinarily payable from the age of compulsory retirement but in certain circumstances is payable earlier (Regulations 19 and 20).

8. Compensation is payable to the widow, child or other dependant or to the personal representatives or trustees of a claimant who dies where such persons would have benefited under the relevant pension scheme (Regulation 24).

9. Part VI provides for long-term and retirement compensation to be reviewed and for awards to be varied in the light of changing circumstances. It also contains provisions for the adjustment, suspension and compounding of compensation in certain circumstances.

10. Part VII contains provisions relating to the procedure for making claims and notifying decisions. A right is given to a claimant who is aggrieved by a decision on a compensation question or the failure of the compensating authority to notify its decision to refer the question for determination by a tribunal in accordance with the Industrial Tribunals (Labour Relations) (Scotland) Regulations 1974.

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