
STATUTORY INSTRUMENTS

1978 No. 1682

**The Justices of the Peace Act 1949
(Compensation) Regulations 1978**

PART V

RETIREMENT COMPENSATION AND PAYMENTS ON DEATH

Entitlement to retirement compensation and other payments

16.—(1) The determining authority shall, subject to the provisions of these Regulations consider and determine the entitlement to retirement compensation and the other payments for which provision is made in Regulations 23 to 27, of every person to whom this Part of these Regulations apply.

(2) Save as is provided in Regulation 26, this Part of these Regulations applies to a pensionable officer who satisfies the conditions set out in Regulation 11.

(3) Regulation 12 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

17.—(1) Where retirement compensation is payable under any one of Regulations 18, 19 or 20, compensation shall not be payable under any other of those Regulations.

(2) If a person has attained the age of 40 at the date on which he lost his office or suffered a diminution of his emoluments, the determining 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,
- (b) 2 years for each of the first 4 years of his reckonable service between the date when he attained the age of 40 and the date of the loss or diminution, and
- (c) one 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 office until attaining normal retiring age,
- (ii) the period of his reckonable service, or
- (iii) 15 years;

and in calculating the amount of any retirement compensation payable to him any period so added shall be aggregated with any period entailing reduction of the relevant pension or retiring allowance because of a retirement pension payable under section 28 of the Social Security Act 1975 or which was paid under section 30 of the National Insurance Act 1965.

(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 32, 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 determining authority may think reasonable having regard to the pension scheme (if any) associated with any further employment obtained by him.

(5) If under his last relevant pension scheme the amount of any benefit to which a person might have become entitled could have been increased at the discretion of the authority administering the pension scheme or of any other body, the determining authority may increase, to an extent not exceeding that to which his accrued pension, accrued retiring allowance, accrued incapacity pension or accrued incapacity retiring allowance might have been increased or supplemented, the corresponding component of any retirement compensation payable to him; and in this connection the determining authority shall have regard to the terms of any relevant resolutions of the authority or body with regard to the increase of benefits and to the provisions of any enactment protecting the interests of that person.

(6) If under his last relevant pension scheme a person would have been entitled to surrender a proportion of any pension which might have become payable to him in favour of his spouse or any dependant, then, if he so desires and informs the determining authority by notice in writing accordingly within one month after becoming entitled to retirement compensation under these Regulations, he may surrender a proportion of so much of the said compensation as is payable by way of an annual sum on the like terms and conditions and in consideration of the like payments by the paying authority as if the said annual sum were a pension to which he had become entitled under the said pension scheme.

(7) In calculating for the purpose of Regulation 18 or 19 the amount of the annual sum which is equal to a person's accrued pension, 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 or social security until the person reaches the age at which under his last relevant pension scheme the pension would have been so reduced.

Retirement compensation for loss of emoluments payable to pensionable officer on attainment of normal retiring age

18.—(1) Subject to the provisions of these Regulations, when a person to whom this Part of these Regulations applies reaches normal retiring age, the retirement compensation payable to him for the loss of emoluments shall be—

- (a) an annual sum equal to the amount of his accrued pension, and
- (b) a lump sum equal to the amount of his accrued retiring allowance (if any).

(2) No compensation shall be payable under this Regulation if the person has continued to pay superannuation contributions as if he had suffered no loss of emoluments.

Retirement compensation payable to pensionable officer on his becoming in-capacitated or reaching minimum pensionable age

19.—(1) Where a person to whom this Part of these Regulations applies and who has suffered loss of office before attaining what would have been his normal retiring age—

- (a) becomes incapacitated in circumstances in which, if he had continued in the office which he has lost, he would have become entitled to a pension under his last relevant pension scheme, or

(b) attains the age which, had he continued to serve in the office which he has lost, would have been his minimum pensionable age,

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

(i) in the case mentioned in sub-paragraph (a) above, an annual sum equal to the amount of his accrued incapacity pension and a lump sum equal to the amount of his accrued incapacity retiring allowance (if any), and

(ii) in the case mentioned in sub-paragraph (b) above, an annual sum equal to the amount of his accrued pension and a lump sum equal to the amount of his accrued retiring allowance (if any), subject however to the conditions specified in paragraph (5).

(2) On receipt of a claim under paragraph (1), the determining authority shall consider whether the claimant is a person to whom that paragraph applies, and—

(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 sub-paragraph (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 determining 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 determining 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 determining authority received the claim.

(5) The calculation of compensation under this Regulation shall be subject to the following conditions—

(a) where the determining authority, by virtue of Regulation 17, 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 office, before the date on which the claim was received by the determining authority;

(b) if, by reason of any provision of the relevant pension scheme for a minimum benefit, the amount of any such pension or retiring allowance is in excess of that attributable to the person's actual service, no account shall be taken of any such additional period of service except to the extent (if any) by which it exceeds the number of years represented by the difference between his actual service and the period by reference to which the minimum benefit has been calculated; and

(c) if the number of years by reference to which an accrued incapacity pension or accrued incapacity retiring allowance is to be calculated is less than any minimum number of years of qualifying service prescribed by the last relevant pension scheme, the amount of the pension or retiring allowance shall, notwithstanding any minimum benefit prescribed by the pension scheme, not exceed the proportion of the minimum benefit which the number of years of pensionable service bears to the minimum number of years of qualifying service.

Retirement compensation for diminution of emoluments

20.—(1) A person to whom this Part of these Regulations applies 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 18 and 19 shall apply to any such person as if he had suffered loss of office 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 office 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;

and for the purposes of this calculation no account shall be taken of any reduction which might otherwise fall to be made in the accrued pension or accrued incapacity pension because of a retirement pension payable under section 28 of the Social Security Act 1975 or which has been paid under section 30 of the National Insurance Act 1965.

(3) No compensation shall be payable under this Regulation—

- (a) if the person has continued to pay superannuation contributions as if his emoluments had not been diminished, or
- (b) as respects any period in respect of which the person is entitled to retirement pension and retiring allowance under his last relevant pension scheme if, as respects that scheme, the whole of the relevant period for calculating the pensionable remuneration of that person falls before he suffered the diminution in his emoluments.

Superannuation contributions

21.—(1) A person entitled to retirement compensation under Regulation 18 or 19 shall pay an amount equal to any sum which was paid to him by way of return of superannuation contributions (including any interest) after ceasing to be employed—

- (a) if the provisions of his last relevant pension scheme enable him to be credited with benefits attributable to that sum, to the fund authority, and
- (b) in any other case, to the paying authority.

(2) If the person does not pay as specified in paragraph (1), his retirement compensation shall be reduced by an annual amount the capital value of which is equal to the amount of the said superannuation contributions.

(3) For the purposes of this Regulation the expression “superannuation contributions” shall include payments made by the person in respect of added years, any additional contributory payments made by him and any other payments made by him for the purpose of increasing the benefits to which he would have become entitled under his last relevant pension scheme.

(4) Any sums paid to a paying authority under this Regulation in respect of returned contributions 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

22.—(1) Where a person to whom this Part of these Regulations applies, after suffering loss of office or diminution of emoluments, 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, insofar 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 normal retiring age immediately before he ceased to hold the office in which he suffered the diminution of emoluments.

(3) No retirement compensation shall be payable in the circumstances mentioned in this Regulation if the person has continued to pay superannuation contributions as if his emoluments had not been diminished.

Compensation payable to widow or dependants of a claimant

23.—(1) Where a person to whom this Part of these Regulations applies dies, payments in accordance with this Regulation and Regulations 24 and 25 shall be made to or for the benefit of his widow, child or other dependant or to his personal representatives or, as the case may be, to trustees empowered by him to stand possessed of any benefit under his last relevant pension scheme.

(2) Where the widow, child or other dependant has become, or but for the person's loss of office would have become, entitled to benefits under his last relevant pension scheme, the widow, child or other dependant, 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 last relevant pension scheme modified as follows:—

- (a) where the person dies before becoming entitled to receive retirement compensation and the last relevant pension scheme provides that when he dies in service his widow, child or other dependant shall be entitled for any period to a benefit equal to his pensionable remuneration, the annual rate of compensation for that period shall be equal to the annual amount of his long-term compensation calculated in accordance with paragraphs (1) to (3) of Regulation 13;
- (b) where the person dies before becoming entitled to receive retirement compensation and the last relevant pension scheme provides that when he dies in service his widow, child or other dependant shall be entitled for any period to a benefit calculated by reference to the pension or incapacity 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 19 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 last relevant pension scheme provides that when he dies after having retired his widow, child or other dependant 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 last relevant pension scheme provides that when he dies after having retired his widow, child or other dependant 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 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 30(1);

- (e) for the purposes of calculating compensation in accordance with the foregoing provisions, each year added to a person's reckonable service under Regulation 17 (or which would have been added if retirement under Regulation 19 were assumed) shall be deemed to have been service rendered immediately before the loss of office.
- (3) Calculation of the amounts described in paragraph (2) shall be subject to the following adjustments:—
- (a) where any retirement compensation has been surrendered under Regulation 17(6) or compounded under Regulation 33, any sum payable under paragraph (2)(b) and (d) shall be calculated as if such surrender or compounding had not taken place;
 - (b) it shall be assumed the retirement compensation payable, or which would have been payable, had been such sum as would have been payable if the accrued pension or accrued incapacity pension had not been reduced by reason of the provisions of any enactment relating to national insurance or social security; and
 - (c) if immediately before his death the person's long-term compensation was reduced under Regulation 13(4) or 32(7) or his retirement compensation was reduced or suspended under Regulation 30(1) by reason of employment in which he was subject to a pension scheme and the widow, child or other dependant 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 purposes of paragraph 2(a) and (c).
- (4) Where the widow, child or other dependant has become, or but for the person's loss of office would have become, entitled to a benefit other than a benefit mentioned in paragraph (2)(a) to (d), the widow, child or other dependant, as the case may be, shall be entitled (subject to the provisions of paragraph (5)), to an annual sum equal to the annual amount of the pension which would have been payable if he had died immediately before the date on which he suffered the loss of office, having then complied with any requirements of the last relevant pension scheme as to a minimum period of qualifying service or contribution and completed any additional contributory payments or payments in respect of added years which he was then in the course of making.
- (5) The calculation referred to in paragraph (4) shall be made on the basis of the method prescribed by the last relevant pension scheme of the person in question for the calculation of benefits for a widow, child or other dependant, and insofar as the age at which he died is relevant for the purposes of the said calculation, the calculation shall be made by reference to his age at the date of death.
- (6) Any sums payable to or for the benefit of a widow, child or other dependant under this Regulation shall cease to be payable when a corresponding pension under the last relevant pension scheme would have ceased to be payable; and where that scheme provides for payment of the pension to any person on behalf of a child or other dependant, any sum payable under this Regulation to a child or other dependant shall be paid to that person on behalf of the child or dependant in the like manner and for the like period as is provided in the pension scheme.
- (7) Except where the compensation has been reduced under Regulation 21, compensation payable under this Regulation and Regulation 24 shall in the aggregate be reduced by an amount the capital value whereof is equal to the amount of any superannuation contributions as defined in Regulation 21(3) returned to the person in respect of whom the compensation is payable and not paid to the paying authority, the compensation under each of those Regulations being reduced in proportion to the capital value of each amount.
- (8) If the person in question suffered a diminution of emoluments, then—
- (a) where his last relevant pension scheme provides benefits of a kind described in paragraph (2), the provisions of that paragraph shall apply with the substitution of references to diminution of emoluments for references to loss of office, and the sums payable to his widow, child or other dependant shall be calculated as if he had suffered

loss of office and as if the loss of emoluments occasioned thereby had been equivalent to the amount of the diminution; but no sum shall be payable under this sub-paragraph—

- (i) if the person has continued to pay superannuation contributions as if his emoluments had not been diminished, or
 - (ii) as respects any period in respect of which benefits are payable to the widow, child or other dependant of any person under his last relevant pension scheme if, as respects that scheme, the whole of the relevant period for calculating the pensionable remuneration of that person falls before he suffered the diminution of his emoluments,
- (b) where his last relevant pension scheme provides benefits of a kind described in paragraph (4), the provisions of that paragraph and of Regulation 30(3)(a) shall apply with the substitution of references to diminution of emoluments for the references to loss of office and of a reference to office in which he has suffered such a diminution for the reference to office which he has lost.

Compensation where death gratuity would have been payable

24.—(1) If the widow, the personal representatives of a person to whom this Part of these Regulations applies or trustees empowered by that person to stand possessed of any benefit under his last relevant pension scheme might have become entitled to a death gratuity under that scheme, she or they, as the case may be, shall be entitled to receive a sum calculated in accordance with the provisions of Regulation 23(7) and paragraph (2) of this Regulation.

(2) The amount of the sum referred to in paragraph (1) shall be ascertained in accordance with the method of calculation prescribed by the last relevant pension scheme for the ascertainment of death gratuity as if the person had died immediately before losing his office, subject to the following modifications—

- (a) account shall be taken of any additional period of service credited to him under Regulation 17(2)—
 - (i) in the case of a person who had been in receipt of retirement compensation under Regulation 19, to the extent of the period between the loss of office and the date of the claim made under that Regulation, and
 - (ii) in any other case, to the extent of the period between the loss of office and the person's death;
 - (b) if the aggregate of the person's pensionable service and the additional period under Regulation 17(2) is less than any minimum period of qualifying service prescribed by the pension scheme for the receipt of a death gratuity, the said sum shall not exceed that proportion of the death gratuity calculated as aforesaid which is equal to the proportion which the aggregate service bears to the minimum period of qualifying service prescribed by the pension scheme; and
 - (c) there shall be deducted from the sum described above the amount of any retirement compensation paid to the person under Regulation 18 or 19, or where any part of the compensation has been surrendered under Regulation 17(6), the amount which would have been so paid but for such a surrender.
- (3) In calculating a death gratuity under this Regulation, any sum payable under Regulation 23(2) or (8)(a) to or for the benefit of the widow, child or other dependant shall be deemed to be a pension payable to or for the benefit of the widow, child or dependant, as the case may be.

(4) This Regulation shall apply in the case of a person who has suffered a diminution of emoluments with the substitution of references to diminution of emoluments for references to loss of office, and the sum payable to the widow, personal representatives or trustees of such a person

shall be calculated as if he had lost emoluments equivalent to the amount of the diminution; but no such sum shall be payable under this paragraph—

- (a) if the person has continued to pay superannuation contributions as if his emoluments had not been diminished, or
- (b) where under the person's last relevant pension scheme a death gratuity is payable if, as respects that scheme, the whole of the relevant period for calculating the pensionable remuneration of that person falls before he suffered the diminution in his emoluments.

Balance payable to claimant's widow or personal representatives

25.—(1) If no sum is payable to the widow, child or other dependant of any person under Regulation 23(2) or (8)(a) and no sum is payable under Regulation 24 and the person dies before he has received in the aggregate by way of retirement compensation a sum equivalent to the aggregate of—

- (i) any superannuation contributions paid by him which have not been returned to him, and
- (ii) any amount paid by him in accordance with Regulation 21(1),

together with compound interest thereon calculated—

- (a) at the rate of 3 per cent per annum with half yearly rests up to the date of his death as from 1st April or 1st October following the half year in which the amount was paid, or
- (b) in such other manner as may be provided by the last relevant pension scheme, (whichever calculation gives the greater amount), there shall be paid to his personal representatives the difference between the aggregate amount received by way of retirement compensation as aforesaid and the said equivalent sum.

(2) If any annual sum which became payable to a widow under Regulation 23(2) or (8)(a) has ceased to be payable on her remarriage or death, and any sum payable to a child or other dependant under either of those paragraphs has ceased to be payable, and if the aggregate amount of the payments which were made as aforesaid to her husband by way of retirement compensation and to the widow or personal representatives or trustees under Regulation 24 is less than a sum equivalent to the amount which would have been payable to the personal representatives under that Regulation if no sum had been payable under either of the said paragraphs (2) or (8)(a), there shall be paid to her or her personal representatives the difference between such aggregate amount and the said equivalent sum.

(3) For the purpose of this Regulation, a person who has surrendered any part of his retirement compensation under Regulation 17(6), or whose retirement compensation has been reduced in accordance with Regulation 30(3), shall be deemed to have received during any period the amount of compensation for that period which he would have received but for such a surrender or such a reduction.

Compensation payable to non-pensionable officer on reaching normal retiring age

26.—(1) Where a person who is not a pensionable officer is receiving long-term compensation for loss of office and attains normal retiring age, the determining authority shall, if satisfied that the person would, but for the loss, have continued in the office he has lost for a substantial period beyond that age, determine that compensation shall continue to be paid to him for the remainder of his life at half its former rate.

(2) Where a person who is not a pensionable officer suffers loss of office on or after attaining normal retiring age, the determining authority may, if satisfied that the person would in the normal course have continued in the office he has lost for a further substantial period, determine that compensation shall be paid to him for the remainder of his life at half the rate to which he would

have been entitled under Regulation 13 had he not attained normal retiring age at the date on which he lost his office.

Persons subject to policy schemes

27.—(1) Regulations 18, 19, 20 and 24 shall not apply to a person (in this Regulation referred to as a “policy scheme participant”) who had been participating in a scheme associated with his employment for providing superannuation benefits by means of contracts or policies of insurance, and who, after the loss of his office or the diminution of his emoluments, continued to participate in that scheme or became entitled to a benefit or prospective benefit thereunder other than a return of contributions.

(2) If a policy scheme participant has lost his office, the determining authority may, if the relevant scheme so permits, determine that such payments shall be made to or in respect of him, whether by way of the payment of premiums or otherwise, as are actuarially equivalent to the amounts by which his retirement compensation might have been increased under Regulation 17(2) or (5) had he been a person to whom Regulation 18 or 19 applied.

(3) If a policy scheme participant has suffered a diminution of his emoluments, the determining authority may, if the relevant scheme so permits, determine that such payments shall be made to or in respect of him, whether by way of the payment of premiums or otherwise, as will secure to him the like benefits as if his emoluments had not been diminished.

(4) If a policy scheme participant becomes entitled to a benefit under such a scheme as is mentioned in paragraph (1) before reaching normal retiring age, the determining authority may reduce any long-term compensation payable to him by the amount of such benefit.

Intervals for payments of compensation under Part V

28. Any compensation awarded under this Part of these Regulations to or in respect of any person shall be payable at intervals equivalent to those at which the corresponding benefit would have been payable under the person's last relevant pension scheme or at such other intervals as may be agreed between the person entitled to receive the compensation and the paying authority.