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 STATUTORY INSTRUMENTS
 

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1978 No. 266

## PENSIONS

**The Local Government Superannuation (Amendment)  
Regulations 1978**

*Made* - - - - - 27th February 1978  
*Laid before Parliament* 9th March 1978  
*Coming into Operation* 30th March 1978

The Secretary of State for the Environment, in exercise of the powers conferred upon him by section 110(1)(a) of the National Insurance Act 1965(b), having been determined by the Minister for the Civil Service to be the appropriate Minister of the Crown under that section, and in exercise of the powers conferred upon him by sections 7 and 12 of the Superannuation Act 1972(c), and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned, the local authorities with whom consultation appeared to him to be desirable and such representatives of other persons likely to be affected by the regulations as appeared to him to be appropriate, hereby makes the following regulations:—

*Title and commencement*

1.—(1) These regulations may be cited as the Local Government Superannuation (Amendment) Regulations 1978.

(2) The principal regulations, the Local Government Superannuation (Amendment) Regulations 1977(d), the Local Government Superannuation (Amendment) (No. 2) Regulations 1977(e) and these regulations may be cited together as the Local Government Superannuation Regulations 1974 to 1978.

(3) These regulations shall come into operation on and shall have effect from 30th March 1978, with the exception of—

- (a) regulations 23 and 26 which shall have effect as from 1st April 1974; and
- (b) regulations 19 to 22, 24, 25, 27 and 31 which shall have effect as from 6th April 1975.

*Interpretation*

2.—(1) In these regulations “the principal regulations” means the Local Government Superannuation Regulations 1974(f).

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- (a) Continued in force by regulation 3 of and Schedule 1 to the National Insurance (Non-participation—Transitional Provisions) Regulations 1974 (S.I. 1974/2057).  
 (b) 1965 c. 51. (c) 1972 c. 11. (d) S.I. 1977/1121.  
 (e) S.I. 1977/1845. (f) S.I. 1974/520.

(2) In these regulations, unless the context otherwise requires, any reference to any enactment or instrument shall be construed as a reference to that enactment or instrument as amended, modified, extended or applied by or under any other enactment or instrument (including these regulations).

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

*Definitions in principal regulations*

3. In regulation A3(1) of the principal regulations—

(a) the following definition shall be inserted after the definition of “enactment”—

““equivalent pension benefits” has the meaning assigned to that expression by section 57(1) of the Insurance Act;”;

(b) the following definition shall be inserted after the definition of “national service”—

““non-participating employment” has the same meaning as in section 56(1) of the Insurance Act;”;

(c) the following definition shall be substituted for the definition of “participating employment”—

““participating employment” means, in relation to any period which is reckonable as service for the purposes of these regulations, any employment in which a person—

(a) was required to pay graduated contributions under the paragraph (c) inserted in section 4(1) of the Insurance Act by section 1(2) of the National Insurance Act 1969(b), as amended by section 2(2) of the National Insurance and Supplementary Benefits Act 1973(c) and by section 2(2)(a) of the National Insurance Act 1974(d); or

(b) would have been required to pay such contributions if the amount which was paid in any income tax week on account of his remuneration (or which would have been paid but for any suspension of remuneration due to leave of absence) exceeded the amount first mentioned in section 4(1) of the Insurance Act, as so amended,

and includes any similar period of employment in which a person was, or would have been, required to pay graduated contributions under the Northern Ireland Act or the Isle of Man Act; but the expression does not include any period of national service in respect of which contributions were paid under the Superannuation (Local Government Staffs) (National Service) Rules 1949 to 1954(e) if immediately prior to entering national service the person had been in non-participating employment;”.

(a) 1889 c. 63.  
(d) 1974 c. 14.

(b) 1969 c. 44.  
(e) S.I. 1949/545, 1951/2145, 1954/1228.

(c) 1973 c. 42.

*Definition of enactments in principal regulations*

4. The following definition shall be inserted after the definition of “the Northern Ireland Act” in regulation A4 of the principal regulations—

““the Transitional Provisions Regulations” means the National Insurance (Non-participation—Transitional Provisions) Regulations 1974(a);”.

*Leave of absence from duty*

5. The following regulation shall be substituted for regulation C2 of the principal regulations—

“C2. A pensionable employee of an employing authority who is on leave of absence from duty, otherwise than by reason of illness or injury, with reduced remuneration or without remuneration, shall—

(a) for a period of 30 days beginning with the date on which he went on leave of absence; and

(b) if he gives notice in writing for the purpose to that employing authority not later than 30 days after the day before the date on which he went on leave of absence, for the period beginning with the day after the expiration of the period specified in sub-paragraph (a) and ending with the expiration of 36 months from the day before the date on which he went on leave of absence,

make contributions to the appropriate superannuation fund on such remuneration as he would have received during that period in his employment under that employing authority but for that leave of absence from duty.”.

*Return of employee's contributions in certain cases*

6.—(1) The following paragraph shall be substituted for paragraph (1) of regulation C8 of the principal regulations—

“(1) This regulation shall apply to a pensionable employee of an employing authority—

(a) who before becoming entitled to a retirement pension, other than a retirement pension under regulation E2(1A), ceases to be employed by that authority; and

(b) who does not, within one month after ceasing to be so employed, enter further employment with any scheduled body and within the said period of one month become in that further employment a pensionable employee; and

(c) whose remuneration on which contributions were paid under regulation C1 or C2, or under Part I of the Act of 1937 or under a local Act scheme, or were paid under some other superannuation scheme in respect of service or employment which became, by virtue of interchange rules, reckonable for the purposes of the former regulations, has not in any income tax year exceeded the sum of £5,000.”.

(2) In regulation C8(2)(b) of the principal regulations, the words “, not earlier than one month after the date on which he ceases to be employed as mentioned in paragraph (1)(a),” shall be inserted after the word “elects” and the words “so ceases to be employed” shall be substituted for the words “ceases to be employed as mentioned in paragraph (1)(a)”.

(3) The following paragraph shall be substituted for paragraph (4) of regulation C8 of the principal regulations—

“(4) Notwithstanding anything in the foregoing provisions of this regulation, no payment shall be made thereunder—

(a) to a person who, having ceased to be employed by the employing authority in the circumstances mentioned in regulation E2(1)(c) and before giving a notice under paragraph (2)(b) of this regulation, again becomes a pensionable employee and gives notice under regulation E2(4)(e); or

(b) in the case of a person whose period of reckonable service and qualifying service after 5th April 1975 is not less than 5 years, in respect of any period of reckonable service and qualifying service after that date; or

(c) in the case of a person whose period of reckonable service and qualifying service commenced before 6th April 1975 and is not less than 5 years, in respect of any period of reckonable service and qualifying service after 5th April 1975 of less than 5 years unless a payment under this regulation is being or has been made in respect of the period of reckonable service and qualifying service before 6th April 1975.”.

(4) In regulation C8(5) of the principal regulations, the words “made not earlier than one month after the date on which he ceases to be employed as mentioned in paragraph (1)(a)” shall be inserted after the word “payment”, in the second place where that word occurs.

(5) In regulation C8(7) of the principal regulations, the words “a retirement pension” shall be substituted for the words “any benefit under these regulations”.

*Reduction of returned contributions following payment in lieu of contributions*

7. The following regulation shall be substituted for regulation C9 of the principal regulations—

“C9.—(1) Subject to the provisions of this regulation, where a pensionable employee leaves employment in circumstances—

(a) to which regulation 6 of the Transitional Provisions Regulations does not apply; and

(b) in which returned contributions are due and a payment in lieu of contributions has previously been made in respect of him in circumstances in which returned contributions were not due,

those returned contributions shall be reduced by a sum equal to the amount, or the aggregate of the amounts, by which under section 60(5) of the Insurance Act (which defines an employer’s rights against an insured person in respect of payments in lieu of contributions) they could have been reduced if returned at the time when the previous payment in lieu of contributions was made.

(2) Paragraph (1) shall also apply for the reduction of returned contributions where a payment in lieu of contributions has been made under any insurance code in respect of any period of former employment which is reckonable as service as a pensionable employee if—

(a) that payment in lieu was made in circumstances not involving the return of any superannuation contributions made by him in that employment; and

(b) the transfer value payable in respect of that employment has been adjusted to take account of that payment in lieu;

and where no superannuation contributions were payable in that employment, any amount returnable in respect of contributions deemed to have been made therein shall be reduced by a sum equal to one half of that payment in lieu.

(3) No payment in lieu of contributions shall be taken into account for the purposes of paragraphs (1) and (2)—

(a) on more than one occasion; or

(b) if the payment is one which has been reduced under regulation 13 of the National Insurance (Non-participation—Assurance of Equivalent Pension Benefits) Regulations 1960(a) or any corresponding enactment in force in Northern Ireland or the Isle of Man.

(4) Where the employment of a pensionable employee comes to an end in circumstances to which regulation 6 of the Transitional Provisions Regulations applies, the amount of returned contributions to which he is entitled shall be reduced by any amount which, under section 60 of the Insurance Act as modified by the said regulation 6, the person who has made or is liable to make a payment in lieu of contributions in respect of such employee or would be so liable had the employee not been assured of equivalent pension benefits is entitled either to recover from the person liable for the returned contributions or to retain out of the returned contributions.

(5) Where returned contributions are due in the circumstances mentioned in paragraph (1) or paragraph (4) on the cessation of two or more concurrently held employments, the reduction required by that paragraph shall be made by such one of the authorities paying the returned contributions as they may agree or, in default of agreement, as is determined by the Secretary of State, and where those employments were held under the same employing authority, the reduction shall be made in relation to such one only of the employments as is determined by the authority.

(6) Where returned contributions are reduced under paragraph (1) or under section 60(5) of the Insurance Act or the said section 60(5) as modified by regulation 6 of the Transitional Provisions Regulations or under any corresponding provision of the Northern Ireland Act or the Isle of Man Act, any sum so deducted shall not form part of any amount payable to or in respect of him, either as returned contributions or as a benefit ascertained by reference to the amount of the contributions paid by him, on the occasion of any later cessation of his employment.

(7) In this regulation “returned contributions” means an amount payable under regulation C8 to or in respect of a pensionable employee by way of a return of contributions.”

*Exclusion from reckonable service and qualifying service*

**8.**—(1) In regulation D3(1) of the principal regulations—

(a) at the end of sub-paragraph (b) there shall be added the word “or”;  
and

(b) after sub-paragraph (b) there shall be inserted the following sub-paragraph—

“(c) where he has entered the employment in which he is a pensionable employee within one month after ceasing on or after 6th April 1975 and before 30th March 1978 to hold an employment in which he is a pensionable employee and in respect of his so ceasing a return of contributions has been made under these regulations and he has become a pensionable employee in his employment under that body within the said period of one month.”.

(2) At the end of regulation D3(1) of the principal regulations there shall be added the words “or in respect of which the return of contributions was made”.

(3) For regulation D3(2)(a) of the principal regulations there shall be substituted the following—

“(a) where before entering the employment in which he is a pensionable employee he was previously a pensionable employee under a scheduled body and by reason of his ceasing to be a pensionable employee under that body a return of contributions has been made under these regulations, any service, employment or period in respect of which the return of contributions was made:

Provided that this sub-paragraph shall not apply to a pensionable employee who entered the employment in which he is a pensionable employee in the circumstances mentioned in paragraph (1)(c) and became a pensionable employee in that employment within the period mentioned therein; or”.

*Non-contributing service treated at discretion of employing authority as contributing service*

**9.** In regulation D9 of the principal regulations, the words “or within such longer period after that day as the Secretary of State may at any time allow in any particular case” shall be inserted after the words “the appointed day”, where those words first occur.

*Previous service of certain re-employed pensioners*

**10.** In regulation D16(1) of the principal regulations—

(a) in sub-paragraph (a)(i), after the words “a retirement pension” there shall be inserted the words “, other than by virtue of regulation E2(1A),”; and

(b) for the word “and”, in the second place where it occurs in sub-paragraph (a)(ii), to the end of paragraph (1) there shall be substituted the following—

“or

(iii) within one month after ceasing on or after 6th April 1975 and before 30th March 1978 to hold an employment in which he was a pensionable employee entered further employment with any scheduled body and in respect of his so ceasing a return of contributions has been made under these regulations; and

(b) is in his new employment a pensionable employee and, where he entered his new employment in the circumstances mentioned in sub-paragraph (a)(iii), became a pensionable employee in that employment within the period mentioned in that sub-paragraph,

then, on ceasing to hold his employment, he shall be entitled to reckon as qualifying service any service, employment or period in respect of which he became entitled to the retirement pension, or the pension referred to in sub-paragraph (a)(ii) was granted or the return of contributions was made, as the case may be.”.

*Entitlement to retirement pension and retiring allowance*

**11.**—(1) The following sub-paragraph shall be substituted for sub-paragraph (c) of regulation E2(1) of the principal regulations—

“(c) he is not entitled to a benefit under sub-paragraph (a) or (b) and either the reckonable service and qualifying service he is entitled to reckon amounts in aggregate to not less than 5 years or, by reason of his not being such an employee as is referred to in regulation C8(1)(c), he is not a person who is entitled on so ceasing to a return of contributions under that regulation.”.

(2) The following paragraph shall be inserted after regulation E2(1) of the principal regulations—

“(1A) Subject as hereafter in these regulations provided, a pensionable employee of an employing authority shall, on ceasing to hold an employment under them, be entitled in relation to that employment to an annual retirement pension if—

- (a) he is not entitled to a benefit under sub-paragraph (a), (b) or (c) of paragraph (1);
- (b) the whole or some part of the reckonable service he is entitled to reckon was service in a non-participating employment;
- (c) a period of his service in a non-participating employment came to an end by reason of the repeal of section 56(1) of the Insurance Act or by reason of the provisions of regulation 2(2) of the National Insurance (Non-participation—Assurance of Equivalent Pension Benefits) Regulations 1960 as modified by regulation 9(2)(a) or 9(2)(b) of the Transitional Provisions Regulations; and
- (d) at some time during the settlement period (within the meaning of regulation 2 of the Transitional Provisions Regulations) he became, and has remained, assured of equivalent pension benefits.”.

(3) In regulation E2(4)(a)(iv) of the principal regulations, the words “three months” shall be substituted for the words “one month”.

*Amount of retirement pension and retiring allowance*

**12.**—(1) In regulation E3(1) of the principal regulations, the figure “(9A)” shall be inserted after the figure “(9)”.

(2) The following paragraph shall be inserted after regulation E3(9) of the principal regulations—

“(9A) Notwithstanding any provision in these regulations, where a pensionable employee becomes entitled to a retirement pension by virtue of regulation E2(1A), that pension shall be payable in respect of any period of reckonable service in a non-participating employment and shall

be the rate of equivalent pension benefits applicable to him in respect of that period and the employee shall be entitled to receive payments in respect of such pension when he has retired and has attained the age of 65 years in the case of a man or 60 years in the case of a woman.”.

(3) The following paragraph shall be substituted for regulation E3(10) of the principal regulations—

“(10) For the purpose of calculating the amount of any benefit under the preceding provisions of this regulation—

(a) subject to paragraphs (11) to (13), no account shall be taken of reckonable service before attaining the age of 60 years beyond a total of 40 years; and

(b) in the case of a pensionable employee in respect of whom any recovery or retention is made under regulation L17, no account shall be taken of so much of his reckonable service as equals such a period as would result in the actuarial value, at the time of such recovery or retention, of the rights referred to in paragraph (1)(ii) of that regulation being reduced by the amount so recovered or retained.”.

(4) In paragraphs (11), (12) and (13) of regulation E3 of the principal regulations, the words “paragraph (10)(a)” shall be substituted for the words “paragraph (10)”.

*Entitlement to widow’s short-term pension and widow’s long-term pension*

**13.** In regulation E5(1) of the principal regulations—

(a) for the word “and” at the end of paragraph (a)(ii) of the proviso there shall be substituted the word “or”; and

(b) the following sub-paragraph shall be inserted after paragraph (a)(ii)—

“(iii) by virtue of sub-paragraph (a) or (c), if her husband became entitled to the retirement pension by virtue of regulation E2(1A); and”.

*Entitlement to children’s short-term pension and children’s long-term pension*

**14.** The following paragraph shall be inserted after paragraph (b) of the proviso to regulation E8(1) of the principal regulations—

“(c) a children’s short-term pension or a children’s long-term pension shall not be payable by virtue of sub-paragraph (a) or (c) if the deceased person became entitled to the retirement pension by virtue of regulation E2(1A).”.

*Pensions of widowers, etc.*

**15.** In regulation E12 of the principal regulations, the words “and as if any reference to the husband of the wife or widow of such a person included a reference to her” shall be inserted after the word “widower”.

*Additional benefits granted at discretion of employing authority in the case of certain female nursing, etc. staff*

**16.** In regulation E13(1)(d) of the principal regulations, the words “(not being a retirement pension to which she becomes entitled by virtue of regulation E2(1A))” shall be inserted after the word “pension”.



*Reduction of retirement pension, etc., in the case of certain re-employed local government pensioners*

17. In regulation E15(2) of the principal regulations, the words “three months” shall be substituted for the words “one month” where those words first occur, and the words “or within one month after the appointed day, whichever period ends the later” shall be deleted.

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

18.—(1) In regulation E16(1)(a) of the principal regulations, the words “or a retirement pension to which that person has become entitled by virtue of regulation E2(1A)” shall be inserted after the words “regulation E3(9)”.

(2) In regulation E16(2) of the principal regulations, the words “three months” shall be substituted for the words “one month”, where those words first occur, and the words “or within one month after the appointed day, whichever period ends the later” shall be deleted.

*Arrangement of pensionable employees into classes*

19.—(1) The following paragraph shall be substituted for paragraph (1) of regulation F1 of the principal regulations—

“(1) The provisions of this Part shall have effect for modifying the contributions and other superannuation payments payable by and the benefits payable to pensionable employees who are or have been insured persons, to take account of contributions payable and benefits receivable under the Insurance Act, and to make provision consequential thereon; and for this purpose pensionable employees shall be divided into four classes, namely—

Case A

Any person who retains unmodified status;

Case B

Any person who does not enjoy unmodified status;

Case C

Any person who—

(a) at any time before 6th April 1975 was in participating employment and

(b) immediately before the said date retained unmodified status;

Case D

Any person who—

(a) at any time before 6th April 1975 was in participating employment and

(b) immediately before the said date did not enjoy unmodified status.”.

(2) In regulation F1(2) of the principal regulations—

(a) the following definition shall be inserted after the definition of “graduated pension”—

“ “insured person” means a person insured under the National Insurance Act 1946(a), the Insurance Act or the Social Security Act 1975(b);”;

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(a) 1946 c. 67.

(b) 1975 c. 14.

- (b) the definition of “non-participating employment” shall be deleted;
- (c) the following definitions shall be substituted for the definitions of “person contracted out of the graduated pension scheme” and “person within the graduated pension scheme”—
- “ “person contracted out of the graduated pension scheme” means a person who immediately before 6th April 1975 was in employment which was a non-participating employment; and “person within the graduated pension scheme” means a person who immediately before that date was in participating employment;”;
- (d) the following definition shall be substituted for the definition of “Stage II”—
- “ “Stage II” means the period from 6th January 1964 to 5th April 1975.”.

*Persons within Case A*

**20.** The following regulation shall be substituted for regulation F3 of the principal regulations—

**“F3.** The contributions payable by any person within Case A, and the benefits payable to any person in respect of any period of reckonable service while within Case A, shall not be subject to any reduction under this Part.”.

*Persons within Case B*

**21.** The following regulation shall be substituted for regulation F4 of the principal regulations—

**“F4.** Regulations F5 to F9 shall apply to any person in respect of any period of reckonable service while within Case B.”.

*Reduction of contributions*

**22.** The following sub-paragraph shall be substituted for sub-paragraph (a) of regulation F6(1) of the principal regulations—

“(a) by an employee to whom paragraph 1(a) of Schedule 6 applies, by way of additional contributions in respect of years added under regulation D10; or”.

*Reduction of pension for a person within Case B*

**23.** The following paragraphs shall be substituted for paragraph (2) of regulation F7 of the principal regulations—

“(2) In respect of a person who was not immediately before the appointed day a person entitled to the optant’s rate for the purposes of the Modification regulations, the reduction shall be £1.70 in respect of each completed year of service as described in paragraph (1).

(2A) In respect of a person who immediately before the appointed day was a person entitled to the optant’s rate for the purposes of the Modification regulations, the reduction shall be the amount of the basic reduction which would have been made in the case of that person under paragraph 1(3) of Schedule 1 to those regulations if those regulations had not been revoked by these regulations.”.

*Persons in concurrent, etc. employments*

24. The following regulation shall be substituted for regulation F8 of the principal regulations—

“F8.—(1) Where a person within Case B is during any period a pensionable employee in the employment of one or more scheduled bodies concurrently and is also in other employment in which he is not a pensionable employee, then if his employer in that other employment would, but for the repeal of section 3 of the Insurance Act, have been treated as his employer for the purposes of the said section 3, regulations F5 and F6 shall not apply to him.

(2) Where an insured person is a pensionable employee in the employment of two or more employing authorities concurrently, regulations F5 and F6 shall only apply in relation to him in his employment under the authority (if any) which, but for the repeal of the said section 3, would be treated as his employer for the purposes of the said section 3.

(3) Where an insured person is a pensionable employee in each of two or more separate employments under the same employing authority then, subject to paragraphs (1) and (2), regulations F5 and F6 shall apply in relation to him only in whichever of those employments occupies the greater part of his time or, if this cannot be readily ascertained, in whichever the authority may determine.”.

*Persons within Cases C and D*

25. The following regulation shall be substituted for regulation F10 of the principal regulations—

“F10. Regulations F11, F13 and F17 shall apply to any person within Case C or Case D in respect of any period of participating employment during Stage I or Stage II and regulations F12, F14, F15 and F16 shall apply to any person within Case C or Case D.”

*Reduction of pension for a person within Case C or D*

26. The following regulation shall be substituted for regulation F13 of the principal regulations—

“F13.—(1) Where any period of service reckonable in calculating the amount of a retirement pension was in participating employment and modified contributions were paid during it, the part of the pension which is attributable to that period shall be reduced in accordance with the provisions of this regulation.

(2) In respect of a person within Case C, the reduction shall be 1p for each completed 3 months of that service in respect of each £10 of relevant remuneration less the sum of £1.70 for each completed year of that service.

(3) In respect of a person within Case D who was not immediately before the appointed day a person entitled to the optant's rate for the purposes of the Modification regulations, the reduction shall be 1p for each completed 3 months of that service in respect of each £10 of relevant remuneration.

(4) In respect of a person within Case D who immediately before the appointed day was a person entitled to the optant's rate for the purpose of the Modification regulations, the reduction shall be—

- (a) the sum of 1p for each completed 3 months of that service in respect of each £10 of relevant remuneration, less the sum of £1.70 for each completed year of that service, together with—
- (b) the amount of the basic reduction which would have been made in the case of that person under paragraph 1(3) of Schedule 1 to those regulations if those regulations had not been revoked by these regulations.

(5) In respect of a person within Case D to whom an old modification scheme applied or was deemed to apply immediately before 1st September 1947 and to whom regulation 14(1) of the Modification regulations applied immediately before the appointed day, the reduction shall be 1p for each completed 3 months of that service in respect of each £10 of relevant remuneration, less the sum of £1.70 for each completed year of that service, and regulation F9 shall apply to such a person.

(6) The reduction required by this regulation in respect of a person within Case D shall not be less than any reduction which would have been required if regulation F7 had been applicable.

(7) In this regulation the expression "relevant remuneration", in relation to a person, means—

- (a) in respect of any period or part of a period or service during Stage I, his pensionable remuneration, up to a maximum of £780;
- (b) in respect of any period or part of a period during Stage II, his pensionable remuneration, up to a maximum of £936.

(8) Reduction shall take effect on the date when a retirement pension becomes payable unless the person has not then reached pensionable age within the meaning of the Social Security Act 1975, in which case the reduction shall take effect on the date on which he reaches that age.

(9) No account shall be taken under this regulation of any part of a period of service in respect of which a retirement pension is reduced by virtue of interchange rules.

(10) No account shall be taken under this regulation of any period of participating employment as a pensionable employee during an income tax year if no graduated contributions had been paid under the Insurance Act in respect of any such period during that year.

(11) Where a person becomes entitled to a retirement pension on ceasing to be employed, or would have become entitled to a pension in those circumstances had he not continued in employment for more than 5 years after attaining pensionable age within the meaning of the Social Security Act 1975, no account shall be taken under this regulation, in respect of any period of participating employment, of pensionable remuneration in excess of that specified during the period in a certificate of non-participation issued under section 56 of the Insurance Act as the level of his remuneration at which his employment would have become non-participating employment.

(12) A period of employment as a pensionable employee in respect of which a payment in lieu of contributions was made shall be treated for the purposes of this regulation as a period of participating employment in respect of which his pensionable remuneration equals maximum relevant remuneration.”.

*Persons in concurrent, etc. employments*

27. In regulation F17(1) of the principal regulations, the word “was” shall be substituted for the word “is”, in each place where that word occurs.

*Special provisions for certain cases*

28. The following regulations shall be added after regulation G8 of the principal regulations—

*“Certain persons who become subject to certain other superannuation schemes*

G9.—(1) Subject to the conditions in paragraph (2) being satisfied, this regulation shall apply to a person—

(a) who either—

- (i) is in the employment of a scheduled body specified in paragraph (4) by virtue of which he is a pensionable employee; or
- (ii) is in the employment of a body mentioned in paragraph (4) of regulation B4 and by virtue of an agreement made, or continued in force as if made, under that regulation is in that employment entitled to participate in the benefits of a superannuation fund maintained under Part B; and

(b) for whose superannuation in that employment that body can make other provision under an approved non-local government scheme.

(2) The conditions referred to in paragraph (1) are that—

(a) the person shall notify the body in whose employment he is as mentioned in paragraph (1)(a) and, where that body is not the appropriate administering authority, the last-mentioned authority in writing that he desires this regulation to apply to him; and

(b) that body and, where as aforesaid, that authority consent to the application to him of this regulation.

(3) A person to whom this regulation applies—

(a) shall not, on and after the date on which he becomes subject in the employment mentioned in paragraph (1)(a) to an approved non-local government scheme, in that employment be liable to contribute to the appropriate superannuation fund; and

(b) shall be treated for the purposes of these regulations as if he had ceased to hold that employment on the day immediately before that date.

(4) The reference in paragraph (1)(a) to a body mentioned in this paragraph is a reference to—

(a) the National Water Council;

- (b) a passenger transport executive; or
- (c) a water authority.

(5) In this regulation “approved non-local government scheme” means—

- (a) for the purpose of giving before 6th April 1978 a notification under paragraph (2), a superannuation scheme or other arrangements for superannuation, other than a superannuation scheme provided in regulations for the time being in force under section 7 of the Act of 1972, which is wholly approved by the Commissioners of Inland Revenue under section 208 of the Income and Corporation Taxes Act 1970(a) or under Chapter II of Part II of the Finance Act 1970(b) or approved for this purpose by the said Commissioners; and
- (b) for the purpose of giving on or after 6th April 1978 a notification under paragraph (2), such a scheme as is described in paragraph (a) of this definition which is a contracted-out scheme within the meaning of the Social Security Pensions Act 1975(c).

*Certain persons who were transferred, etc., to the employment of the National Water Council or the Thames Water Authority*

**G10.**—(1) This regulation shall apply to a person who either—

- (a) (i) immediately before the transfer or appointment referred to in (ii) below, was in the employment of the Water Supply Industry Training Board, but was not a member of the Industrial Training Boards’ Pension Fund constituted by a definitive trust deed dated 20th July 1967;
- (ii) by an order under section 255 of the Local Government Act 1972(d) as applied by section 34 of the Water Act 1973(e) was on 1st April 1974 transferred to the whole-time employment of the National Water Council as a manual worker or was appointed by the National Water Council to any whole-time employment as a manual worker before or as from 1st April 1974 and but for the appointment would have been so transferred on that day under the said section 255;
- (iii) before 1st April 1975 became a pensionable employee in the employment mentioned in (ii) above;
- (iv) during the period beginning with the date on which he became a pensionable employee as mentioned in (iii) above and ending with 30th March 1978 was, without a break of service of a continuous period of 12 months or longer, in the whole-time employment of the National Water Council as a manual worker; and
- (v) on 30th March 1978 is a pensionable employee under a scheduled body; or
- (b) (i) immediately before the transfer or appointment referred to in (ii) below, was in the employment of the Metropolitan Water Board but was not a contributor to the Superannuation and

(a) 1970 c. 10.  
(d) 1972 c. 70.

(b) 1970 c. 24.  
(e) 1973 c. 37.

(c) 1975 c. 60.

Provident Fund established by a Scheme approved by the Metropolitan Water Board on 23rd April 1909, as amended from time to time, or a contributory employee;

- (ii) by an order under section 255 of the Local Government Act 1972 as applied by section 34 of the Water Act 1973 was on 1st April 1974 transferred to the whole-time employment of the Thames Water Authority as a manual worker or was appointed by the Thames Water Authority to any whole-time employment as a manual worker before or as from 1st April 1974 and but for the appointment would have been so transferred on that day under the said section 255;
- (iii) before 1st April 1975 became a pensionable employee in the employment mentioned in (ii) above;
- (iv) during the period beginning with the date on which he became a pensionable employee as mentioned in (iii) above and ending with 30th March 1978 was, without a break of service of a continuous period of 12 months or longer, in the whole-time employment of the Thames Water Authority as a manual worker; and
- (v) on 30th March 1978 is a pensionable employee under a scheduled body.

(2) If a person to whom this regulation applies, within 3 months after 30th March 1978, notifies his employing authority in writing that he desires this paragraph to apply to him, then—

(a) if—

- (i) he is such a person as is mentioned in paragraph (1)(a) and his employing authority is the National Water Council; or
- (ii) he is such a person as is mentioned in paragraph (1)(b) and his employing authority is the Thames Water Authority;

on giving such notification he shall cease to be a pensionable employee under the National Water Council or, as the case may be, the Thames Water Authority;

(b) whenever he is in the whole-time employment of—

- (i) in the case of a person mentioned in paragraph (1)(a), the National Water Council; and
- (ii) in the case of a person mentioned in paragraph (1)(b), the Thames Water Authority,

as a manual worker without a break of service of a continuous period of 12 months or longer, he shall not be a pensionable employee in that employment; and

(c) he shall be entitled to receive out of the appropriate superannuation fund a sum equal to the aggregate amount of contributions which were paid by him and have not been returned to him—

- (i) in the case of a person mentioned in paragraph (1)(a), in respect of any period before the giving of the notification during which he was in the whole-time employment of the National Water Council as a manual worker; and

(ii) in the case of a person mentioned in paragraph (1)(b), in respect of any period before the giving of the notification during which he was in the whole-time employment of the Thames Water Authority as a manual worker.

(3) On making any repayment of contributions under paragraph (2)(c), the administering authority shall deduct from the repayment any tax to which they may become chargeable under paragraph 2 of Part II of Schedule 5 to the Finance Act 1970.”.

*Continuity of employment and preservation of status*

29. In regulation J13(1)(a) of the principal regulations, the words “and any enactment, instrument or other document contained in or made or issued under Part III of the Insurance Act” shall be deleted.

*Decisions to be taken by administering authorities as to status of employees*

30. In regulation L3(2) of the principal regulations, in sub-paragraph (a)(v), the expression “F13(10)” shall be substituted for the expression “F13(6)”.

*Transmission of documents and information between authorities*

31. In sub-paragraph (c) of regulation L6(2) of the principal regulations, the words “or the said section 60(1) as modified by the Transitional Provisions Regulations” shall be inserted after the words “Insurance Act”.

*Recovery or retention by employing authority of certain sums from the superannuation fund*

32. The following regulation shall be added after regulation L16 of the principal regulations—

*“Recovery or retention by employing authority of certain sums from the superannuation fund*

L17.—(1) If a pensionable employee is dismissed or resigns or otherwise ceases to hold his employment in consequence of a criminal, negligent or fraudulent act or omission on his part, being such an act or omission arising in connection with his employment, then if the employee has incurred some monetary obligation to his employing authority arising out of such act or omission, that authority shall be entitled to recover from or retain out of the appropriate superannuation fund a sum which (subject to any different agreement in writing between the employing authority and the employee) shall not exceed the lesser of the following amounts—

- (a) the amount of the said monetary obligation; and
- (b) the actuarial value at the time of such recovery or retention of all rights enjoyed by or in respect of the employee with respect to his previous service (being rights under Parts C, D, E, F and J), and being rights enjoyed in respect of a period of service or in respect of contributions or other payments made by him as a pensionable employee, a contributory employee or a local Act contributor.

(2) The employing authority shall give to the employee not less than three months’ previous notice of the amount to be recovered or retained under paragraph (1).



(3) The employee shall be entitled to a certificate from the employing authority showing the amount recovered or retained under paragraph (1), the manner in which it is calculated and the effect of such recovery or retention upon his benefits or prospective benefits.

(4) In the event of any dispute as to the amount to be recovered or retained under paragraph (1), the employing authority shall not be entitled to such recovery or retention except after the monetary obligation referred to in that paragraph has become enforceable under an order of a competent court or the award of an arbitrator.”.

*Investment of superannuation fund moneys*

**33.** In paragraph 3 of Schedule 2 to the principal regulations (which restricts investment in the manner specified in paragraphs 4 and 5 of Part III of Schedule 1 to the Trustee Investment Act 1961(a), as modified by the principal regulations), the words “, other than the superannuation fund established and administered by the National Water Council,” shall be inserted after the words “a superannuation fund”.

*Modifications to Part E in its application to persons with no entitlement under the former regulations to a retiring allowance and widow's pension or to a widow's pension*

**34.—**(1) In paragraph 3 of Part I of Schedule 12 to the principal regulations, the following sub-paragraphs shall be substituted for sub-paragraph (a)—

“(a) in paragraph (1)(b) the words “and retiring allowance” shall be omitted and the words “or regulation E2(1A)” shall be inserted after the words “regulation E2(1)(c)”;

(aa) in paragraph (1)(c), for the words “and retiring allowance” there shall be substituted the words “, other than a person who became entitled thereto by virtue of regulation E2(1A),” and the words “or payment of that allowance” shall be omitted;”.

(2) Paragraph (1) above shall not apply to Schedule 12 to the principal regulations as substituted by regulation 14(c) of, and Schedule 3 to, the Local Government Superannuation (City of London) Regulations 1977(b), but in the said Schedule 12, as so substituted, the following sub-paragraphs shall be substituted for sub-paragraphs (a) and (b) of paragraph 4 of Part III thereof—

“(a) in paragraph (1)(b), for the words “and retiring allowance” to the end there shall be substituted the words “, other than a person who became entitled thereto by virtue of regulation E2(1A); or”;

(b) in paragraph (1)(c), for the words “and retiring allowance” there shall be substituted the words “, other than a person who became entitled thereto by virtue of regulation E2(1A),” and the words “or payment of that allowance” shall be omitted;”.

*Peter Shore,*

Secretary of State for the Environment.

27th February 1978.

## EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These Regulations further amend the Local Government Superannuation Regulations 1974 ("the 1974 regulations").

The main changes are—

- (1) The provisions of the 1974 regulations relating to return of contributions and qualifying service are amended so that they comply with the requirements of section 63 of, and Part I of Schedule 16 to, the Social Security Act 1973 (regulations 6, 8 and 10).
- (2) Pensions required by the National Insurance Act 1965 for periods of employment which were non-participating under that Act are provided for persons who would not otherwise be entitled to a pension under the 1974 regulations on retirement and consequential amendments to the 1974 regulations are made (regulations 11, 12(1), 13 to 16, 18 and 34).
- (3) The provisions of the 1974 regulations relating to modification of benefits under those regulations in connection with the payment of graduated benefit under the National Insurance Act 1965 are amended to take account of the consequential effects of the repeal of Part III (non-participating employments) of that Act and to remedy a small number of omissions and defects (regulations 7 and 19 to 27).
- (4) Provision is made whereby—
  - (a) an employee of the National Water Council, a passenger transport executive, a water authority or a body whose employees may be admitted to participate in the benefits provided by the 1974 regulations may, if suitable alternative superannuation arrangements are available and his employing authority and the body maintaining the superannuation fund under the 1974 regulations consent, opt to switch to the other superannuation arrangements;
  - (b) certain persons transferred, etc., on or as from 1st April 1974 from employment in which they were not superannuable to the employment of the National Water Council or the Thames Water Authority as whole-time manual workers may, as respects that employment, opt not to be superannuable under the regulations and to receive a return of contributions (regulation 28).
- (5) An employing authority is empowered, where an employee has been dismissed or resigned or otherwise ceases to hold his employment in consequence of a criminal, negligent or fraudulent act or omission on his part, to recover from or retain out of the superannuation fund a sum, subject to specified limits, in respect of a monetary obligation incurred to them by the employee and arising from that act or omission (regulation 32).
- (6) A restriction on powers to invest superannuation fund moneys is, in relation to the fund maintained by the National Water Council, removed (regulation 33).

Under the powers conferred by section 12(1) of the Superannuation Act 1972, regulations 23 and 26 are brought into force as from 1st April 1974 and regulations 19 to 22, 24, 25, 27 and 31 are brought into force as from 6th April 1975.



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