

1980 No. 1885 (S. 172)

## PENSIONS

**The Local Government Superannuation (Scotland)  
Amendment (No. 3) Regulations 1980***Made* - - - - 1st December 1980*Laid before Parliament* 18th December 1980*Coming into Operation* 8th January 1981

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

*Title and commencement*

1.—(1) These regulations may be cited as the Local Government Superannuation (Scotland) Amendment (No. 3) Regulations 1980 and the Local Government Superannuation (Scotland) Regulations 1974 to 1980(b) (in these regulations referred to as “the principal regulations”) and these regulations may be cited together as the Local Government Superannuation (Scotland) Regulations 1974 to 1980.

(2) These regulations shall come into operation on 8th January 1981 and shall have effect—

- (a) for the purposes of regulation 3, as from such date in respect of each regulation of the Local Government Superannuation (Scotland) Amendment Regulations 1980(c) as is expressed in regulation 1(2) of those regulations as the date on which that regulation comes into effect;
- (b) for the purposes of regulations 4 and 12, as from 1st April 1979;
- (c) for the purposes of regulations 5, 7, 8, 9, 11 and 13 as from 8th January 1981;
- (d) for the purposes of regulation 6, as from 9th January 1979;
- (e) for the purposes of regulation 10, as from 1st August 1975.

*Interpretation*

2. In these regulations, unless the context otherwise requires, words and expressions to which meanings are assigned by the principal regulations have the same respective meanings.

(a) 1972 c. 11.

(b) S.I. 1974/812, 1975/638, 1978/425, 1378, 1794, 1926, 1980/198, 342.

(c) S.I. 1980/198.

*Right to opt out*

3. After regulation 19 of the Local Government Superannuation (Scotland) Amendment Regulations 1980 there shall be added the following regulation—

*“Right to opt out*

20.—(1) No provision of these regulations shall apply to any person to whom at any time before 19th March 1980 any benefit (including a return of contributions and any pension payable to a widow or any dependant by virtue of a surrender) was being paid or became payable or to any person to whom any such benefit is being paid or may become payable, if—

- (a) he is placed by that provision in a worse position than he would have been if it had not applied in relation to that benefit; and
- (b) that provision relates to a benefit paid or payable in respect of a person who—
  - (i) ceased before the said date of coming into operation to hold an employment in respect of which he was a pensionable employee, or
  - (ii) died before that date while still in such an employment; and
- (c) the first-mentioned person, by notice in writing given to the appropriate administering authority within 3 months after the date of coming into operation of the Local Government Superannuation (Scotland) Amendment (No. 3) Regulations 1980, elects that that provision shall not apply to him.

(2) The provisions of Part H of the principal regulations (determination of questions and appeals) shall apply in relation to any question arising under this regulation as they apply in relation to rights and liabilities under the principal regulations.”.

*Power to admit employees of other bodies*

4. The following regulation shall be substituted for regulation B4(2)(b) of the principal regulations—

“(b) may not contain provision, other than—

- (i) provision that any previous period of employment by the body concerned of an employee admitted under the agreement shall be reckonable as reckonable service to such extent as may be agreed between the administering authority and the body, or
- (ii) where the body concerned is a development corporation established under the New Towns (Scotland) Act 1968(a), provision that a percentage, not exceeding 4·4%, of the remuneration of an employee admitted under the agreement shall, if he is an employee of a description specified for that purpose in the agreement, be treated as not being remuneration for the purposes of these regulations,

conferring on any employee admitted under the agreement any greater or lesser rights under these regulations or subjecting him to any greater or lesser liabilities thereunder than those which he would have enjoyed or to which he would have been subject respectively had he become a pensionable employee by virtue of regulation B2.”.

*Payments by employee to avoid reduction of retiring allowance and death gratuity*

5. After regulation C2A(4) of the principal regulations there shall be added the following regulations—

“(4A) Where a person who has made application under regulation D10A, to which consent under regulation D10(2) has not been given, gives notice of an election under paragraph (2), (3) or (4), the notice may state that in the event of such a consent being given the service to which it relates is to be treated as having been included in the service specified in the notice.

(4B) Where—

(a) a notice of an election under paragraph (2), (3) or (4) contains such a statement as is mentioned in paragraph (4A) and a consent is subsequently given under regulation D10(2), or

(b) an election is made under regulation D10A(5),

any resulting increase in any payment mentioned in paragraph (3) or (4) is payable from the date which is for the purposes of Schedule 22 the date of the election under the paragraph in question, and any resulting increase in any payment mentioned in paragraph (2) shall be paid within one month after the date of the consent.”.

*Increase in amount of retiring allowance and death gratuity of certain persons*

6. After regulation C2B(2) of the principal regulations there shall be added the following regulation—

“(2A) Where a retired employee dies after 31st March 1978 then for the purposes of giving notice under this regulation a notice served by his personal representatives shall be deemed to be served by him.”.

*Further provision for increase in amount of retiring allowance and death gratuity of certain persons*

7. After regulation C2B of the principal regulations there shall be added the following regulation—

*“Further provision for increase in amount of retiring allowance and death gratuity of certain persons*

**C2C.—(1)** A person who—

(a) attained the age of 65 years after 31st March 1978 and before 9th January 1979, and

(b) was on his 65th birthday in an employment in which he would have been a person to whom regulation C2A applied, if that regulation had come into operation on 31st March 1978, and

(c) was in that employment on 9th January 1979,

shall for the purposes of regulation C2B(1)(a) be deemed to be a retired employee and to have ceased to hold that employment on his 65th birthday.

(2) In relation to such a person as is mentioned in paragraph (1) above—

(a) regulation C2A(6)(c) shall not apply and the notice mentioned in regulation C2B(1) may be given by the person within 12 months of the date of coming into operation of the Local Government Superannuation (Scotland) Amendment (No. 3) Regulations 1980, or

- (b) if the person concerned dies within the period of 12 months beginning on that said date of coming into operation without giving such a notice, by his personal representatives within the period of 12 months beginning on the date of his death.”.

*Further provision as to added years reckonable on payment as reckonable service*

8. After regulation D10 of the principal regulations there shall be added the following regulations—

*“Further provision as to added years reckonable on payment as reckonable service*

**D10A.**—(1) Subject to paragraph (3), an application under this regulation for the purpose mentioned in regulation D10(2)—

- (a) may be made by an employee in relation to whom the conditions specified in paragraph (2) are satisfied, and  
 (b) shall be treated for the purposes of regulation D10(2) as an application made for the purpose and within the period mentioned in that regulation.

(2) The conditions mentioned in paragraph (1) are that the person is a person to whom regulation D10 applied and either—

- (a) he did not make any application for the purpose mentioned in regulation D10(2) within the period there mentioned, or  
 (b) he made such an application within that period and has not been notified in writing by the authority to whom the application was made that they refused to give consent.

(3) An application under this regulation must be made in writing to the employing authority within 12 months after the date of coming into operation of the Local Government Superannuation (Scotland) Amendment (No. 3) Regulations 1980.

(4) The employing authority to whom an application under this regulation is made shall for the purposes of regulation D10(2) be deemed to be the employing authority under whom the person making the application was a pensionable employee on the appointed day or, as the case may be, the day on which he first became a pensionable employee after the appointed day.

(5) Subject to paragraph (6), where a person has given notice of an election under regulation C2A(2), (3) or (4), and he makes an application under this regulation, he may elect that in the event of consent being given under regulation D10(2) the service to which it relates is to be treated as having been included in the service specified in the notice.

(6) An election under paragraph (5) must be made, not later than the date of the application under this regulation, by giving notice in writing to the appropriate administering authority.

*Provision for increase in amount of retiring allowance and death gratuity of certain persons in relation to added years*

**D10B.**—(1) Where a person, on or after the appointed day but before the date of coming into operation of the Local Government Superannuation (Scotland) Amendment (No. 3) Regulations 1980, ceased by virtue of

retirement or death to hold an employment in which he would have been a person to whom regulation D10A applied, if that regulation had come into force before he so ceased to hold that employment, then application may be made for the purposes of regulation D10A—

- (a) where the employee is still alive, by him, within 12 months after the date of coming into operation of the said regulations of 1980, or
- (b) where the employee is deceased or dies not later than 12 months after the said date of coming into operation without making an application under the said regulation D10A, by his personal representatives, within 12 months after that date or within 12 months after the date of his death, whichever is the later.

(2) Where an application under paragraph (1) has been made but no consent under regulation D10(2) has yet been given, and notice is given in accordance with regulation C2B in respect of the person to whom the application relates, the notice may state that in the event of such a consent being given the service to which it relates is to be treated as having been included in the service specified in the notice.

(3) Subject to paragraph (4), where notice has been given in accordance with regulation C2B and an application under paragraph (1) is made by or in respect of the person to whom the notice relates, the person making the application may elect that in the event of any consent being given under regulation D10(2) the service to which it relates is to be treated as having been included in the service specified in the notice.

(4) An election under paragraph (3) above must be made, not later than the date of the application under this regulation, by giving notice in writing to the appropriate administering authority.

(5) Where—

- (a) a notice given in accordance with regulation C2B contains such a statement as is mentioned in paragraph (2) and a consent is subsequently given under regulation D10(2), or
- (b) an election is made under paragraph (3),

any resulting increase in the amount specified in regulation C2B(3) shall be paid within one month after the date of the consent.”

*Amount of retirement pension and retiring allowance*

**9.**—(1) In regulation E3(6) of the principal regulations for the words “paragraph 6A” there shall be substituted the words “paragraphs (6A) and (6AA)”.

(2) After regulation E3(6A) of the principal regulations there shall be added the following regulation—

“(6AA) A reduction under paragraph (6) in the case of a female pensionable employee shall be made only where regulation E12(a)(i) applies.”

*Persons subject to relevant limitation*

**10.** After regulation L10A of the principal regulations there shall be added the following regulation—

*“Persons subject to relevant limitation*

**L10B.**—(1) This regulation applies to a person if his pensionable remuneration in relation to an employment under a scheduled body would, apart from this regulation, be less than it would have been but for a relevant limitation.

(2) In this regulation, “relevant limitation” means a limitation of remuneration—

- (a) which was necessary to comply with limits referred to in section 1 of the Remuneration, Charges and Grants Act 1975(a), and
- (b) the effect of which was that any relevant remuneration was less than would, apart from that section, have been payable under an agreement entered into before 1st August 1975.

(3) In paragraph (2) above, “relevant remuneration” means any remuneration which is material for any of the purposes of regulation E1 or, in the case of a person to whom regulation J5 applies, of any provision contained in his former local Act scheme which is similar to regulation E1.

(4) The pensionable remuneration of a person to whom this regulation applies shall be taken to be the amount it would have been but for the relevant limitation.

(5) Where it appears to a scheduled body that a person who has been an employee of theirs may be a person to whom this regulation applies they shall as soon as is reasonably practicable decide whether he is such a person.

(6) A decision under paragraph (5) above shall for the purposes of regulations L2, L8 and L9 be treated as a decision made under regulation L8(1).”.

*Provisions applicable as respects additional contributions while any amount remains outstanding*

**11.**—(1) After paragraph 2 of Schedule 5 to the principal regulations there shall be added the following paragraph—

“2A. If the employee becomes entitled to benefits under regulation E2(1)(b)(iii) he may elect to pay to the appropriate superannuation fund, within 3 months of ceasing to be employed, the actuarial equivalent of the balance of contributions outstanding and, if he makes such payment, shall be treated as having completed the payments required under regulation D10 or, as the case may be, D13.”.

(2) In paragraphs 3 and 6 of the said Schedule 5 for the words “paragraph 2” there shall be substituted the words “paragraphs 2 or 2A”.

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

**12.** In Schedule 15 to the principal regulations there shall be added the following paragraph—

“8. A percentage, not exceeding 4.4%, of the remuneration of the General Manager of the Association shall be treated as not being remuneration for the purposes of these regulations.”.

*Right to opt out*

**13.**—(1) No provision of these regulations shall apply to any person to whom at any time before the date of coming into operation of these regulations any benefit (including a return of contributions and any pension payable to a widow or any dependant by virtue of a surrender) was being paid or became payable or to any person to whom any such benefit is being paid or may become payable, if—

(a) 1975 c. 57; section 1 was amended, and the period for which it had effect extended to 31st July 1978 by the Price Commission Act 1977 (c. 33), section 17; references to limits set out in documents laid before Parliament in 1976 and 1977 were added by S.I. 1976/1097, 1977/1294.

- (a) he is placed by that provision in a worse position than he would have been if it had not applied in relation to that benefit; and
  - (b) that provision relates to a benefit paid or payable in respect of a person who—
    - (i) ceased before the said date of coming into operation to hold an employment in respect of which he was a pensionable employee, or
    - (ii) died before that date while still in such an employment; and
  - (c) the first-mentioned person, by notice in writing given to the appropriate administering authority within 3 months after the said date of coming into operation, elects that that provision shall not apply to him.
- (2) The provisions of Part H of the principal regulations (determination of questions and appeals) shall apply in relation to any question arising under this regulation as they apply in relation to rights and liabilities under the principal regulations.

New St. Andrew's House,  
Edinburgh.  
1st December 1980.

*George Younger,*  
One of Her Majesty's Principal  
Secretaries of State.

## EXPLANATORY NOTE

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

These Regulations amend the Local Government Superannuation (Scotland) Regulations 1974 to 1980 by—

- (1) Making provision for the disregard, for the purposes of the payment of superannuation contributions and the calculation of retirement benefits, of non-pensionable additions to salary awarded to certain employees of New Town Development Corporations and the Scottish Special Housing Association (Regulations 4 and 12).
- (2) Giving to any employee or former employee who missed the time limit in regulation D10 of the principal regulations a further opportunity of applying in terms of that regulation for the consent of his employing authority to the reckoning of shared cost added years and, where such consent is given, providing for such service to be taken into account under the facility for making payments to secure an unreduced lump sum (Regulations 5 and 8).
- (3) Rectifying an omission from the Local Government Superannuation (Scotland) Amendment (No. 3) Regulations 1978 to allow the personal representatives of a deceased retired employee to make application under the facility for making payments to secure an unreduced lump sum (Regulation 6).
- (4) Extending the facility for making payments to secure an unreduced lump sum to persons who attained age 65 on or after 31st March 1978 but before 9th January 1979 (Regulation 7).
- (5) Making provision for benefits to be calculated on notional remuneration where actual remuneration under an agreement entered into before 1st August 1975 was restricted by the 1975 pay policy (Regulation 10).
- (6) Ensuring that a female pensionable employee who at the time of giving notice under regulation E12(b) of the principal regulations had no husband does not suffer a reduction under regulation E3(6) of the principal regulations in her retiring allowance in respect of service before 1st April 1972 (Regulation 9).
- (7) Introducing a provision for payment of the balance outstanding under added years contracts where an employee leaves his employment on grounds of redundancy or forced early retirement (Regulation 11).

Regulation 3 corrects an omission from the Local Government Superannuation (Scotland) Amendment Regulations 1980 by adding a no worsening provision to those regulations.

Under powers conferred by Section 12 of the Superannuation Act 1972 provisions (1), (3) and (5) are brought into force respectively from 1st April 1979, 9th January 1979 and 1st August 1975. Regulation 3 is brought into force contemporaneously with each regulation of the Local Government Superannuation (Scotland) Amendment Regulations 1980 to which it applies. Provision is made for opting out if a person is placed in a worse position as a result of the retrospective effect of any of the Regulations.





SI 1980/1885  
ISBN 0-11-007885-3



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