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 STATUTORY INSTRUMENTS
 

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1981 No. 1509

## PENSIONS

**The Local Government Superannuation (Amendment)  
(No. 2) Regulations 1981**

*Made* - - - - 23rd October 1981

*Laid before Parliament* 5th November 1981

*Coming into Operation* 1st December 1981

The Secretary of State for the Environment, in exercise of the powers conferred upon him by sections 7 and 12 of the Superannuation Act 1972(a), 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:—

*Citation and commencement*

1.—(1) These regulations may be cited as the Local Government Superannuation (Amendment) (No. 2) Regulations 1981.

(2) The Local Government Superannuation Regulations 1974 to 1981(b) and these regulations may be cited together as the Local Government Superannuation Regulations 1974 to 1981.

(3) These regulations shall come into operation on 1st December 1981 and, except as provided in paragraph (4), shall have effect from that date.

(4) Regulations 3, 4, 5(b) and (e), 8 and 9 shall have effect as from 31st March 1977.

*Interpretation*

2. In these regulations “the principal regulations” means the Local Government Superannuation Regulations 1974(c), and other words and expressions to which meanings are assigned by the principal regulations have the same respective meanings.

*Definitions in principal regulations*

3. Regulation A3(1) of the principal regulations is amended—

(a) by inserting after the definition of “regular fireman” the following:

““relevant absence” and “relevant contribution period” have the meanings given by regulation C1A;”; and

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(a) 1972 c. 11.

(b) S.I. 1974/520, 1977/1121, 1845, 1978/266, 822, 1738, 1739, 1979/2, 592, 1534, 1980/216, 233, 234, 1981/1250.

(c) S.I. 1974/520; relevant amending instruments are S.I. 1977/1121, 1978/266, 1739, 1979/2, 1980/234, 1981/1250.

- (b) by inserting after the definition of “statutory scheme” the following:  
 ““trade dispute” has the meaning given by regulation C1A;”.

*Absence due to trade dispute*

4. The principal regulations are amended by inserting after regulation C1 the following regulation:

“*Absence due to trade dispute*

C1A.—(1) This regulation applies to a person who—

(a) has been absent from duty, otherwise than on leave of absence, for a period of one or more days during and in consequence of a trade dispute, and

(b) immediately before—

(i) the period of absence, or

(ii) where two or more periods of absence occurred in consequence of a single trade dispute, the first of those periods,

was a pensionable employee.

(2) For the purposes of paragraph (1)—

(a) a person whose contract of employment is terminated in consequence of a trade dispute is, notwithstanding the termination, to be treated as having been absent from duty after the termination if, not later than the day after the end of the trade dispute, he again becomes a pensionable employee of the same scheduled body, and

(b) it is immaterial whether or not—

(i) the person was participating in or financing or otherwise directly interested in the trade dispute, or

(ii) the employing authority were a party to the trade dispute.

(3) In this regulation, unless the context otherwise requires—

“relevant absence” means a period for which a person to whom this regulation applies was absent from duty as mentioned in paragraph (1);

“relevant contribution period” means a period which—

(a) is coextensive with one of the intervals at which a person to whom this regulation applies was required under regulation C1(1) to contribute to the appropriate superannuation fund, and

(b) includes all or part of a relevant absence;

“remuneration” does not include any guarantee payment under Part II of the Employment Protection (Consolidation) Act 1978 (a); and

“trade dispute” has the meaning given by section 29 of the Trade Union and Labour Relations Act 1974 (b).

(4) Subject to paragraphs (5), (6) and (8), if notice in writing is given for the purpose by—

(a) a person to whom this regulation applies, or

(a) 1978 c. 44.

(b) 1974 c. 52; part of section 29(3) was repealed by the Trade Union and Labour Relations (Amendment) Act 1976 (c. 7), section 1(d), and section 29(7) was repealed by the Criminal Law Act 1977 (c. 45), section 65 and Schedule 13.

- (b) the personal representatives of a person to whom this regulation applied who has died before the end of the period of 3 months specified in paragraph (6) without giving such notice (referred to in this regulation as a "deceased employee"),

the amount specified in paragraph (7) is payable in respect of a relevant contribution period to the authority to whom notice was given; and the authority shall pay to the appropriate superannuation fund any sum they receive by way of full or part payment of that amount.

(5) Where all or part of more than one relevant contribution period is included in a relevant absence or relevant absences which occurred in consequence of a single trade dispute, notice given for the purpose mentioned in paragraph (4) in respect of any one of those periods is of no effect unless notice is given in respect of all those periods.

(6) Notice for the purpose mentioned in paragraph (4) must be given in writing, within the period of 3 months beginning—

- (a) on the day after the last day of the relevant contribution period or, where paragraph (5) applies, of the last of the relevant contribution periods, in respect of which it is given, or

(b) on 1st December 1981,

whichever is the later date, or in the case of a deceased employee within the period of 12 months beginning on the date of his death, or in either case within such longer period as the authority may allow, to the authority who are, or as the case may be were last, the employing authority in relation to the person by or in respect of whom notice is given.

(7) The amount mentioned in paragraph (4) is an amount equal to 16% of the difference between—

- (a) the person's remuneration (if any) for the relevant contribution period, and

(b) the remuneration he would have received for that period if it had not included any relevant absence or part of a relevant absence.

(8) Notwithstanding anything in regulation C4, but without prejudice to the power of the appropriate administering authority under that regulation to deduct from any payment by way of benefits under these regulations any sum remaining due on account of an amount payable under this regulation—

- (a) an employing authority shall not accept from a pensionable employee, or deduct from his remuneration, and

(b) an administering authority shall not recover from a pensionable employee,

in any period of 12 months ending with 5th April, by way of full or part payment of so much of any amount payable under this regulation as is attributable to any relevant absence during that period, any sum which, when aggregated with any such amounts as are mentioned in Schedule 4, would exceed 15% of his remuneration for that period."

*Leave of absence from duty*

5. Regulation C2 of the principal regulations is amended—

- (a) by inserting before the words "A pensionable employee" the figure "(1)";

- (b) by inserting after the words “without remuneration,” the words “shall not make any contribution under regulation C1 but”;
- (c) by inserting at the beginning of paragraph (b) the words “subject to paragraph (2),”;
- (d) by substituting for the words “the day before the date on which he went on leave of absence”, in the first place where they occur, the words “the day on which he returns to duty or the day on which he ceases to be employed by that authority, whichever is the earlier”;
- (e) by inserting after the words “superannuation fund” the words “of amounts equal to the contributions he would have been required to make under regulation C1”; and
- (f) by adding at the end the following paragraph:
  - “ (2) Where the leave of absence was given to enable the employee to attend—
    - (a) for jury service in pursuance of a summons under the Juries Act 1974 (a), or
    - (b) as a juror at an inquest under the Coroners Act 1887 (b),
 and such attendance continues after the expiration of the period specified in paragraph (1)(a), the employee shall be deemed to have given such a notice as is mentioned in paragraph (1)(b). ”

*Deduction from remuneration of employee's contributions, etc. and recovery thereof*

6. The principal regulations are amended by substituting for regulation C4 the following:

“C4. An employing authority may deduct from the remuneration payable by them to a pensionable employee the contributions payable by him under regulation C1 or C2 to the appropriate superannuation fund, any amount payable by him under regulation C2A(3) or (4) to that fund and any amount payable by him under regulation C1A; and, if and so far as deductions are not made from the remuneration of a pensionable employee, the appropriate administering authority may recover any such contributions or amount as a simple contract debt in any court of competent jurisdiction or may deduct any sum remaining due on account thereof from any payment by way of benefits under these regulations.”

*Return of employee's contributions in certain cases*

7. Regulation C8 of the principal regulations is amended by substituting for paragraph (8)(e) the following:

“(e) any sum paid by him by way of additional contributory payments or under regulation C1A;”.

*Reckonable service*

8. Regulation D1 of the principal regulations is amended—

- (a) by substituting for the words “paragraphs (2) and (3)” in paragraph (1) the words “paragraphs (1A), (1B), (2) and (3)”;
- (b) by substituting for the words “the contributions required by these regulations” in paragraph (1)(a) the words “contributions under regulation C1 or C2”; and
- (c) by inserting after paragraph (1) the following paragraphs:

(a) 1974 c. 23.

(b) 1887 c. 71.

“(1A) A period of absence from duty without remuneration, otherwise than on leave of absence, may not be reckoned as reckonable service unless—

- (a) that period was a relevant absence, and
- (b) the amount specified in regulation C1A(7) has been paid in respect of every relevant contribution period all or part of which was included in that relevant absence.

(1B) Where the amount specified in regulation C1A(7) has been paid in respect of a relevant contribution period, so much of any relevant absence as was included in that period may be reckoned as reckonable service whether or not a contract of employment continued to subsist during the relevant absence or any part of it.”.

*Pensionable remuneration*

**9.** Regulation E1 of the principal regulations is amended—

- (a) by inserting in paragraph (2)(b)(i), after the word “contributions” where it occurs for the first time, the words “under regulation C1 or C2 or payments under regulation C1A”;
- (b) by substituting for the word “contributions” where it occurs for the second time in paragraph (2)(b)(i) the words “such contributions or payments or both”; and
- (c) by substituting for paragraph (3) (a) the following:

“(a) an employee whose remuneration was, during the 13 years immediately preceding the day following the end of the year specified in paragraph (2)(a), reduced or discontinued by reason of his absence from duty owing to illness or injury shall be deemed to have received the remuneration which he would have received but for the reduction or discontinuance;

(aa) an employee—

- (i) whose remuneration was, during the period mentioned in subparagraph (a), reduced or discontinued during absence from duty otherwise than by reason of illness or injury, but who made contributions in accordance with regulation C2 or a payment under regulation C1A, or
- (ii) who, during that period, on reduction or discontinuance of his remuneration contributed under section 6(5) of the Act of 1937,

shall be deemed to have received for any period in respect of which he made such contributions or payment the remuneration which he would have received but for the reduction or discontinuance;”.

*Certificates as to reduction in remuneration*

**10.** Regulation L11(3) of the principal regulations is amended by substituting for the words “10 years” the words “13 years”.

*Amount to be paid for added years*

**11.** Schedule 6 to the principal regulations is amended by inserting after paragraph 1 the following paragraph:

“2.—(1) For the purposes of paragraph 1, in relation to any additional contribution falling to be paid by a pensionable employee under regulation D10(4) his remuneration for the time being is, subject to sub-paragraph (2),

the remuneration received by him for the interval (being an interval determined under regulation D10(4)) at the end of which the additional contribution falls to be paid.

(2) For the purposes of sub-paragraph (1), a pensionable employee shall be taken to have received for any period for which, while a contract of employment subsisted, he was absent from duty with reduced remuneration or without remuneration, otherwise than by reason of illness or injury, the remuneration that he would have received but for his absence from duty.”.

*Amount to be paid for additional period*

**12.** Schedule 8 to the principal regulations is amended by inserting after paragraph 4 the following paragraph:

“5.—(1) For the purposes of paragraph 4, in relation to any additional contribution falling to be paid by a pensionable employee under regulation D13(2) his remuneration for the time being is, subject to sub-paragraph (2), the remuneration received by him for the interval (being an interval determined under regulation D13(2)) at the end of which the additional contribution falls to be paid.

(2) For the purposes of sub-paragraph (1), a pensionable employee shall be taken to have received for any period for which, while a contract of employment subsisted, he was absent from duty with reduced remuneration or without remuneration, otherwise than by reason of illness or injury, the remuneration that he would have received but for his absence from duty.”.

*Method and calculation of payment by employees to avoid reduction under regulation E3(5) or (6) of retiring allowance*

**13.** Part III of Schedule 20 to the principal regulations is amended by inserting after paragraph 3 the following paragraph:

“4.—(1) For the purposes of paragraph 3, in relation to any additional contribution falling to be paid by a pensionable employee under paragraph 1 his remuneration for the time being is, subject to sub-paragraph (2), the remuneration received by him for the interval (being an interval determined under paragraph 2) at the end of which the additional contribution falls to be paid.

(2) For the purposes of sub-paragraph (1), a pensionable employee shall be taken to have received for any period for which, while a contract of employment subsisted, he was absent from duty with reduced remuneration or without remuneration, otherwise than by reason of illness or injury, the remuneration that he would have received but for his absence from duty.”.

*Right to opt out*

**14.** No provision of these regulations shall apply to any person to whom at any time before 1st December 1981 any benefit (including a return of contributions and any pension payable to a widow or any dependant by virtue of a surrender) was or is being paid or became 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 1st December 1981 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 1st December 1981, elects that that provision shall not apply to him.

*Right of appeal*

15. The provisions of Part H of the principal regulations (determination of question and appeals) shall apply in relation to rights and liabilities under these regulations as they apply in relation to rights and liabilities under the principal regulations.

*Michael R. D. Heseltine,*

23rd October 1981.

Secretary of State for the Environment.

EXPLANATORY NOTE

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

These regulations further amend the Local Government Superannuation Regulations 1974 ("the principal regulations"). The main changes are—

- (a) where a period of absence due to industrial action would otherwise have resulted in a loss of reckonable service, or of both reckonable service and pensionable remuneration, a pensionable employee may gain the right to reckon the period as reckonable service, and to have notional remuneration during the period treated as pensionable remuneration, on making payment at a specified rate (16% of notional remuneration) greater than that of his normal contributions (regulations 3, 4, 6, 7, 8 and 9) ;
- (b) other periods of unpaid absence without leave are not reckonable as reckonable service (regulation 8(c)) ;
- (c) the period for giving notice for the purpose of making contributions after the first 30 days of absence on leave without pay, or on reduced pay, is extended and the rate of contribution clarified, and notice is deemed to have been given where the leave was for jury service (regulation 5) ;
- (d) inconsistencies between periods specified in the principal regulations for certain interrelated purposes are corrected (regulations 9(c) and 10) ; and
- (e) in provisions of the principal regulations requiring periodical payments made for various purposes to be calculated by reference to "remuneration for the time being", the meaning of that expression is clarified and it is extended to include notional remuneration during periods of absence (regulations 11, 12 and 13).

Section 12 of the Superannuation Act 1972 confers express power to make regulations retrospective in effect. These regulations are to a certain extent retrospective. Where rights in relation to ex-employees could be adversely affected, provision is made for opting out and for the determination of related questions (regulations 14 and 15).

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