
STATUTORY INSTRUMENTS

1986 No. 151

LOCAL GOVERNMENT, ENGLAND AND WALES

**The Local Government Reorganisation
(Compensation) Regulations 1986**

<i>Made</i>	- - - -	<i>31st January 1986</i>
<i>Laid before Parliament</i>		<i>7th February 1986</i>
<i>Coming into Operation</i>		<i>28th February 1986</i>

The Secretary of State for the Environment, in exercise of the powers conferred upon him by section 24 of the Superannuation Act 1972, and of all other powers enabling him in that behalf, hereby makes the following regulations:—

**PART I
PRELIMINARY**

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Local Government Reorganisation (Compensation) Regulations 1986 and shall come into operation on 28th February 1986.

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

“the 1978 Act” means the Employment Protection (Consolidation) Act 1978**(1)**;

“the 1985 Act” means the Local Government Act 1985;

“the 1982 regulations” means the Local Government (Compensation for Premature Retirement) Regulations 1982**(2)**;

“the 1984 regulations” means the Local Government (Compensation for Redundancy and Premature Retirement) Regulations 1984;

“the Superannuation regulations” means the Local Government Superannuation Regulations 1974**(3)**;

(1) sections 81, 82, 84 and 94 and Schedules 4 and 6 apply as modified by the Redundancy Payments (Local Government) (Modification) Order 1983 (S.I. 1983/1160, amended by S.I. 1985/1872).
(2) amended by S.I. 1984/740.
(3) relevant amendments were made by S.I. 1985/1515.

“compensating authority”, in relation to compensation under these regulations of any kind, means—

- (a) the former employer, or
- (b) where that body has ceased to exist, the body to whom its liabilities in respect of compensation of that kind payable by it have been transferred by section 60(2) or under section 66(1) or 67 of the 1985 Act;

“compensation period” is to be construed in accordance with regulation 8(2);

“emoluments” is to be construed in accordance with regulation 6;

“former employer” means the body (being a body mentioned in regulation 2) by whom a person was employed under a contract of employment which has been terminated, and “former employment” means his employment under that contract;

“new authority” has the meaning given by section 105(1) of the 1985 Act;

“new employment” means—

- (a) in relation to a person dismissed by reason of redundancy, an employment following the former employment which by virtue of section 84, 94 or 95 of the 1978 Act precludes him (or in the case of a woman to whom section 82(1)(b) of that Act applies, would otherwise have precluded her) from receiving any redundancy payment, and
- (b) in any other case, an employment which would have fallen within (a) above if the person had been dismissed by reason of redundancy,

and “new employer” is to be construed accordingly;

“normal retiring age”, in relation to a person's former employment, means—

- (a) the age, if any, at which he could under his contract or any enactment have been compelled to retire, or
- (b) where there is no such age, the age of 65;

“person” means a person to whom these regulations apply;

“redundancy payment” means a redundancy payment under Part VI of the 1978 Act;

“relevant date” means the relevant date as defined by section 90(1) of the 1978 Act or, where a contract of employment is terminated by the abolition of the Greater London Council or a metropolitan country council, 31st March 1986;

“relevant local government service” has the meaning given in paragraph 1(b) of Schedule 2 to the Redundancy Payments (Local Government) (Modification) Order 1983; and

“residuary body” means a body established by section 57 of the 1985 Act.

Purposes and application

2. These regulations are made for the purposes of section 53 of the 1985 Act and apply to any person who at any time after 15th July 1985 is in the service of—

- (a) the Greater London Council or the council of a metropolitan county, metropolitan district or London borough or the Common Council, or
- (b) a new authority, an authority in relation to whom that section has effect as if it were a new authority, or a residuary body,

who suffers loss of employment or loss or diminution of emoluments which is attributable to any provision made by or under that Act, and who either did not have or has released any such rights as are mentioned in section 53(3) of the 1985 Act (contractual rights acquired before 2nd March 1984 entitling a person to a compensation payment).

PART II

LOSS OF EMPLOYMENT

Compensation where redundancy is certified

3.—(1) This regulation applies to a person who becomes entitled to a retirement pension under regulation E2(1)(b)(iii) of the Superannuation regulations by virtue of the competent authority's certifying under regulation E2(3)(a) of those regulations that he has ceased to hold his employment by reason of redundancy.

(2) Subject to paragraph (3), where this regulation applies the like compensation is payable as would have been payable under the 1982 regulations and Part II of the 1984 regulations if they had applied (in the case of the former, with the modifications set out in Part I of the Schedule to these regulations) and—

- (a) the person had been an eligible person within the meaning of the 1982 regulations, and
- (b) he had been required—
 - (i) unless he elects to be credited with a shorter period, to be credited with the maximum period of additional service under regulation 5 of the 1982 regulations, and
 - (ii) if he is entitled to a redundancy payment, to be paid the maximum compensation under Part II of the 1984 regulations.

(3) In the case of a woman who would have been entitled to a redundancy payment but for section 82(1)(b) of the 1978 Act (attainment of the age of 60), paragraph (2)(b)(ii) does not apply and she is instead entitled to compensation equal to the redundancy payment to which she would have been entitled if in the 1978 Act—

- (a) for section 82(1)(a) and (b) there had been substituted the words “has attained the age of sixty-five.”,
- (b) in paragraph 4(2) of Schedule 4, for the words from “, in relation to a man” to “her birth” there had been substituted the words “means the sixty-fourth anniversary of the day of the employee's birth”, and
- (c) paragraph 8(1)(c) of Schedule 14 had been repealed.

(4) In this regulation “the competent authority” means the body which is for the time being competent to certify as mentioned in paragraph (1).

Compensation in other cases of redundancy

4.—(1) A person who is entitled to a redundancy payment and who on the relevant date had not attained the age of 41 is entitled—

- (a) if he had then been employed in relevant local government service for 5 years or more, to compensation equal to the difference between—
 - (i) the redundancy payment, and
 - (ii) 2 weeks' pay (calculated as if Schedule 14 to the 1978 Act, except paragraph 8, had applied) for each year of such service in which he was not below the age of 18, and
- (b) in any other case, to the like compensation as would have been payable if Part II of the 1984 regulations had applied and he had been required to be paid the maximum compensation under that Part.

(2) A person who is entitled to a redundancy payment and—

- (a) who on the relevant date had attained the age of 41, and

- (b) to whom regulation 3 does not apply,
is entitled to compensation of the amount specified in paragraph (3).
- (3) The amount mentioned in paragraph (2) is the difference between—
- (a) the redundancy payment to which the person is entitled, and
 - (b) the redundancy payment to which he would have been entitled if the 1978 Act had applied with the modifications set out in paragraphs 6 and 7 of the Schedule to these regulations.
- (4) A woman who would have been entitled to a redundancy payment but for section 82(1)(b) of the 1978 Act and to whom regulation 3 does not apply is entitled to compensation of the amount specified in paragraph (5).
- (5) The amount mentioned in paragraph (4) is that of the redundancy payment to which she would have been entitled if the 1978 Act had applied with the modifications set out in Part II of the Schedule to these regulations.

Date for certain calculations

5. In the case of a person who immediately before 1st April 1986 is in the service of the Greater London Council or a metropolitan county council, in making any calculation for the purposes of regulation 3(2)(b)(ii) or (3) or 4(1)(a)(ii), (1)(b), (3)(b) or (5) the calculation date for the purposes of Part II of Schedule 14 to the 1978 Act is to be taken to be 31st March 1986.

PART III

LOSS OR DIMINUTION OF EMOLUMENTS

Emoluments

- 6.—(1) Subject to paragraphs (2) and (3), a person's emoluments in an employment are all the salary, wages, fees and other payments made to him as an employee for his own use, and the money value of any accommodation or other allowances in kind appertaining to the employment.
- (2) A person's emoluments do not include—
- (a) unless it is a usual incident of the employment, any payment for overtime or bonus payment,
 - (b) any allowance payable to him to cover the cost of providing office accommodation or clerical or other assistance,
 - (c) any travelling or subsistence allowance or other moneys to be spent, or to cover expenses incurred, by him for the purposes of the employment,
 - (d) any payment for loss of holidays made to him on his ceasing to hold the employment, or
 - (e) any payment accepted by him in lieu of notice to terminate his contract of employment, or
 - (f) any compensation paid to him under these regulations or otherwise.
- (3) Where a person has been absent from work his emoluments are to be treated as including any payments which would have been made to him but for his absence.
- (4) Subject to paragraph (5), the annual rate of a person's emoluments in his former employment is the amount of his emoluments in that employment for the period of 12 months immediately preceding the relevant date, or if greater—
- (a) in the case of emoluments payable monthly, the amount of his emoluments for the last complete month of that period multiplied by 12, or

- (b) in the case of emoluments payable weekly or at intervals of 2 or 4 weeks, the amount of his emoluments for the last complete 8 weeks of that period multiplied by 365/56.
- (5) Where a person's emoluments for the period of 12 months immediately preceding the relevant date included any fees or other variable payments, the annual rate of his emoluments in his former employment includes the annual average of those payments during—
 - (a) the period of 5 years immediately preceding the relevant date, or
 - (b) such other period as is reasonable in the circumstances.

Entitlement to compensation in respect of loss or diminution of emoluments

7.—(1) A person suffers loss or diminution of emoluments if

A is greater than B,

where— A is the annual rate of his emoluments in his former employment, and B is the amount of the emoluments that would be received in respect of his new employment during the first 12 months of that employment if the contract continued for that period with no variation.

(2) A person who suffers loss or diminution of emoluments is entitled to compensation if—

- (a) his former employment was terminated before he reached normal retiring age, and
- (b) on the relevant date, or on 1st April 1986 if earlier, he had been employed for not less than 3 years in relevant local government service, and
- (c) if his former employment was terminated before 13th November 1985, the contract under which he was employed in it was terminated by his former employer, and
- (d) if his former employer is one of the metropolitan county councils or the Greater London Council, he had on the relevant date been employed from 16th July 1985 in relevant local government service consisting of service with one or more of those councils, and
- (e) he is not entitled to any compensation under Part II.

Amount of compensation in respect of loss or diminution of emoluments

8.—(1) Subject to paragraphs (3) to (6) and regulation 9, the compensation to which a person is entitled under regulation 7 is an annual sum equal to

$((A+B)-C)-D$,

where— A is the annual rate of his emoluments in his former employment, B is any amount by which A would, by the end of a compensation period, have been increased if it had been the annual rate of an official pension within the meaning of the Pensions (Increase) Act 1971 beginning, and first qualifying for increases under that Act, on the day after the relevant date or, where the relevant date is 31st March 1986 or an earlier date, 25th November 1985, C is the amount of his emoluments in his new employment, or in any subsequent employment by virtue of which compensation continues to be payable as provided in regulation 9(1)(a), during a compensation period, and D is any part of the excess of (A + B) over C in respect of which compensation was payable during that period under regulations made under section 259 of the Local Government Act 1972 or under any instrument made under any enactment, whenever enacted, to the like effect.

(2) For the purposes of this regulation and of regulations 11 and 13, the compensation periods are the 8 consecutive periods of 12 months of which the first begins on the first day of the new employment; but the running of a compensation period is suspended during any period during which the person is not employed by an employer referred to in the Appendix to Schedule 2 to the Redundancy Payments (Local Government) (Modification) Order 1983, or a relevant authority for the purposes of section 54 of the 1985 Act, and in that event the start of the following compensation period is postponed accordingly.

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(3) Where the contractual weekly hours in the new employment or a subsequent employment fall short of those in the former employment by more than 2 hours, then, to the extent that C comprises the emoluments of that new or subsequent employment—

(a) C is to be multiplied by

EF

, and

(b) the annual sum is to be multiplied by

FE

,

where E is the number of the contractual weekly hours in the former employment and F is the number of those in the new or subsequent employment.

(4) In respect of any compensation period the annual sum is not to exceed the total of £5,000 and any amount by which that sum would by the end of the period have been increased if it had been the annual rate of an official pension within the meaning of the Pensions (Increase) Act 1971 beginning, and first qualifying for increases under that Act, on 1st April 1986.

(5) In respect of the eighth compensation period there is payable one half of the annual sum.

(6) No compensation is payable in respect of any period after the earlier of—

(a) the end of the eighth compensation period, and

(b) the person's attaining normal retiring age.

Cessation of new employment

9.—(1) If before compensation has by virtue of regulation 8(6) ceased to be payable the person ceases to be employed by his new employer, then—

(a) if he is, or would if he had been dismissed by reason of redundancy have been, precluded by virtue of section 84, 94 or 95 of the 1978 Act from receiving a redundancy payment, compensation continues to be payable in accordance with regulation 8, and

(b) in any other case, no compensation is payable in respect of any period after the cessation of employment.

(2) Sub-paragraph (a) of paragraph (1) applies to a woman who is precluded by virtue of section 82(1)(b) of the 1978 Act (attainment of the age of 60) from receiving a redundancy payment if she would otherwise have been precluded from doing so by virtue of a section mentioned in that sub-paragraph.

PART IV

MISCELLANEOUS

Calculation of compensation

10. In calculating the amount of any compensation to which a person is entitled under these regulations no account is to be taken of any temporary increase or decrease in his emoluments which is attributable to any provision made by or under the 1985 Act.

Payment of compensation

11.—(1) Compensation to which a person is entitled under these regulations is payable by the compensating authority.

(2) Subject to paragraphs (3) and (4), compensation under Part III is payable at the end of each compensation period.

(3) The compensating authority may during a compensation period, at such intervals as they think fit, and having regard to any material change of circumstances occurring during the period, make interim payments to a person entitled to compensation under Part III on account of any compensation that may become payable to him at the end of that period.

(4) If the total of any payments made to a person under paragraph (3) during any of the first seven compensation periods exceeds or falls short of the compensation payable at the end of that period, the excess or shortfall is to be deducted from, or as the case may be added to, any compensation payable to him at the end of the following compensation period.

Apportionment of certain costs

12.—(1) Where any new compensation is payable by a council designated by an order under section 66 of the 1985 Act which makes provision for the apportionment of costs, the cost of the new compensation is to be apportioned as if that provision had applied.

(2) In paragraph (1) “new compensation” means compensation under these regulations which is payable by the designated council, otherwise than in the discharge of a liability imposed on them by the order, to a person who has ceased to be employed by another body.

Claims and decisions

13.—(1) A claim for compensation under these regulations must be made to the compensating authority by notice in writing, which may be sent by post.

(2) A decision by the compensating authority on a claim, and any decision made by them as to the amount of compensation payable for any period, is to be notified by them in writing to the person concerned, and in their notification they must—

- (a) give reasons for the decision,
- (b) show how any compensation has been calculated, and
- (c) inform the claimant of his right to institute proceedings under paragraph (3) and of the address to which any application instituting such proceedings should be sent.

(3) If the person is dissatisfied with the compensating authority's decision, or they have not notified him of a decision within 13 weeks after, as the case may be—

- (a) their receiving a claim, or
- (b) the end of any compensation period,

he may institute proceedings for the determination of the matter by an industrial tribunal established in pursuance of the Industrial Tribunals (England and Wales) Regulations 1965(4).

(4) Proceedings under paragraph (3) must be instituted within 13 weeks after, as the case may be—

- (a) the notification of the compensating authority's decision, or
- (b) the expiry of the 13 weeks mentioned in that paragraph.

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Amendment of 1982 regulations

14.—(1) Regulation 6(3C)(b) of the 1982 regulations is amended by substituting for the words “beginning on and payable from” the words “beginning, and first qualifying for increases under that Act, on”.

(2) Part I of Schedule 1 to the 1982 regulations is amended by inserting after paragraph (i) the following:

“(j) the Inner London Education Authority established by section 18 of the Local Government Act 1985;

(k) a residuary body established by section 57 of that Act.”.

31st January 1986

Kenneth Baker
Secretary of State for the Environment

SCHEDULE

Regulation 3(2)

PART I

MODIFICATION OF 1982 REGULATIONS

1. For every reference in the 1982 regulations to an employing authority substitute a reference to the compensating authority within the meaning of these regulations.
2. In regulation 3 (definitions)—
 - (a) delete the definition of “employing authority”; and
 - (b) at the end of the regulation insert:

“the 1986 regulations” means the Local Government Reorganisation (Compensation) Regulations 1986.”
3. In regulation 3A (meaning of “redundancy payment”)—
 - (a) in paragraph (1)(b) for the words from “Part II” to “(“the 1984 regulations”)” substitute “regulation 3(2)(b)(ii) or (3) of the 1986 regulations”; and
 - (b) for paragraph (2)(a) and (b) substitute “any compensation paid to him in respect of the termination under regulation 3(2)(b)(ii) or (3) of the 1986 regulations.”
4. In regulation 14 (other payments)—
 - (a) delete paragraph (2); and
 - (b) in paragraph (8)(c) delete the words “or as compensation for”.
5. Delete regulation 20 (paying authority).
Regulation 4(3)(b) and (5)

PART II

MODIFICATION OF 1978 ACT

6. In Schedule 4 (calculation of redundancy payments)—
 - (a) for paragraph 2(a), (b) and (c) substitute:

“(a) six weeks' pay for each year of employment, up to a maximum of eight years, which consists wholly of weeks counting under paragraphs 3 to 12 of Schedule 13 in which the employee was not below the age of forty-one; and

(b) two weeks' pay for each year of employment not falling within sub-paragraph (a) which consists wholly of weeks so counting in which the employee was not below the age of eighteen.”;
 - (b) in paragraph 3 for the words “twenty years”, in both places where they occur, substitute “twenty-five years”; and
 - (c) in paragraph 4(2) for the words from “, in relation to a man” to “her birth” substitute “means the sixty-fourth anniversary of the day of the employee's birth”.
7. In Schedule 14, delete paragraph 8(1)(c) (weekly pay in excess of specified limit to be disregarded in calculating redundancy payment).
8. For section 82(1)(a) and (b) substitute “has attained the age of sixty-five.”

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EXPLANATORY NOTE

These regulations are made for the purposes of section 53 of the Local Government Act 1985 (“the 1985 Act”), and accordingly constitute the only statutory provision under which compensation may be paid in the circumstances specified in section 53(1) (certain persons suffering loss of employment or loss or diminution of emoluments which is attributable to provision made by or under the Act).

In Part II, which deals with loss of employment, regulation 3 requires the maximum lump sum and annual compensation under the existing regulations there mentioned to be paid where it has been certified that the person ceased to hold his employment by reason of redundancy. In other cases where there is an entitlement to a redundancy payment under the Employment Protection (Consolidation) Act 1978, lump sum compensation is payable and is to be calculated by reference to that Act as modified by the regulations (regulation 4).

In Part III, which deals with loss or diminution of emoluments, regulation 6 defines “emoluments” and regulation 7 sets out the conditions of entitlement. Regulation 8 requires annual compensation, calculated by reference to the difference between former and current emoluments, to be paid for up to 8 consecutive 12-month periods. Regulation 9 concerns changes of employment subsequent to the initial loss or diminution.

The miscellaneous provisions in Part IV require certain increases and decreases in emoluments to be left out of account (regulation 10), deal with the payment of compensation and in particular allow advance payments to be made on account of Part III compensation (regulation 11), require costs to be apportioned in certain cases (regulation 12), and provide for questions to be determined in the first instance by the compensating authority, and in cases of dispute or default by an industrial tribunal (regulation 13). Regulation 14 adds certain bodies established by the 1985 Act to those who are “employing authorities” for the purposes of the existing regulations referred to in Part II.

Section 24 of the Superannuation Act 1972 confers express power to make regulations retrospective in effect. Regulation 2 confers entitlement in relation to loss of employment or loss or diminution of emoluments occurring at any time after the passing of the 1985 Act on 15th July 1985 as section 53 of the 1985 Act requires.