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STATUTORY INSTRUMENTS

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**1994 No. 531 (S. 24)**

**PENSIONS**

**The Local Government Superannuation  
(Scotland) Amendment Regulations 1994**

<i>Made</i>	- - - -	<i>2nd March 1994</i>
<i>Laid before Parliament</i>		<i>11th March 1994</i>
<i>Coming into force</i>	- -	<i>1st April 1994</i>

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(1), 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, individual 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 in accordance with section 7(5) of that Act, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Local Government Superannuation (Scotland) Amendment Regulations 1994 and shall come into force on 1st April 1994; regulations 4 and 5 shall have effect from 1st January 1993.

**Interpretation**

2. In these Regulations “the principal Regulations” means the Local Government Superannuation (Scotland) Regulations 1987(2) and, unless the context otherwise requires, any expression which is used in these Regulations and also in the principal Regulations has the same meaning as in the principal Regulations.

**Power to admit employees of other bodies**

3. Regulation B6 of the principal Regulations shall be amended as follows:—
- (a) in paragraph (1), for “(3)” there shall be substituted “(2A)”;
  - (b) after paragraph 2 there shall be inserted the following paragraphs:—

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(1) 1972 c. 11; section 7(3) was extended by the Pensions (Increase) Act 1974 (c. 9) section 2(2); section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 10.  
(2) S.I.1987/1850, amended by S.I. 1988/625, 1989/422, 802 and 967, 1990/422 and 1284, 1991/78, 1992/1220, 1597 and 3025 and 1993/1593, 2013 and 3044.

“(2A) Where an admission agreement was made at any time before 1st April 1994 with a body which was specified in paragraph (8)(c) or paragraph (8)(d) of this Regulation as they were in force immediately before the coming into force of the Local Government Superannuation (Scotland) Amendment Regulations 1994<sup>(3)</sup>, and immediately before 1st April 1994 that body was not a Company under the control of a body described in Part I of Schedule 3, no person who starts employment with the first-mentioned body on or after 1st April 1994 shall be entitled to be admitted to participate in the benefits of a fund in accordance with that agreement.

(2B) For the purpose of paragraph (2A) the expression “Company under the control of a body described in Part I of Schedule 3” shall mean a company which would be under the control of a body described in Part I of Schedule 3 in terms of section 68 or, as the case requires, section 73 of the Local Government and Housing Act 1989<sup>(4)</sup> if—

- (a) those sections applied to Scotland;
  - (b) the body were a local authority to which those sections applied; and
  - (c) the Secretary of State had not otherwise directed under section 68.”; and
- (c) sub-paragraphs (c) and (d) of paragraph (8) shall be deleted.

#### **Leave of absence from duty**

4. Regulation C3 of the principal Regulations shall be amended as follows:—
- (a) in paragraph (1) the words “Subject to regulation C3A,” shall be deleted; and
  - (b) in paragraph (2) there shall be inserted at the beginning of the paragraph the words “Unless, in the case of a female employee, regulation C3A applies to her,”.

#### **Contributions during maternity absence**

5. Regulation C3A of the principal Regulations shall be amended as follows:—
- (a) in paragraph (1)(b) the words “, or had made an election under regulation B3 or B4B” shall be deleted;
  - (b) in paragraph (2) there shall be inserted after the words “regulation C2” the words “, if the provisions of that regulation had applied to her during the relevant period,”; and
  - (c) in paragraph (3) there shall be inserted after the words “regulation C2” the words “, if the provisions of that regulation had applied to her during the unpaid period,”.

#### **Pensionable employees**

6. In Part I of Schedule 3 to the principal Regulations there shall be inserted at the end the following paragraph:—

“6. A board of management of a self-governing school constituted and incorporated under section 19(2) of the Self-Governing Schools etc. (Scotland) Act 1989.”<sup>(5)</sup>

#### **Transitional provisions**

7. Where at any time before 1st April 1994 an administering authority has made an admission agreement under regulation B6 of the principal Regulations with a body specified in paragraph (8) (c) or paragraph (8)(d) of that regulation, as these paragraphs were in force before their deletion by

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(3) S.I. 1994/531.

(4) 1989 c. 42.

(5) 1989 c. 39.

regulation 3(c) of these Regulations, that agreement shall, notwithstanding the deletion of the said paragraphs remain an admission agreement for the purposes of the said regulation B6:

Provided that where the body was immediately before 1st April 1994 a Company under the control of a body described in Part I of Schedule 3, as that expression is defined in regulation B6(2B) of the principal Regulations<sup>(6)</sup> and at any time on or after 1st April 1994 it ceases to be such a company the admission agreement shall cease to be an admission agreement for the purposes of the said regulation B6 and any person who by virtue of that agreement is an admitted employee under the said regulation B6 shall cease to be an admitted employee.

### **Decisions and appeals**

**8.** For the purposes of Part N (decisions and appeals) of the principal Regulations, rights or liabilities arising by reason of regulation 7 of these Regulations shall be treated as rights or liabilities under the principal Regulations.

### **Right to opt out**

**9.—(1)** This regulation shall apply in the case of any person (“a relevant beneficiary”) to whom any benefit (including a return of contributions and any pension payable to a widow or widower or any dependant by virtue of a surrender) is or may become payable, being a benefit (“a relevant benefit”) payable to or in respect of, a person who before 1st April 1994—

- (a) ceased to hold an employment in respect of which he was a pensionable employee (whether or not he has subsequently recommenced any such employment); or
- (b) died while still in such employment.

(2) If, in relation to a relevant benefit, a relevant beneficiary—

- (a) would be placed by any amendment made by these Regulations in a worse position than he would have been in if that amendment had not been made, and
- (b) so elects, by notice in writing given to the appropriate administering authority within the three month period beginning with 1st April 1994,

then, in the case of that beneficiary and in relation to that benefit, the principal Regulations shall have effect, subject to paragraph (3), as if these Regulations had not been made.

(3) If such an election as is mentioned in paragraph (2) above is made in relation to a benefit which is or may become payable in respect of a person who is employed in a local government employment, or if that person subsequently recommences service in such an employment, then—

- (a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued—
  - (i) by virtue of periods of service rendered before the cessation referred to in paragraph (1) above (or, if there has been more than one such cessation, the last of them before 1st April 1994); or
  - (ii) by virtue of contributions paid in respect of any such periods of service; and
- (b) in determining entitlement to, or the amount of the benefit to that extent he shall (without prejudice to the application of this paragraph) be treated as if he had never recommenced service in such employment at any time after the cessation referred to in sub-paragraph (a) above,

and the principal Regulations shall apply accordingly.

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(6) Regulation B6(2B) is added by regulation 3(b) of these Regulations.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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St Andrew's House,  
Edinburgh  
2nd March 1994

*Fraser of Carmyllie*  
Minister of State, Scottish Office

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make a number of amendments to the Local Government Superannuation (Scotland) Regulations 1987 (“the principal Regulations”). These amendments relate primarily to the rights of employees of certain bodies to participate in the superannuation scheme established by the principal Regulations.

Regulation 3(c), by revoking the relevant provisions of the principal Regulations, removes the right of bodies providing transport services or providing certain other public services to enter into an admission agreement with an administering authority under which the employees of the body will participate in the superannuation scheme. No new admission agreements with such bodies will thus be competent on or after 1st April 1994.

Regulation 7 preserves the effect of admission agreements already entered into before 1st April 1994. Employees of the bodies to which these relate will thus continue to be entitled to participate in the superannuation scheme. However, this is subject to two limitations. For any body which was not immediately before 1st April 1994 a company under the control of a local authority or similar body, it will not be competent for new employees who take up employment on or after 1st April 1994 to be admitted to participate in the superannuation scheme (Regulation 3(b).) In the case of a body which was immediately before 1st April 1994 a company under the control of a local authority or similar body the foregoing restriction will not apply, but if the body subsequently ceases to be a company under such control the admission agreement will no longer be applied and all employees will lose the right to participate in the superannuation scheme (Proviso to regulation 7).

Regulation 8 ensures that the provisions of the principal Regulations as to the determination of rights and liabilities under those Regulations apply also to the transitional provisions of regulation 7.

Regulation 4 amends regulation C3 of the principal Regulations to make it clear that a person on leave of absence who makes contributions under Regulation C3A does not also make contributions under regulation C3(2).

Regulation 5 amends regulation C3A of the principal Regulations to make clear that an employee is only entitled to pay contributions on the remuneration which she receives during a period of maternity absence under that regulation if she is a pensionable employee at the date her period of maternity absence starts and otherwise to clarify its effect.

The provisions of regulations 4 and 5 have retrospective effect from 1st January 1993. Retrospection is authorised by section 12(1) of the Superannuation Act 1972.

The definition of “pensionable employee” is also expanded to include staff employed by Boards of Management of self-governing schools established under the Self-Governing Schools etc. (Scotland) Act 1989 (regulation 6).

Regulation 9 confers a right to opt that these Regulations shall not apply in certain circumstances where the person is adversely affected by the amendments now made.