
STATUTORY INSTRUMENTS

1995 No. 2865 (S.208)

**LOCAL GOVERNMENT, SCOTLAND
EDUCATION, SCOTLAND**

**The Local Government (Compensation for Reduction of
Remuneration on Reorganisation) (Scotland) Regulations 1995**

Made - - - - 31st October 1995
Laid before Parliament 10th November 1995
Coming into force - - 1st December 1995

The Secretary of State, in exercise of the powers conferred on him by sections 7, 9 and 24 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, representatives of education authorities and of teachers and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate in accordance with sections 7(5) and 9(5) of that Act, and not having considered consultation with any individual local authority desirable, and with the consent of the Treasury(2) hereby makes the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Local Government (Compensation for Reduction of Remuneration on Reorganisation) (Scotland) Regulations 1995 and shall come into force on 1st December 1995 and regulations 2 to 8 shall have effect from 6th April 1995.

Interpretation

2.—(1) In these Regulations—

“the 1994 Act” means the Local Government etc. (Scotland) Act 1994(3);

“the 1979 Regulations” means the Local Government (Compensation for Premature Retirement) (Scotland) Regulations 1979(4);

(1) 1972 c. 11; section 7(3) was extended by the Pensions (Increase) Act 1974 (c. 9), section 2(2); section 9 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4, 8 and 11.

(2) This function was transferred to the Treasury by S.I.1981/1670.

(3) 1994 c. 39.

(4) S.I. 1979/785, amended by S.I. 1982/917, 1984/846, 1986/409, 1990/125, 1992/1025 and 1597, 1993/490, 1994/1715 and 3068 and 1995/340.

“the 1994 Regulations” means the Local Government (Compensation for Redundancy) (Scotland) Regulations 1994⁽⁵⁾;

“the 1995 Regulations” means the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995⁽⁶⁾;

“eligible employee” means—

- (a) an eligible employee within the meaning of—
 - (i) the 1994 Regulations; or
 - (ii) the Local Government (Education Administration) (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995⁽⁷⁾, who was, on 6th April 1995, an employee of an old authority; or
- (b) a person who was, on 6th April 1995, an employee of a development corporation established under the New Towns (Scotland) Act 1968⁽⁸⁾;

“new authority” means—

- (a) any of the following established under the Local Government etc. (Scotland) Act 1994:—
 - (i) an authority established under section 2;
 - (ii) Strathclyde Passenger Transport Authority established under section 40;
 - (iii) a body established under section 62(1) (water and sewerage authorities); or
 - (iv) the Scottish Children’s Reporter Administration established under section 128; or
- (b) a joint board appointed under any Act or any statutory order or statutory scheme, if all the constituent authorities are local authorities described in paragraph (a)(i) of this definition;

“old authority” means—

- (a) Central Scotland Water Development Board established under section 3 of the Water (Scotland) Act 1967⁽⁹⁾;
- (b) a development corporation established under the New Towns (Scotland) Act 1968;
- (c) a Passenger Transport Executive established under section 9(1) of the Transport Act 1968⁽¹⁰⁾;
- (d) a local authority constituted under section 2 of the Local Government (Scotland) Act 1973⁽¹¹⁾; or
- (e) a joint board appointed under any Act or any statutory order or statutory scheme if all the constituent authorities are local authorities described in paragraph (d) of this definition;

“prescribed period” means the period beginning with 6th April 1995 and ending with 31st March 1997;

“remuneration” means all the salary, wages, fees and other payments paid or made by an employer to an employee for his own use and shall include the money value associated with the provision by the employer to the employee of accommodation or a motor vehicle insofar as that accommodation or motor vehicle is available for the employee’s private use, together with any allowances in kind provided or paid to the employee and appertaining to his employment, but shall not include—

⁽⁵⁾ S.I. 1994/3068 amended by S.I. 1995/340.

⁽⁶⁾ S.I. 1995/340.

⁽⁷⁾ S.I. 1995/840.

⁽⁸⁾ 1968 c. 16.

⁽⁹⁾ 1967 c. 78; section 3 was repealed by the Water (Scotland) Act 1980 (c. 45), Schedule 11, but the Board continues to exercise its functions by virtue of section 80 of that Act.

⁽¹⁰⁾ 1968 c. 73; section 9(1) was substituted by the Transport Act 1985 (c. 67), section 57(1).

⁽¹¹⁾ 1973 c. 65; to which no relevant amendments have been made.

- (i) any payment made by an employer to an employee in consequence of that employee undertaking additional or different duties on behalf of the employer on a temporary basis in the absence, for whatever reason, of the employee usually or formerly employed to undertake these duties;
- (ii) any payment made by an employer to an employee in consequence of that employee undertaking additional duties on a temporary basis which arise from any provision of, or made under, the 1994 Act;
- (iii) unless it is a usual incident of his employment, any other payment by an employer to an employee for overtime or any bonus payment not of a kind specified in sub-paragraph (ii);
- (iv) any allowance paid by an employer to an employee to cover the cost incurred by the employee in providing office accommodation, or clerical or other assistance;
- (v) any travelling or subsistence allowance or other monies paid by an employer to an employee to be spent, or to cover expenses incurred, by the employee for the purposes of his employment;
- (vi) any payment by an employer to an employee as compensation for loss of holiday entitlement;
- (vii) any payment by an employer in lieu of notice terminating an employee's contract of employment; and
- (viii) any compensation payable to an employee under these Regulations.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is to be construed as a reference to the regulation that bears that number in these Regulations and any reference in a regulation to a numbered paragraph is to be construed as a reference to the paragraph that bears that number in that regulation.

Persons to whom these Regulations apply

3. These Regulations apply to an eligible employee who—
- (a) during the prescribed period ceases employment with an old authority and, without taking up alternative employment in the interim (other than with a new authority) takes up employment with a new authority in which—
 - (i) the annual rate of remuneration payable at commencement is lower than that payable at the date of termination of employment with the old authority; or
 - (ii) whether or not sub-paragraph (i) applies, the annual rate of remuneration is reduced at any time within the prescribed period;
 - (b) meets the prescribed conditions specified in regulation 4; and
 - (c) is not a person to whom the provisions of section 13(4) of the 1994 Act apply,

and in respect of whom the new authority determines that the reduction of remuneration specified in paragraph (a) is attributable to any provision of, or made under, the 1994 Act.

Prescribed conditions

4.—(1) The provisions of paragraphs (2) and (3) of this regulation specify the prescribed conditions for the purposes of regulation 3.

(2) The first condition is that the person is not, in respect of the event that has given rise to the reduction of remuneration, entitled to have his case considered for the payment of compensation under any instrument within the meaning of Part I of Schedule 2 to the 1979 Regulations or in terms of the 1994 Regulations, nor is he entitled to payment of compensation or, as the case may be, entitled to have his case considered for the payment of compensation in terms of the 1995 Regulations.

(3) The second condition is that the person has at the date when the reduction of remuneration occurs, not attained the age of 65.

(4) For the purposes of paragraph (3) of this regulation and regulation 5, reduction of remuneration occurs on the date when the eligible employee to whom these Regulations apply commences employment with the new authority at a lower annual rate of remuneration than that paid by the old authority or, as the case may be, on the date when any reduction in the annual rate of remuneration payable by a new authority takes effect.

Amount of compensation payable

5.—(1) Compensation shall be payable in accordance with this regulation in respect of each separate reduction of remuneration suffered by an eligible employee.

(2) As soon as reasonably practicable and, in any event, within three months of the date on which an eligible employee suffers a reduction of remuneration, or the date on which these Regulations come into force, whichever is the later, the new authority shall determine to pay to such an employee the compensation prescribed in paragraph (3).

(3) Subject to the provisions of paragraphs (4) and (5), the compensation which the new authority shall determine to pay under paragraph (2) shall—

- (a) where regulation 3(a)(i) applies, be a sum equal to three times the difference between the annual rate of remuneration payable to the eligible employee by the old authority at the date on which he left that employment and the annual rate of remuneration payable at the start of his new employment with the new authority; and
- (b) where regulation 3(a)(ii) applies, be a sum equal to three times the difference between the annual rate of remuneration payable to the eligible employee immediately before and after the reduction in question took effect.

(4) Where the whole or any part of the remuneration payable to an eligible employee in his former employment or, as the case may be, in his employment with a new authority immediately before the reduction in question took effect was not determined at an annual rate or was determined by applying a fixed rate to an irregular pattern of employment, the annual rate of remuneration or relevant part thereof for the purposes of paragraph (3) shall be the total amount or relevant part of that amount earned during the period of five years ending with the date on which that person left his former employment, or as the case may be, the date immediately before the reduction in question took effect, divided by five, or, where the employment in question subsisted for a shorter period, the total amount or relevant part of that amount earned during that period divided by a factor equal to the length in years, and parts of a year, of that employment.

(5) Where the whole or any part of the remuneration payable to an eligible employee at commencement of his employment with the new authority or, as the case may be, immediately after the reduction in question takes effect is not determined at an annual rate or is determined by applying a fixed rate to an irregular pattern of employment, that authority shall, for the purposes of paragraph (3), determine the annual rate of remuneration or relevant part thereof which the employee could, on the basis of the terms and conditions of employment and the circumstances of employment at the time in question, be expected to earn in a year.

(6) Subject to regulation 6, any compensation payable under this regulation shall be paid in equal instalments over a period of three years, commencing with the date of reduction of remuneration, at such regular frequency, not exceeding monthly intervals, as may be determined by the new authority:

Provided that the first instalment, which shall be paid as soon as practicable after the determination under paragraph (2), shall be increased as necessary to cover the amount of compensation which would have been payable in the period from the date of reduction of remuneration until the date of payment.

Recalculation of compensation

6.—(1) Subject to the following provisions of this regulation, the amount of the instalments of compensation payable in accordance with regulation 5 shall be varied in accordance with this regulation whenever, during the period when the compensation is being paid, the annual rate of remuneration with the new authority is increased, and instalments of compensation shall cease to be payable at any time during which the annual rate of remuneration with the new authority equals or exceeds that payable at the date of termination of employment with the old authority or, as the case may be, immediately before the reduction in question took effect.

(2) Any variation or cessation of payments of instalments under paragraph (1) shall affect only the instalments of compensation payable after the date on which the relevant increase in the annual rate of remuneration took effect.

(3) Where the amount of instalments of compensation payable under regulation 5 requires to be varied, recalculation of the remaining instalments payable shall be carried out in accordance with regulation 5 and accordingly the provisions of regulation 5(3)(a) or, as the case may be, (b) shall apply substituting for the reference there respectively to the annual rate of remuneration payable at the start of the new employment, or the annual rate of remuneration payable immediately after the reduction in question took effect, a reference to the revised annual rate of remuneration payable by the new authority.

(4) Where compensation is being paid in respect of more than one reduction of remuneration and an increase in the annual rate of remuneration takes effect, any variation in the amount of the instalments of compensation payable shall be made first to the compensation in respect of the most recent reduction; and where the increase equals or exceeds the amount of the most recent reduction instalments of compensation in respect of that reduction shall cease to be payable during the time that this effect continues; and any excess of the increase over the amount of the most recent reduction shall be applied similarly to the instalments in respect of the immediately preceding reduction; and any further such excesses shall be similarly applied to earlier reductions.

(5) Where under this regulation instalments of compensation in respect of any reduction of remuneration have been varied or have ceased to be payable in consequence of an increase of remuneration, and a subsequent decrease of remuneration during the period when compensation is being paid offsets the effect of that increase—

- (a) in whole, the instalments of compensation shall, as from the date on which the decrease of remuneration takes effect, be restored to the amount which they were before the increase;
- (b) in part the instalments of compensation shall, as from that date, be recalculated in accordance with this regulation on the basis of the amount of increase remaining.

Change of employment to other new authority

7.—(1) Where, before all instalments of compensation are paid, an eligible employee ceases employment with one new authority and immediately commences employment with another new authority, the second new authority shall be liable to pay the instalments of compensation payable under these Regulations, subject to any recalculation that may be required under regulation 6, after the date on which the eligible employee commences employment with that authority, and the first new authority shall cease to be so liable, and the provisions of this paragraph shall apply to any further changes of employment between new authorities.

(2) Where paragraph (1) applies, any reference in these Regulations to a new authority shall be read as a reference to a second new authority.

Cessation of employment with new authority

8. Payment of compensation under these Regulations shall cease when the eligible employee dies or, except in the circumstances referred to in regulation 7(1), ceases to be employed by a new authority for whatever reason.

Notification of compensation

9.—(1) A new authority, after making a determination in accordance with regulation 5, or after recalculating the compensation payable in accordance with regulation 6, shall, as soon as reasonably practicable, give the person in respect of whom that determination or recalculation is made, or such other person or persons to whom compensation is payable in accordance with these Regulations, written notification of the compensation that the new authority has determined to pay, or the revised compensation that is payable following such recalculation.

(2) Any notification given under paragraph (1) shall—

- (a) show how any compensation has been determined or recalculated, as the case may be; and
- (b) inform the person concerned of his right to institute proceedings under regulation 11 and the address to which any application instituting such proceedings should be sent.

Payment of compensation

10. Subject to any statutory provision to the contrary, any sum payable under these Regulations shall be paid to or in trust for the person entitled to receive the compensation and shall not be assignable.

Right of appeal

11.—(1) If any person is dissatisfied with a new authority's determination in accordance with regulation 5 or its recalculation of compensation in accordance with regulation 6, as the case may be, or if a new authority has failed to notify him of any determination within the three month period specified in regulation 5(2), he may, after having exhausted all internal grievance procedures which may be made available by the new authority in respect of the matter, institute proceedings for the determination of the matter by an industrial tribunal in accordance with the Industrial Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 1993(12); and the tribunal shall determine the matter accordingly.

(2) Proceedings under paragraph (1) shall be instituted within three months after—

- (a) the grievance procedures referred to in paragraph (1) have been exhausted; or
- (b) if no such procedures are available the notification of the determination or recalculation or, as the case may be, the expiry of the three month period specified in regulation 5(2).

Amendment of the Local Government Superannuation (Scotland) Regulations 1987

12. In Schedule 1 to the Local Government Superannuation (Scotland) Regulations 1987(13) the definition of "remuneration" shall be amended by inserting after paragraph (f) the following new paragraph:—

- “(g) any compensation paid under the Local Government (Compensation for Reduction of Remuneration on Reorganisation) (Scotland) Regulations 1995;”.

(12) S.I. 1993/2688.

(13) S.I. 1987/1850, to which relevant amendments have been made by S.I. 1992/3025.

Amendment of the Teachers' Superannuation (Scotland) Regulations 1992

13. Paragraph (2) of regulation C1 (salary on which contributions are payable) of the Teachers' Superannuation (Scotland) Regulations 1992(14) shall be amended by adding at the end the following new sub-paragraph:—

“(g) any compensation paid under the Local Government (Compensation for Reduction of Remuneration on Reorganisation) (Scotland) Regulations 1995.”.

St Andrew's House,
Edinburgh
26th October 1995

James Douglas-Hamilton
Minister of State, Scottish Office

We consent

31st October 1995

Derek Conway
Bowen Wells
Two of the Lords Commissioners of Her
Majesty's Treasury

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for payment of compensation to certain staff of local authorities and other bodies affected by local government reorganisation in Scotland who either secure employment at a lower annual rate of remuneration with a new body established under the Local Government etc. (Scotland) Act 1994 (“the 1994 Act”) or a joint board, the constituent authorities of which are all local authorities established under section 2 of that Act or having secured employment with such a body subsequently suffer a reduction or further reduction of remuneration. Regulations 2 to 8 have retrospective effect from 6th April 1995, as authorised by section 24(3)(c) of the Superannuation Act 1972.

To qualify for payment of compensation an eligible employee must be in employment with an old authority on 6th April 1995 and must be aged less than 65 at the date the reduction of remuneration occurs. Regulation 4(4) identifies how the date on which the reduction occurs is to be determined. His new employer must determine that he suffered a reduction of remuneration as a consequence of provisions of, or made under, the 1994 Act. Payment of compensation is mandatory and a formal decision to pay compensation must be made within 3 months of the reduction of remuneration taking effect (regulation 5(2)). The amount of compensation payable is fixed (regulation 5(3) and (4)). Compensation is payable in equal instalments over three years (regulation 5(6)) and is subject to readjustment if the individual’s remuneration subsequently varies in that period (regulation 6(1) to (5)). Compensation will continue to be payable if an eligible employee moves during this 3 year period from employment with one new authority to a second new authority (regulation 7(1)). Regulation 8 specifies the circumstances in which payment of compensation will stop.

Regulations 9 and 10 deal with notification and payment of compensation. Regulation 11 provides a right of appeal to an industrial tribunal for any person dissatisfied with the determination of a new authority, its recalculation of compensation payable or its failure to make a determination within the specified period. Appeal proceedings may be taken only after the person concerned has exhausted the authority’s own grievance procedures.

Regulations 12 and 13 amend the Local Government Superannuation (Scotland) Regulations 1987 and the Teachers’ Superannuation (Scotland) Regulations 1992 to make it clear that superannuation contributions are not payable on the compensation payments made under these Regulations and that therefore such payments are not taken into account for the purposes of calculating superannuation benefits.