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STATUTORY INSTRUMENTS

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**1998 No. 192**

**The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998**

**PART VI**

**GRATUITIES AS RESPECTS NON-PENSIONABLE SERVICE**

**Meaning of “service” in Part VI**

**45.**—(1) In this Part, unless the context otherwise requires, “service” is to be construed in accordance with this regulation.

(2) A person’s service is the time spent by him in employment with any LGSS employer or former local authority which is not excluded by paragraph (3).

(3) Subject to paragraph (4), a person’s service does not include any period—

- (a) before he attained the age of 16 or after he attained the age of 70;
- (b) in excess of a total of 40 years;
- (c) in respect of which a gratuity has been granted under a local Act, section 18 of the Local Government Superannuation Act 1953(1), the Local Government Superannuation (Scotland) Regulations 1974, the Superannuation Regulations, Part II of the Local Government (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995 or these Regulations;
- (d) during which he is not a pensionable employee by virtue of a failure to apply under regulation B4(1) of the Superannuation Regulations (application for membership) or notification under regulation B4(2) or B4A of those Regulations (which provide respectively for notifications that a person does not wish to become, or, as the case may be, wishes to cease to be a pensionable employee), or any corresponding act or omission under those Regulations, unless—
  - (i) he was employed by a LGSS employer on 1st April 1986 and had attained the age of 55 before that date; or
  - (ii) he was so employed on 31st December 1993, had attained the age of 50 before that date and immediately before that date was disqualified from being a pensionable employee because his contractual hours were fewer than 15;
- (e) in respect of which he has retained rights in a scheme which was a relevant policy scheme within the meaning of regulation K1 of the Superannuation Regulations; or
- (f) which has been or may be taken into account for the purpose of calculating any benefit under the LGSS or any other public service scheme, or which, but for an election by that person on or after 6th April 1988 not to participate in the benefits of such a scheme, might have been so taken into account.

(4) Where regulation 46(1) applies, service includes periods before 1st April 1986 of the kinds mentioned in paragraph (3)(e) and (f).

(5) In paragraph (3)(f) “public service scheme” means the Universities' Superannuation Scheme and any occupational pension scheme—

- (a) which cannot come into force, or be amended, without the scheme or amendment being approved by a Minister of the Crown or government department; and
- (b) which includes provisions for any such whole-time service as is described in regulation F2(1) of the Superannuation Regulations, rendered by a person before he becomes entitled to participate in the scheme, to be reckonable as service in respect of which benefits are payable under the scheme.

(6) In paragraph (5) “occupational pension scheme” means any scheme or arrangement comprised in one or more instruments or agreements and having effect (or being capable of having effect) in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, on death or on retirement, to or in respect of earners with qualifying service in an employment of any such description or category.

#### **Death in service gratuities**

**46.**—(1) Where a person who has been employed by a LGSS employer for not less than one year dies while in that employment, the LGSS employer may make a discretionary grant (“a death benefit gratuity”) to one or more of the person’s spouse and dependants.

(2) A death benefit gratuity may consist of a lump sum or an annuity or both.

(3) The amount of a death benefit gratuity (including the capital value of any annuity) or, in a case where the gratuity is paid to more than one person, the aggregate amount of such gratuity must not exceed the prescribed maximum.

(4) In this regulation “the prescribed maximum” means 3.75 per cent of the aggregate of—

- (a) an amount equal to remuneration at the annual rate for a period equal to the total of the length in years and days of the person’s service before 1st April 1986 and 50 per cent of any war service (within the meaning of Part F of the Superannuation Regulations) in respect of which a period might have become reckonable as reckonable service under regulation F6 of those Regulations if the conditions in regulation F3(2) to (9) of those Regulations had been satisfied; and
- (b) an amount equal to remuneration at the annual rate (with the necessary adjustments in accordance with paragraph (6)), for a period equal to the length in years and days of that person’s service after 31st March 1986, but in the case of a person—
  - (i) whose contractual hours are fewer than 15 and who had not attained the age of 50 on 31st December 1993; or
  - (ii) who contractual hours are at least 15 and who had not before 1st April 1986 attained the age of 55,

disregarding the assumed membership.

(5) In this regulation “annual rate of remuneration”, in relation to an employee, means the annual rate of his remuneration (ascertained as if paragraphs 4 and 5 of Part III of Schedule 16 to the Superannuation Regulations had applied) at whichever of the following times yields the highest figure—

- (a) the date on which he ceased to be employed;
- (b) 12 months before that date; or
- (c) 24 months before that date.

(6) For the purposes of paragraph (4), the necessary adjustments to the annual rate of remuneration are—

- (a) if that rate exceeds the annual equivalent of the lower earnings limit in force at the time at which the annual rate of remuneration falls to be ascertained (as determined in accordance with section 5 of the Social Security Contributions and Benefits Act 1992(2)), but not the upper earnings limit then in force (as so determined), to substitute the lower earnings limit; and
- (b) if that rate exceeds that upper earnings limit, to substitute the sum of that lower earnings limit and the excess over that upper earnings limit.

(7) In paragraph (4) “the assumed membership”, in relation to any person, means any service which would have been counted as part of his effective service if the person—

- (a) in the case of paragraph (4)(b)(i), had made an election under regulation B4 or regulation B4B of the Superannuation Regulations on 31st December 1993; and
- (b) in the case of paragraph (4)(b)(ii)—
  - (i) had made any election which he was entitled to make under regulation B2(4) or B3(2)(a) or (b) of those Regulations on 21st December 1987; and
  - (ii) had not given any notice he is entitled to give under regulation B4A of the Superannuation Regulations.

### **Retirement gratuities**

**47.—**(1) Where a person—

- (a) who has been employed by a LGSS employer for at least five years; or
  - (b) who has been so employed for at least one year and—
    - (i) has attained the age of 60; or
    - (ii) is incapable of discharging efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body,
- ceases to be so employed (otherwise than as mentioned in regulation 48(1)(b)), the LGSS employer may make him a discretionary grant (“a retirement gratuity”).

(2) A retirement gratuity may consist of a lump sum or an annuity or both.

(3) The amount of a retirement gratuity (including the capital value of any annuity) must not exceed—

- (a) an amount equal to three-eighths of the person’s annual rate of remuneration for each year of service; or
- (b) the prescribed maximum;

and in this paragraph “annual rate of remuneration” has the meaning given in regulation 46(5) and “the prescribed maximum” the meaning given in regulation 46(4).

(4) Where—

- (a) the gratuity granted under paragraph (1) to a person (“the original annuitant”) is or includes an annuity; and
- (b) he dies at a time when the capital value of the payments of the annuity he has received falls short of its capital value at the time of its grant,

the LGSS employer may grant a further gratuity by way of an annuity to one or more of the original annuitant’s spouse and dependants.

(5) The amount of an annuity granted under paragraph (4) or, in a case where an annuity is paid to more than one person, the aggregate amount of annuity must be the lesser of—

- (a) the amount the capital value of which equals the shortfall mentioned in paragraph (b) of that paragraph; or
- (b) two-thirds of the amount of the annuity payable to the original annuitant immediately before his death.

### **Redundancy gratuities**

**48.**—(1) Where a person—

- (a) has been employed by a LGSS employer—
  - (i) for at least five years; or
  - (ii) in the case of a person who has attained the age of 60, for at least one year;
- (b) ceases to be so employed—
  - (i) by reason of redundancy; or
  - (ii) in the interests of the efficient exercise of the LGSS employer’s functions; and
- (c) the LGSS employer—
  - (i) have certified in relation to him in accordance with regulation E2(4)(a) of the Superannuation Regulations; or
  - (ii) are satisfied that if he were a pensionable employee they would have so certified, the LGSS employer may make him a discretionary grant (“a redundancy gratuity”).

(2) A redundancy gratuity may consist of a lump sum or an annuity or both.

(3) Where—

- (a) the gratuity granted to a person under paragraph (1) is or includes an annuity; and
- (b) he dies before receiving payments of the annuity of an aggregate amount equal to its capital value,

the LGSS employer may grant a further gratuity by way of an annuity to one or more of the person’s spouse and dependants.

(4) Where—

- (a) the gratuity granted to a person under paragraph (1) is or includes an annuity; and
- (b) he dies at a time when the capital value of the payments of the annuity he has received falls short of its capital value at the time of its grant,

the LGSS employer may grant a further gratuity by way of an annuity to one or more of his spouse and dependants.

(5) The amount of a redundancy gratuity in respect of any person (including the capital value of any annuity) or, in a case where the gratuity is paid to more than one person, the aggregate amount of such gratuity must not exceed the prescribed maximum (as defined in regulation 46(4)).

(6) The capital value of an annuity granted under paragraph (4) or, in a case where an annuity is paid to more than one person, the aggregate amount of such annuities must not exceed the shortfall mentioned in paragraph (4)(b).

(7) Where a person to whom a further gratuity is granted under paragraph (4) dies at a time when the capital value of the payments of the annuity he has received falls short of its capital value at the time of its grant, the LGSS employer may grant a further gratuity by way of an annuity to any other person to whom they might have granted a further annuity under paragraph (4) at the time of the original annuitant’s death, but its capital value must not exceed that shortfall.

### **Schemes in connection with the exercise of powers**

**49.** A LGSS employer may make a scheme with respect to the exercise of their powers under regulation 46, 47 or 48.