
STATUTORY INSTRUMENTS

1996 No. 1680

PENSIONS

The Local Government (Discretionary Payments) Regulations 1996

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The Secretary of State for the Environment, in exercise of the powers conferred on him by sections 7, 12 and 24 of the Superannuation Act 1972, 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: -

PART I GENERAL

Citation and commencement

1. These Regulations may be cited as the Local Government (Discretionary Payments) Regulations 1996 and shall come into operation on 25th July 1996.

General interpretation

2. - (1) Unless the context otherwise requires, in these Regulations -

"the 1972 Act" means the Superannuation Act 1972;

"the 1978 Act" means the Employment Protection (Consolidation) Act 1978;

"assumed member" has the meaning given in regulation 6(2);

"employing authority", in relation to a person whose employment ceases as described in regulation 6(1)(a), means the body by whom he is employed on the material date, being a body specified in Schedule 2 of the LGPS Regulations (Scheme employers) or a resolution body specified in regulation 4 of the LGPS Regulations ;

"employment" includes office and service;

"the LGPS Regulations" means the Local Government Pension Scheme Regulations 1997;

"the 1986 Regulations" means the Local Government Superannuation Regulations 1986;

"the 1995 Regulations" means the Local Government Pension Scheme Regulations 1995;

"the Transitional Regulations" means the Local Government Pension Scheme (Transitional Provisions) Regulations 1997;

"LGPS employer" means a Scheme employer (as defined in the LGPS Regulations) including, in relation to any person who is an admission agreement employee (as so defined), his admission body (as so defined);

"LGPS member" means a member of the Scheme (as defined in the LGPS Regulations);

"pensionable remuneration" means pay within the meaning of regulation 13 of the LGPS Regulations;

"the Scheme" has the meaning given in the LGPS Regulations.

(2) Any expressions which are used in these Regulations and are not given a specific meaning for the purposes of these Regulations shall, unless the context otherwise requires, be construed as if they were contained in the LGPS Regulations or, if the expression is not defined in those regulations, in the 1995 Regulations.

(3) Where in these Regulations references are made to anything done under, required under or arising under any provision of the LGPS Regulations, those references shall be construed (so far as the context permits) as references to anything done under, required under or arising under the corresponding provision of the Local Government Superannuation Regulations 1974 or, as the case may be, the 1986 Regulations or, the 1995 Regulations; and where any references are made to a LGPS member or a person who would be or would have been a LGPS member, those references shall be construed so far as the context permits as references to a pensionable employee or, as the case may be, to a person who would be or would have been a pensionable employee, within the meaning of the Local Government Superannuation Regulations 1974 or, as the case may be, the 1986 Regulations or, the 1995 Regulations .

Application to Isles of Scilly

3. These Regulations apply to the Isles of Scilly as if the Isles were a district in the county of Cornwall and the Council of the Isles of Scilly were a council of that district.

PART V INJURY ALLOWANCES ETC

Interpretation of Part V

33. - (1) In this Part, unless the context otherwise requires, "relevant employment", in relation to any person, means employment -

(a) with a LGPS employer (other than a passenger transport executive) or the predecessor of such an employer; or

(b) in which the person is, by virtue of regulation 5 of the LGPS Regulations (admission agreements) or any corresponding earlier provision, entitled to participate in the benefits of a pension fund maintained under those Regulations or the former regulations;

and for the purposes of this Part a police cadet appointed under section 17 of the Police Act 1964 shall be deemed to be in employment with the police authority who maintain the force with which he is undergoing training.

(1A) But "relevant employment" shall not include any period as a councillor member, the Mayor of London or a member of the London Assembly which is treated as employment for the purposes of the LGPS Regulations.

(2) In this Part "the relevant employer", in relation to any person, means -

(a) the employer by whom the person in question was employed immediately before he first qualifies for any allowance or lump sum payable under this Part;

(b) if he dies without qualifying for any such allowance or lump sum, the employer who last employed him in a relevant employment before his death; or

(c) if the employer specified in paragraph (a) or (b) has ceased to exist, the employer to whom he would have been transferred if he had continued in the employment in question.

(3) References in this Part to an injury or disease do not include any injury or disease which is one in respect of which the person is entitled -

(a) to an injury award under a scheme made in accordance with section 26 of the Fire Services Act 1947; or

(b) to injury benefits under regulations made in accordance with section 35 of the Police Act 1964.

(4) For the purposes of this Part, if a person -

(a) sustains an injury while travelling as a passenger by vehicle to or from his place of work with his employer's permission (whether express or implied); and

(b) at the time of the injury the vehicle was being operated (otherwise than in the course of a public transport service) by or on behalf of, or pursuant to arrangements made by, his employer,

he shall be treated as having sustained the injury as a result of a requirement of carrying out his work.

Loss of employment through permanent incapacity

34. - (1) If -

(a) as a result of anything he was required to do in carrying out his work a person who is employed in a relevant employment -

- (i) sustains an injury; or
- (ii) contracts a disease; and

(b) he ceases to be employed in that or any other relevant employment as a result of an incapacity which is likely to be permanent and was caused by the injury or disease,

he shall be entitled to an annual allowance not exceeding 85 per cent of his annual rate of remuneration in respect of the employment when he ceased to be employed.

(2) The allowance is to be paid by the relevant employer and, subject to paragraph (1), is to be of such amount as that employer may from time to time determine.

(3) In ascertaining for the purposes of paragraph (1) a person's annual rate of remuneration when he ceased to be employed -

(a) the annual rate of any fluctuating element included in his remuneration is to be estimated by reference to an average taken over a representative period;

(b) the annual rate of any benefit in kind included in his remuneration is to be the estimated annual value of the benefit in kind as at the date on which he ceased to be employed;

(c) if at that date -

- (i) he had no remuneration; or
- (ii) his remuneration was reduced because of absence from duty,

the annual rate is that which would have applied if he had not been absent;

(d) if at that date he was entitled to an allowance under regulation 35 by reason of a reduction in his remuneration (whether as a result of the same or another injury or disease), the annual rate is that which would have applied if his remuneration had not been reduced;

(e) if his remuneration is calculated by reference to a rate which is not annual, the annual rate is to be derived from the applicable rate at that date; and

(f) if his remuneration is retrospectively altered as a result of a pay award, the annual rate is that based on the award.

(4) The relevant employer may suspend or discontinue the allowance under this regulation if the person becomes capable of working again.

Reduction in remuneration

35. - (1) If -

(a) as a result of anything he was required to do in carrying out his work a person who is employed in a relevant employment -

(i) sustains an injury; or

(ii) contracts a disease,

and suffers a reduction in his remuneration while he is employed in that or any other relevant employment; and

(b) regulation 34 does not apply,

he shall be entitled to an allowance while the reduction continues.

(2) For the purposes of paragraph (1), a person's remuneration is to be treated as reduced at any time when it is lower than it would have been but for the injury or disease.

(3) The allowance under paragraph (1) is to be paid by the relevant employer and is to be of such amount as the employer may from time to time determine, but must not in any year exceed the shortfall between -

(a) the person's remuneration in the relevant employment; and

(b) the remuneration he would have been paid if he had not sustained the injury or, as the case may be, contracted the disease.

Allowances for pensioners

36. - (1) Where a person ceases to be employed in a relevant employment, if -

(a) immediately before so ceasing he was entitled to an allowance under regulation 35;

(b) on so ceasing regulation 34 does not apply, but he becomes entitled under Part II of the LGPS Regulations to receive payments in respect of an annual retirement pension and regulation 23 of those Regulations (different relevant period for calculating pensionable remuneration where a material reduction has been certified) does not apply; and

(c) the annual rate of the retirement pension in any year falls short of what it would have been if the amount of the allowance paid under regulation 35 during the period which is the final pay period for the LGPS Regulations had been part of his remuneration in the relevant employment,

the relevant employer may pay him an allowance (but not of an amount in any year exceeding that shortfall).

(2) An allowance under this regulation continues for such period as the relevant employer may determine.

Death benefits

37. - (1) If -

(a) as a result of anything he was required to do in carrying out his work a person who is employed in a relevant employment

- (i) sustains an injury; or
- (ii) contracts a disease; and

(b) he dies as a result of the injury or disease,

then -

(i) subject to paragraph (2), if the deceased leaves a surviving spouse or spouses, or a surviving civil partner, the surviving spouse or all of them, or the surviving civil partner, as the case may be, shall be entitled to an annual allowance or lump sum; and

(ii) if the deceased leaves a dependant, the dependant shall be eligible for an annual allowance or lump sum.

(2) A surviving spouse or civil partner shall not be entitled to an annual allowance or lump sum if at the date of death he was cohabiting with another person outside marriage or civil partnership.

(3) The allowance or lump sum is to be paid by the relevant employer and is to be of such amount as the employer may from time to time determine.

(4) Subject to paragraph (5), an allowance to a surviving spouse or civil partner shall cease if he marries or registers a subsequent civil partnership or cohabits with another person outside marriage or civil partnership, but if that marriage, civil partnership or cohabitation ceases the relevant employer may restore the allowance for such period as the employer may determine.

(5) Where the person whom the surviving spouse or civil partner marries, or with whom he forms a civil partnership or cohabits, is also a surviving spouse or surviving civil partner entitled to an allowance under this regulation, only such one of them as they may choose shall be so entitled; and the other shall cease to be so entitled until the end of the marriage, civil partnership or cohabitation.

(6) An allowance to a dependant shall continue for such period as the relevant employer may determine.

Considerations in determining amount of benefits

38. - (1) In determining the amount of an allowance under regulation 34 or 35 or of an allowance or a lump sum under regulation 37, the relevant employer is to have regard to all the circumstances of the case, including the matters specified in paragraph (2) (except in so far as they are excluded by paragraph (3)).

(2) The matters mentioned in paragraph (1) are -

(a) any right to benefit under Part V of the Social Security Contributions and Benefits Act 1992;

(b) any other statutory right to benefit or compensation;

(c) any right to receive pension benefit (whether payable under an enactment or otherwise); and

(d) any damages recovered and any sum received by virtue of a contract of insurance.

(3) In the case of an allowance or a lump sum which is payable by virtue of a person having sustained an injury, no regard shall be had -

(a) to any benefit payable periodically which the person was entitled to be paid before the injury was sustained;

(b) to any right which accrued before that time; or

(c) to any damages or sum received by virtue of such a right.

PART VI GRATUITIES AS RESPECTS NON-PENSIONABLE SERVICE

Meaning of "service" in Part VI

39. - (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 LGPS 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, the former Regulations, the 1974 Regulations, the 1986 Regulations, Part III of the Local

Government (Compensation for Redundancy) Regulations 1994 or these Regulations;

(d) during which he is not a LGPS member by virtue of a failure to apply under regulation 7 of the LGPS Regulations (application for membership) or notification under regulation 7(5) or 8 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 member), or any corresponding act or omission under the 1986 Regulations, unless -

(i) he was employed by a LGPS employer on 1st April 1987 and had attained the age of 55 before that date; or

(ii) he was so employed on 17th August 1993, had attained the age of 50 before that date and immediately before that date was disqualified from being a LGPS member because his contractual hours were fewer than 15;

(e) in respect of which he has retained rights in a scheme which was a relevant scheme for the purposes of regulation G14 of the 1974 Regulations;

(f) which has been or may be taken into account for the purpose of calculating any benefit under the Scheme 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; or

(g) as a councillor member, the Mayor of London or a member of the London Assembly which is treated as employment for the purposes of the LGPS Regulations.

(4) Where regulation 40(1) applies, service includes periods before 1st April 1987 of the kinds mentioned in paragraph (3)(e) and (f).

(5) In paragraph (3)(f) "public service scheme" means a water company scheme within the meaning of the 1986 Regulations, 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 1986 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

40. - (1) Where a person who has been employed by a LGPS employer for not less than one year dies while in their employment, the LGPS employer may make a discretionary grant ("a death benefit gratuity") to one or more of the person's spouse, surviving civil partner 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 1987 and 50 per cent of any war service (within the meaning of Part F of the 1986 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 (10) 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 1987, 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 16th August 1993; or

(ii) whose contractual hours are at least 15 and who had not before 1st April 1987 attained the age of 55,

disregarding the assumed membership.

(4A) Paragraph (4) applies to surviving civil partners where after 5th April 1988 a person both -

(a) ceases to be employed; and

(b) is awarded a retirement gratuity.

(5) In this regulation "annual rate of remuneration", in relation to an employee, means the annual rate of his remuneration (ascertained as if regulations 21 to 23 of the LGPS 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), 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 total period of membership if the person -

(a) in the case of paragraph (4)(b)(i), had made an election under regulation B1A or regulation B1C of the 1986 Regulations on 17th August 1993; and

(b) in the case of paragraph (4)(b)(ii) -

(i) had made any election which he was entitled to make under regulation B1(18) of, or paragraph 1(1) or 5(2) of Part IV of Schedule 2 to, those Regulations on 1st April 1987; and

(ii) had not made any election he has made under regulation B1(15B) of those Regulations or given any notice he is entitled to give under regulation 8 of the LGPS Regulations.

Retirement gratuities

41. - (1) Where a person -

(a) who has been employed by a LGPS 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 42(1)(b)), the LGPS 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 40(5) and "the prescribed maximum" the meaning given in regulation 40(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 LGPS employer may grant a further gratuity by way of an annuity to one or more of the original annuitant's spouse and dependants.

(4A) Paragraph (4) applies to surviving civil partners where after 5th April 1988 a person both –

(a) ceases to be employed; and

(b) is awarded a retirement gratuity.

(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

42. - (1) Where a person -

(a) has been employed by a LGPS 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 LGPS employer's functions; and

- (c) the LGPS employer -
 - (i) have certified in relation to him in accordance with regulation 26(1)(b) of the LGPS Regulations; or
 - (ii) are satisfied that if he were a LGPS member they would have so certified,

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

(4A) Paragraphs (3) and (4) apply to surviving civil partners where after 5th April 1988 a person both –

(a) ceases to be employed; and

(b) is awarded a redundancy gratuity.

(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 40(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 LGPS 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

43. A LGPS employer may make a scheme with respect to the exercise of their powers under regulation 40, 41 or 42.

PART VII MISCELLANEOUS AND SUPPLEMENTARY

Modification for special cases

Special provisions for special categories of employees

44. Schedule 2 shall have effect for the purpose of applying these Regulations with modifications as respects certain kinds of employees; and Part I of that Schedule makes provision as to former harbour authority employees, Part II of that Schedule as to the employees of certain educational establishments, Part III of that Schedule as to magistrates' courts committees and probation committees and Part IV of that Schedule as to coroners.

Decisions and appeals

Decisions and appeals

45. (1) Any question concerning the rights of any person or his eligibility to be considered for any award under Part V or Part VI shall be decided in the first instance by the relevant LGPS employer, that is to say the LGPS employer who last employed the person in respect of whose employment the question arises; and any question arising under regulation 33(2)(c) as to the identity of the employer to whom the person would have been transferred shall be determined by the Secretary of State.

(2) A decision by the relevant employer does not bind any other LGPS employer or the Secretary of State.

(3) The questions specified in paragraph (1) shall be decided as soon as is reasonably practicable after the occurrence of the last event by virtue of which the award may be payable.

(4) A body who have decided any question under this regulation shall, as soon as is reasonably practicable after doing so, send a written notification of their decision to every person affected by it.

(5) The notification shall include -

(a) the grounds for the decision; and

(b) in any case where paragraph (6) applies, a conspicuous statement directing the person's attention to his right under that paragraph to appeal to the Secretary of State.

(6) Where -

(a) the relevant employer has decided or failed to decide any such question as is mentioned in paragraph (1); and

(b) an appeal is duly made to the Secretary of State,

then, subject to the following provisions of this regulation, the question shall be determined by him and his determination of it shall be final.

(7) The Secretary of State shall not determine any question that fell to be decided by the relevant employer in the exercise of a discretion conferred by these Regulations (but see paragraph 9(4) of Schedule 2).

(8) An appeal under paragraph (6) shall be made by notice in writing which -

(a) shall be served (whether by being sent by post or otherwise) as soon as is reasonably practicable; and

(b) may be served by any person whose interests are affected.

Supplemental

Finance

46. - (1) The cost of any payment to be made under these Regulations is not to be met out of any pension fund.

(2) Where -

(a) an allowance under regulation 7 of the Benefits regulations (a "regulation 7 allowance") is payable in addition to any allowance or lump sum under Part V of these Regulations; and

(b) the relevant employer is the employing authority for the purposes of regulation 7(4) of the Benefits regulations (repayment to appropriate superannuation fund),

the regulation 7 allowance shall be treated for the purposes of paragraph (1) as an allowance under these Regulations.

Information and records

46A. - (1) Each employing authority must formulate and keep under review the policy they intend to apply in the exercise of their discretionary powers in the discharge of their functions under Parts II, III and IV.

(2) Before the end of three months beginning with 1st April 1999 each employing authority shall publish a written statement of the policy which is to be applied by that employer in the exercise of such discretionary powers from the date of publication.

(3) Where, as a result of a review under paragraph (1), an employing authority determine to amend their policy, they must publish a written statement of the amended policy before the expiry of one month beginning with the date on which they so determine.

(4) No change in policy shall come into effect until the expiry of one month from the date that the written statement of the amended policy is published.

(5) In formulating or reviewing their policy under paragraph (1), an employing authority shall -

(a) have regard to the extent to which the exercise of their discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service; and

(b) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

Transitional provisions

47. Schedule 3 shall have effect for the purpose of making transitional provision and savings.

Consequential amendments

48. Schedule 4 shall have effect for the purpose of making amendments which are consequential on the making of these Regulations.

Revocations

49. - (1) The subordinate legislation specified in Schedule 5 is revoked to the extent specified in the third column (but subject to the savings in Schedule 3).

(2) Nothing in Schedule 5 affects any savings contained in Schedule M4 to the LGPS Regulations.

Signed by authority of the Secretary of State

MODIFICATIONS FOR SPECIAL CATEGORIES OF EMPLOYEES**PART I
FORMER HARBOUR AUTHORITY EMPLOYEES**

1. - (1) In relation to a person who in his employment immediately before the material date was engaged wholly or mainly in connection with the employing authority's functions as a harbour authority (as defined in section 57(1) of the Harbours Act 1964), Part III of these Regulations applies with the modifications in paragraphs (2) and (3).

(2) "Excepted payment", in relation to an employment of a person, includes a payment received by him which is a payment under an agreement made before 1st July 1984 in connection with the closure of any harbour, being a closure effected in the exercise of powers conferred by an Act of Parliament passed before that date.

(3) In paragraphs 5, 6 and 8 of Schedule 3, for references to 6th September 1982, wherever they occur, substitute references to 1st July 1984.

**PART II
PERSONS EMPLOYED IN EDUCATIONAL ESTABLISHMENTS*****"Educational employment"***

2. In this Part of this Schedule "educational employment" means employment of one of the following kinds, namely -

(a) employment at a single school or institution maintained by a local education authority which for the time being has a delegated budget within the meaning of Chapter IV of Part II of the School Standards and Framework Act 1998 or section 85 of the Further and Higher Education Act 1992;

(b) employment -

(i) at a school or institution maintained by a local education authority and does not have a delegated budget,

(ii) by a local education authority otherwise than at a school or institution, or

(iii) at a maintained school or institution with a delegated budget and concurrent with employment within paragraph (i) or (ii) or with employment at another such school or institution;

(d) employment at an institution conducted by a further education corporation or a higher education corporation;

(e) employment at a designated institution.

General exclusions

3. - (1) References in these Regulations to employment with a LGPS employer do not include employment by virtue of which a person is entitled to participate in benefits provided under regulations made under section 9 of the 1972 Act (teachers' superannuation).

(2) Regulation 4(1) does not apply to a person ceasing to hold an employment in which he was a person in relation to whom regulations may be made under that section.

(3) In Part V "relevant employment" does not include employment as a teacher.

(4) In regulations 40(1), 41(1) and 42(1) the references to employment do not include employment as a teacher.

Part II: aided schools

4. Where the employment mentioned in regulation 4(1) is at a voluntary, foundation or foundation special school (within the meaning of section 20 of the School Standards and Framework Act 1998) the power to pay compensation under that regulation is exercisable by the local education authority.

Part III: former educational employment

5. - (1) Where the former employment (within the meaning of Part III) was educational employment, Part III of these Regulations applies with the following modifications.

(2) In regulations 8 and 9 for the references to the employing authority substitute references -

(a) in the case of employment within paragraph 2(a) or (e), to the governing body of the school or institution;

(b) in the case of employment within paragraph (2)(b), to the local education authority;

(c) in the case of employment within paragraph 2(d), to the corporation.

(3) In regulations 19(1), 20(2) and (4), 26(2), 27, 28 and 31(2) and paragraph 6(2) of Schedule 3 for the references to the employing authority substitute references to the person who under paragraph 7(2) to (5) of this Schedule is for the time being the paying authority.

6. Where -

(a) the former employment was of the kind specified in paragraph 2(a);

(b) the employing authority is the local education authority;

(c) the governing body of the school or institution request the authority to do so; and

(d) the cessation of employment is as mentioned in regulation 6(1)(a)(i) or (ii),

the employing authority must certify or, as the case may be, declare themselves satisfied as mentioned in regulation 6(1)(b).

7. - (1) Regulation 31(1) (paying authorities) is subject to the following provisions.

(2) In the case of an eligible person whose former employment was educational employment, compensation shall, subject to sub-paragraphs (3) to (5), be paid -

(a) in the case of employment within paragraph 2(a) or (b), by the local education authority;

(c) in the case of employment within paragraph 2(d), by the corporation; and

(d) in the case of employment within paragraph 2(e), by the governing body of the institution.

(4) Where -

(a) the former employment was of a kind specified in paragraph 2(d) or (e); and

(b) in consequence of any amalgamation, merger or other arrangement the institution becomes part of another ("the successor establishment") and ceases to have a separate governing body,

the governing body of the successor establishment becomes the paying authority.

(5) Where -

(a) the former employment was of a kind specified in paragraph 2(d) or (e); and

(b) the institution closes and there is no successor establishment,

the Secretary of State becomes the paying authority.

Part VI

8. Where -

(a) a person is employed (otherwise than as a teacher) by the governing body of a voluntary, foundation or foundation special school (within the meaning of section 20 of the School Standards and Framework Act 1998); and

(b) the local education authority have by a statutory resolution specified him as an employee, or specified a class of employees to which he belongs as a class of employees, to whom Part VI is to apply,

Part VI applies to him as if he were employed by the local education authority.

PART III MAGISTRATES' COURTS AND PROBATION COMMITTEES

9. - (1) Part VI applies in relation to the magistrates' courts committee for the inner London area as if that committee were a LGPS employer, and sub-paragraphs (2) to (5) have effect for modifying the application of that Part in relation to magistrates' courts committees and probation committees.

(2) The probation committee for an area other than the inner London area are to report any decision made by them under regulation 40, 41 or 42 –

(a) to the body responsible for defraying the expenses of the committee; or

(b) where two or more bodies contribute to the defraying of those expenses, to each of those bodies.

(3) A magistrates' courts committee (other than the committee for the inner London area) are to report any decision made by them under regulation 40, 41 or 42 to the body who paid the employee's remuneration.

(4) Where a report is made under sub-paragraph (2) or (3), regulation 45 has effect as if paragraph (7) of that regulation were omitted.

(5) Any decision made under regulation 40, 41 or 42 by -

(a) the probation committee for the inner London area; or

(b) the magistrates' committee for that area,

is to be reported by the committee to the Secretary of State, and has no effect until approved by him; and any gratuity granted by virtue of such an approved decision is to be paid by the Receiver for the Metropolitan Police District.

PART IV CORONERS

10. In relation to coroners, regulations 6(1)(d), 8(1)(b) and 17(1)(b) shall have effect as if for the number 65 there were substituted the number "70".

SCHEDULE 3 Regulation 47 **TRANSITIONAL PROVISIONS AND SAVINGS**

General

1. - (1) Where -

(a) immediately before the coming into operation of these Regulations the employment or former employment of a person by any body ("the former authority") was employment by virtue of which any provision revoked by these Regulations ("the revoked provision") applied;

(b) the former authority has ceased to exist by virtue of the Local Government Act 1992 or the Local Government (Wales) Act 1994;

(c) the liabilities of the former authority in respect of that employment which were relevant for the purposes of the revoked provision have been transferred to another body ("the new authority"),

then, if it would not do so apart from this paragraph, any provision of these Regulations corresponding to the revoked provision shall apply as if that employment had been employment with the new authority and as if that provision of these Regulations applied to it and to that authority.

(2) In determining for the purposes of these Regulations whether any employment at a time before these Regulations came into operation is employment with a LGPS employer, that employment shall be regarded as such employment if the employer was at that time a body mentioned in column 1 of Part 2 of Schedule 1 to the Local Government (Compensation for Premature Retirement) Regulations 1982 (educational bodies).

Part II

2. Regulation 4 does not apply if the cessation of employment referred to in paragraph (1) of that regulation occurred before 1st July 1984.

Part III

3. Nothing in Part III applies to a person who ceased to hold his employment with an employing authority as mentioned in regulation 6(1)(a) before 29th March 1976.

4. Where the employment by reference to the cessation of which a period might fall to be credited ceased to be held before 6th April 1988, Part III shall have effect as if the amendments made by the Local Government (Superannuation and Compensation) (Amendment) Regulations 1988 had not been made (and, in particular, that Part shall have effect with such modifications as are necessary for the omission of references to assumed members and the expressions defined in regulation 7).

5. If the material date was before 6th September 1982, regulation 8 shall have effect with the substitution for any reference to the material date of a reference to that date.

6. - (1) Subject to paragraph (2), regulations 13 and 14 do not apply to the compensation payable to a person whose material date is before 6th September 1982.

(2) If the employing authority of a person whose material date falls after 14th July 1980 and before 6th September 1982 have before 6th September 1982 determined that any lump sum compensation or annual compensation which might become payable to him under Part III should be reduced, regulation 13(1) applies to the compensation payable to him; but, if his employing authority determined to reduce by an amount less than the reduction required by that regulation, that regulation applies with the substitution for any references to a reduction in compensation of references to the determined reduction.

7. In a case where the death occurs on or before 5th April 1988, regulation 20(2) applies with the omission of paragraph (a)(i) and the word "otherwise" in paragraph (a)(ii).

8. Regulation 21(4), 23(2) and 25(4) do not apply if the material date in relation to the deceased was before 6th September 1982.

9. As respects any female employee who -

(a) duly elected under regulation E12(1)(b) or (2)(b) of the 1986 Regulations (election by wife of dependent and permanently incapacitated husband);

(b) duly elected under regulation 12(2) of the 1982 Regulations (similar elections and elections by unmarried women with potentially eligible children);
or

(c) immediately before these Regulations came into force was a person to whom regulation 12(3) of the 1982 Regulations applied,

these Regulations have effect as if references in them to provisions in the LGPS Regulations were references to those provisions as modified by the provisions of regulation 9 of the Transitional Regulations, by virtue of which her membership is treated as membership after 5th April 1988.

Part IV

10. - (1) Regulation 32 does not apply if the cessation of employment referred to in paragraph (1) of that regulation occurred before 28 December 1994.

(2) Nothing in these Regulations shall affect the operation of regulation 7 of the Local Government (Compensation for Redundancy) (Amendment) Regulations 1996 (savings for those placed in a worse position by virtue of the retrospectivity of those Regulations and those who had received an estimate of their compensation before the making of those Regulations).

Part V

11. - (1) Subject to the following provisions of this paragraph, Part V applies even if the injury or disease was sustained or contracted before the date on which these Regulations come into force.

(2) Regulations 34 and 36 do not apply if the cessation of the employment occurred before 31st March 1972, regulation 35 does not apply if the reduction of remuneration occurred before that date and regulation 37 does not apply if the death occurred before that date.

(3) Anything treated by virtue of regulation L9(4) of the 1986 Regulations (which saved payments made in anticipation of the commencement of Part L of those Regulations) as done under Part L of those Regulations shall be treated as if it had been done under Part V of these Regulations.

(4) If adequate provision has already been made for a person under regulation 7 of the Benefits regulations, Part V does not apply to him.

(5) Where -

(a) by virtue of paragraph (2) regulation 34, 35, 36 or 37 applies in a case where the cessation of the employment, the reduction of remuneration or, as the case may be, the death occurred before 1st March 1986; and

(b) paragraphs (3) and (4) do not apply,

the relevant employer shall decide what allowance or lump sum (if any) is to be granted in accordance with Part V for any past or future period (but in making that decision the relevant employer shall take into account any allowance to which the person is or was entitled under regulation 7 of the Benefits regulations).

(6) Regulation 38(2)(c) has effect in cases where the cessation of employment, reduction in remuneration or death in question occurred before 6th April 1988 with the insertion after the word "otherwise)" of the words "out of any fund to which any body which employed him in relevant employment has made any contributions in respect of him or out of any fund to which assets of any such fund were transferred".

SCHEDULE 5 Regulation 49
SUBORDINATE LEGISLATION REVOKED

<i>Year and Number</i>	<i>Title</i>	<i>Extent of revocation</i>
1982/1009	The Local Government (Compensation for Premature Retirement) Regulations 1982	All the Regulations
1984/740	The Local Government (Compensation for	All the Regulations

	Redundancy and Premature Retirement) Regulations 1984	
1986/24	The Local Government Superannuation Regulations 1986	Parts K and L and the other provisions of the Regulations (so far as not previously revoked)
1987/293	The Local Government Superannuation (Miscellaneous Provisions) Regulations 1987	Regulation 16
1988/466	The Local Government (Superannuation and Compensation) (Amendment) Regulations 1988	Regulations 9, 10 and 12 to 22
1989/371	The Local Government Superannuation (Amendment) Regulations 1989	Regulation 14
1989/372	The Local Government (Superannuation and Compensation) Regulations 1989	All the Regulations
1989/1815	The London Government Reorganisation (Pensions etc) Order 1989	Article 7(9)
1990/2380	The Local Government (Compensation for Redundancy and Premature Retirement) (Amendment) Regulations 1990	All the Regulations
1992/172	The Local Government Superannuation (Amendment) Regulations 1992	All the Regulations
1992/2432	The Local Government (Compensation for Premature Retirement) (Amendment) Regulations 1992	All the Regulations
1993/1814	The Local Government Superannuation (Part-time	All the Regulations

	Employees) Regulations 1993	
1993/2890	The Local Government (Compensation for Premature Retirement) (Amendment) Regulations 1993	All the Regulations
1993/3108	The Local Government (Compensation for Premature Retirement) (Amendment) (No 2) Regulations 1993	All the Regulations
1994/3025	The Local Government (Compensation for Redundancy) Regulations 1994	Part II, in regulations 15 and 16, the word "4", and regulation 17
1995/817	The Local Government (Compensation for Redundancy and Premature Retirement) (Amendment) Regulations 1995	All the Regulations
1996/456	The Local Government (Compensation for Redundancy) (Amendment) Regulations 1996	Regulation 3

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations consolidate, with amendments, the provisions of the Local Government (Compensation for Premature Retirement) Regulations 1982, Part II of the Local Government (Compensation for Redundancy and Premature Retirement) Regulations 1984 and Part II of the Local Government (Compensation for Redundancy) Regulations 1994, all of which have been amended. They also revoke the extant Parts K and L of the Local Government Superannuation Regulations 1986. Parts V and VI of these regulations replace them as part of local authority discretionary awards. These Regulations contain all the provisions relating to discretionary payments that may be made to persons engaged in local government employment other than teachers and those engaged in the police and fire services (excluding those under Part III of the Local Government (Compensation for Redundancy) Regulations 1994).

The main changes are as follows –

- provision for holders of a joint appointment whose appointment has been terminated because the other ceased to hold his appointment may now be considered for a discretionary award under Part III (Regulation 6(1)(a)(iii));
- all the service of a part-timer can be taken into account when considering an award on compensatory added years (Regulation 7(3));
- spouses of post retirement marriages of employees awarded compensatory added years may receive part of the compensation pension (Regulation 20);
- the "indexed training rate" has been updated (Regulation 25(6));
- interest is to be paid on compensation paid late in certain circumstances (Regulation 30);
- the appropriate authority has two months in which to recover from the employing authority the amount of any payment made on their behalf (Regulation 31(2));
- injury allowances and gratuities, which were in the Local Government Superannuation Regulations 1986, have been included in these regulations as they are payable by the local authorities and not from the pension fund (Parts V and VI).