

STATUTORY INSTRUMENTS

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The Local Government (Superannuation) (Gratuities)
Regulations, 1984.

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The Minister for the Environment, in exercise of the power conferred on him by sections 4 and 5 of the Local Government (Superannuation) Act, 1980 (No. 8 of 1980), with the consent of the Minister for the Public Service, hereby makes the following regulations:

- Short Title.** 1. These Regulations may be cited as the Local Government (Superannuation) (Gratuities) Regulations, 1984.
- Interpretation.** 2. (1) In these Regulations -
- "the Act of 1945" means the Mental Treatment Act, 1945 (No. 19 of 1945);
- "the Act of 1956" means the Local Government (Superannuation) Act, 1956 (No. 10 of 1956);
- "emolument" means, subject to sub-article (2), any apartments, rations, or other perquisites in kind (or, as the case may require, a monetary payment given in lieu of such apartments, rations, or other perquisites) appertaining to an office or employment and all fees, poundage and commission of an officer or servant as such for his own use, together with allowances in the nature of pay, which are additional to salary or wages other than payments, expenses or allowances in kind of the kind specified in sub-article (2);
- "employee" means an employee who is directly and personally employed, otherwise than as an independent contractor or as an officer, by a local authority;
- "local authority" shall have the meaning assigned to it by section 1 of the Local Government (Superannuation) Act, 1980 (No. 8 of 1980), and, in addition, shall include a body within the meaning of section 2(9) of that Act;
- "the Minister" means the Minister for the Environment;
- "officer" does not include a person holding any of the offices mentioned in section 17 of the Local Government Act, 1941 (No. 23 of 1941);

"pension" means an allowance payable under the Act of 1956 or under any earlier Act relating to superannuation as may have applied to an officer or employee of a local authority or under the Act of 1945 or any earlier Act relating to superannuation as may have applied to him;

"pensionable officer" means a pensionable officer for the purposes of the Act of 1956;

"pensionable servant" means a pensionable servant for the purposes of the Act of 1956;

"qualified employment" shall have the meaning assigned to it by article 3;

"qualified person" means an officer or an employee of a local authority who is serving -

- (a) in a non-pensionable capacity for the purposes of the Act of 1945, the Act of 1956 and the Revision Scheme of 1984, or
- (b) as a pensionable officer or servant, as a registered officer or employee of a local authority or as an officer or employee of a local authority to whom Part VIII of the Mental Treatment Act, 1945 applies, where in each case he has a period or periods of service with the local authority or with any other local authority which is not reckonable as service for the purposes of the said Acts or Scheme, such non-reckonability not being due to the exercise or the non-exercise of any option at any time under the superannuation provisions applicable to him at that time;

"registered employee" means a registered employee for the purposes of the Revision Scheme of 1984;

"registered officer" means a registered officer for the purposes of the Revision Scheme of 1984;

"the Revision Scheme of 1984" means the Local Government (Superannuation Revision) Scheme, 1984 (S.I. No 33 of 1984);

"salary" means, subject to sub-article (2), payments as salary to an officer as such for his own use and, in the case of an officer who is suspended or absent on leave and who, as respects the period of suspension or absence, does not receive a part of the payments as salary to him for his own use which he would have received if he had not been suspended or absent on leave, includes that part, together with allowances made to vocational teachers in

respect of qualifications in accordance with the appropriate scales for the time being approved by the Minister for Education and the Minister for the Public Service;

"unfitness" means unfitness of a qualified person for his office or employment, but does not include unfitness due to infirmity of mind or body or old age;

"wages" means, subject to sub-article (2), payments as wages to a servant as such for his own use and in the case of a servant who is suspended or absent on leave and who, as respects the period of suspension or absence, does not receive a part of the payments as wages to him for his own use which he would have received if he had not been suspended or absent on leave, includes that part;

"weekly remuneration", subject to sub-articles (3) and (4), means -

(a) in the case of a qualified person -

(i) whose salary or wages in respect of his qualified employment over the period or the aggregate of the periods of the last three years of his qualified employment, hereafter called "the relevant period", have not changed, otherwise than in accordance with changes applicable generally to the class, description or grade of qualified persons to which he belonged at the expiration of the relevant period or, having so changed,

(I) he has died and the period between the date his salary or wages so changed and the date of his sixty-fifth birthday is not less than three years, or

(II) he has ceased to hold the qualified employment because of his having become incapable of performing his duties by reason of permanent infirmity of mind or body and the period between the date his salary or wages so changed and the date of his sixtieth birthday is not less than three years,

his weekly rate of salary or wages at the date of cesser of his qualified employment together with the weekly average of his emoluments (if any) over the relevant period, and

- (b) in any other case, the uprated average weekly rate of salary or wages applicable to his qualified employment during the relevant period determined in accordance with the formula set out in the Table hereto together with the average weekly emoluments (if any) so applicable during that period.

TABLE

$$\frac{(A \times B)}{N} + \frac{(C \times D)}{N}$$

where

- A is the number of days in the relevant period served in the position in which he was serving at the commencement of that period,
- B is the weekly rate of salary or wages which he would have had at the date of cesser of qualified employment if he had continued to serve in the position in which he was serving at the commencement of the relevant period,
- C is the number of days in the relevant period served in the position in which he was serving at the expiration of the relevant period,
- D is his weekly rate of salary or wages at the expiration of the relevant period,
- N is 1095 days,

provided that, if his position changed more than once during the relevant period, the formula shall be modified by the insertion after the value $\frac{(A \times B)}{N}$, of the value,

+ $\frac{(E \times F)}{N}$, in respect of each such additional change, where in any value so inserted

- E equals the number of days in the relevant period served in the additional position to which the value relates, and

F equals the weekly rate of salary or wages which he would have had at the date of cesser of qualified employment if he had continued to serve in the additional position to which the value relates.

(2) In this Scheme neither "salary" nor "emoluments" shall include -

- (a) payments for overtime,
- (b) travelling expenses,
- (c) payments for special work of a casual or temporary nature which is additional to salary or wages in respect of qualified employment,
- (d) allowances to cover particular expenses or needs.

(3) For the purpose of the definition of "weekly remuneration", "salary", "wages" and "emolument" in relation to any position (other than under a local authority) service in which is capable of being reckoned under this Scheme, shall include the remuneration applicable to that position which corresponds to the remuneration comprehended in the said definitions of "salary", "wages" and "emolument".

(4) For the purposes of these Regulations, where the remuneration of a qualified person whose qualified employment consists of or includes part-time service given on an hourly basis, his weekly rate of salary or wages in respect of such service shall be determined by the formula

$$A \times B$$

where

A is the average number of hours of such service per week, calculated in accordance with article 3(2)(c), for the duration of such service or where the records of service are incomplete, for the last ten years of such service, and

B is the hourly rate of pay at the date of cesser of the qualified employment.

(5) In these Regulations any reference to an article which is not otherwise identified is a reference to an article of these Regulations.

(6) In these Regulations any reference to a sub-article, paragraph or subparagraph which is not otherwise identified is a reference to the sub-article, paragraph or subparagraph of the provision in which the reference occurs.

Qualified
Employment.

3. (1) Subject to article 4, a qualified person shall be entitled to reckon as qualified employment any of the following:

(a) service, as an officer or as an employee, with one or more than one local authority on any day on which he worked in a whole-time or part-time capacity, not being service which is reckonable by him for the purposes of the Act of 1945 or the Act of 1956 or the Revision Scheme of 1984 nor, being service which as a result of the exercise or non-exercise of an option by him, or on his behalf, at any time, under the superannuation provisions applicable to him at that time, is not so reckonable,

(b) service, at the discretion of the local authority granting the gratuity, on any day on which he worked in a non-pensionable whole-time or part-time capacity with any of the bodies, other than the local authorities, referred to in sections 11 and 34 of the Act of 1956, which was subsequently followed at any time by the service referred to in paragraph (a).

- (2) (a) For the purposes of sub-article (1) a person shall be deemed to have worked on any day for which he was given paid leave in addition to the days he actually worked and the aggregate of those days shall be expressed in terms of years by dividing such aggregate -

(i) by 300, in respect of any period up to the date on which a 5-day week came into operation generally for his category of employee in relation to the local authority or body under which he held the qualified employment, and

(ii) by 250, in respect of any subsequent period,

provided that in determining the aggregate number of days worked not more than 300 days or 250 days, as appropriate, are taken into account in any year.

- (b) Fractions of years of qualified employment shall be represented as follows where A is the number of days worked:

(i) in relation to a period of qualified employment referred to in subparagraph (a)(i) - $A/300$, and

(ii) in any other case - $A/250$.

- (c) For the purposes of these Regulations, where the service of a qualified person whose qualified employment consists of or includes part-time service given on an hourly basis, his average number of hours of part-time service per week shall be determined by the formula A/B

where

A is the total number of hours of part-time service (including paid leave) less the hours in any week in which such service (including paid leave) is less than ten hours, and

B is the total number of reckonable weeks of such service.

Limitations
on the
reckoning
of qualified
employment.

4.

The provisions of article 3 entitling a qualified person to reckon any period of service as qualified employment shall be subject to the overriding qualification that he shall not be entitled so to reckon a particular period more than once nor shall he be entitled so to reckon any of the following:

- (a) service in any week in which he served for less than ten hours,
- (b) service as a part-time fireman for which he is eligible for any ex-gratia payment on termination of service,
- (c) service, other than as a part-time fireman, for which any ex-gratia payment on termination of service was made, save that where the amount of the gratuity which would otherwise be payable under these Regulations, apart from this paragraph, exceeds such ex-gratia payment, a gratuity amounting to the difference between the said ex-gratia payment and the said gratuity may be paid,
- (d) service in respect of which he has already received a lump sum or pension or a preserved lump sum or pension or a gratuity or a return of contributions under any Scheme or Act relating to superannuation or service which was transferred in respect of him to any other body for superannuation purposes,
- (e) service given before a date on which he was removed or discharged from his position for misconduct or unfitness unless he was subsequently appointed to a position under the local authority or any other local authority,

- (f) any day which is a service day for the purposes of the Act of 1956 during a local financial year in respect of which his name is entered in the register of pensionable servants of a local authority maintained under section 30 of that Act,
- (g) any day which is a service day for the purposes of the Revision Scheme of 1984 during a local financial year in respect of which his name is entered in Part II of the Superannuation Revision Scheme Register of a local authority maintained under article 4 of that Scheme.

Power to
grant gratuity.

5. (1) Where -

- (a) a qualified person ceases to hold office or employment with a local authority -
 - (i) on or after the 27th day of May, 1977 and before the 10th day of January, 1984, having not less than seven years' qualified employment, or
 - (ii) on or after the 10th day of January 1984, having not less than five years' qualified employment,

and is not employed in a position

- (I) in which his service as such qualified person may become reckonable for the purposes of the Act of 1956, the Revision Scheme of 1984, these Regulations, or any other Scheme or Act relating to superannuation, or
 - (II) in which his service as such qualified person may not become reckonable due to the exercise or the non-exercise of an option at any time under the superannuation provisions applicable to him at that time, and
- (b) the local authority either are of opinion that in general he has served in such qualified employment with diligence and fidelity and to their satisfaction or, not being of that opinion, they nevertheless decide that, in the special circumstances of his case, he should be granted a reduced gratuity,

the local authority may, subject to the sanction of the Minister, grant to him (or, in the case of his death and subject to paragraph (c), to his legal personal representative) a gratuity in any of the specified circumstances in sub-article (2) save that a gratuity shall not be granted to or in respect of a qualified person where there is a claim for

compensation for injury or otherwise against the local authority or where any such compensation is paid by or on behalf of the local authority,

- (c) Notwithstanding the foregoing provisions of this article the gratuity may, as respects a qualified person who dies in his qualified employment on or after the 10th day of January, 1984, and who is married at the date of death, be granted at the discretion of the local authority to the widow, widower or legal personal representative as appropriate.
- (2) The specified circumstances referred to in sub-article (1) are as follows:-
- (a) where the person, having attained the age of sixty years or more, has ceased to hold his qualified employment otherwise than by removal or discharge,
 - (b) where the person was removed or discharged from his qualified employment for any cause other than misconduct or unfitness,
 - (c) where the person has ceased to hold his qualified employment on account of his having become incapable of performing his duties by reason of permanent infirmity of mind or body or old age,
 - (d) where the person ceased to hold his qualified employment by reason of redundancy or, having been an officer, his office was abolished,
 - (e) where the person, being a qualified person by virtue of paragraph (b) of the definition of "qualified person" in article 2, ceased to hold office or employment as a pensionable officer or servant or as a registered officer or employee, such cesser being due to death, permanent infirmity of mind or body from performing the duties of his office or employment, or such other circumstances where he is awarded a pension, or, being over 60 years of age, would be awarded a pension if he had sufficient reckonable service to qualify for a pension.
 - (f) where the person dies while in his qualified employment and a gratuity might have been granted to him if at the time of death he had retired from such employment by reason of permanent infirmity of mind or body.

- (3) (a) (i) Subject to paragraph (b), the amount of a gratuity to be paid to or in respect of a qualified person under sub-article (1) shall, subject to sub-paragraphs(ii) and (iii), be equal to his weekly remuneration at date of cesser of qualified employment multiplied by the number of years in his qualified employment together with, where his qualifying employment comprises a fraction of a year in addition to a multiple of years, that fraction.
- (ii) Where the person's qualified employment exceeds 15 years the gratuity in respect of each year together with any fraction of a year which is in excess of 15 years, shall, subject to sub-paragraph (iii), be calculated by reference to twice his weekly remuneration.
- (iii) The maximum gratuity which may be paid under this sub-article to or in respect of a qualified person shall not exceed 78 times his weekly remuneration.
- (b) The gratuity in the case of a qualified person whose qualified employment consists partly of wholetime employment and partly of part-time employment shall be determined by the formula

$$\frac{[(A \times C) + (B \times D)] \times F}{E}$$

where

- A is the number of years of wholetime employment together with, where the wholetime employment comprises a fraction of a year in addition to a year or a multiple of years, that fraction,
- B is the number of years of part-time service together with, where the part-time employment comprises a fraction of a year in addition to a year or a multiple of years, that fraction,
- C is the remuneration which would apply under the definition of weekly remuneration if he held the wholetime employment at the date of cesser of the qualified employment,
- D is the remuneration which would apply under the definition of weekly remuneration if he held the part-time employment at the date of cesser of the qualified employment,
- E is the aggregate of A + B,

F is the aggregate of A + B where such aggregate does not exceed 15 years; otherwise, subject to a maximum of 78, it means the aggregate of A + B together with the excess of that aggregate over 15 years.

- (4) Where a local authority decide under sub-article (1) to grant a reduced gratuity, they shall reduce the amount of the gratuity below the rate that would be appropriate therefor under sub-article (3) and to an extent not less than fifty per cent.
- (5) The provisions of the foregoing sub-articles shall be applied to or in respect of a qualified person who ceased to hold his qualified employment prior to the 27th day of May, 1977, having not less than seven years' qualified employment, provided that he was alive on that date and for this purpose reference in article 3(1) -
 - (a) to the Act of 1945 shall be construed as including any earlier Act relating to superannuation as may have applied to him, and
 - (b) to the Act of 1956 shall be construed as including any earlier Act relating to superannuation as may have applied to him.

Application
of certain
provisions of
the Act of
1956 to these
Regulations.

6.

- (a) The provisions of section 55 of the Act of 1956 shall apply to the payment of a gratuity under these Regulations as if it were a gratuity under that Act.
- (b) The provisions of section 57 of the Act of 1956 shall apply in respect of gratuities paid under these Regulations in relation to any service with a local authority, other than with the local authority which granted the gratuity, which was taken into account for the purpose of determining the amount of the gratuity.

GIVEN under the Official Seal
of the Minister for the
Environment this 18th day of
December, 1984.

L.S.

Liam Kavanagh

Minister for the Environment

The Minister for the Public Service, hereby consents to the making of these Regulations.

GIVEN under the Official Seal
of the Minister for the
Public Service this 18th day of
December, 1984.

L.S.-

John Boland

Minister for the Public Service

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The effect of these Regulations is to make provision for the payment of a gratuity on retirement to persons employed by local authorities who because of the conditions of their employment are not eligible to be pensionable.

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