
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 141

**The Local Government Pension
Scheme (Scotland) Regulations 2018**

PART 2

Administration

Decisions

First instance decisions

67.—(1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) In relation to any employment in which a person is a member or prospective member, the appropriate administering authority must decide—

- (a) any question concerning the person's previous service or employment;
- (b) any question about counting additional periods as membership or crediting additional pension.

(3) Such a decision must be made as soon as is reasonably practicable after the person becomes a member in the employment.

(4) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount.

(5) That decision must be made as soon as is reasonably practicable after the event by virtue of which the entitlement arises or may arise.

(6) Any question whether a person is entitled to a benefit under the Scheme must be decided by the Scheme employer who last employed the person.

(7) That decision must be made as soon as is reasonably practicable after the earlier of—

- (a) the date the employment ends; or
- (b) the date specified in the notification mentioned in regulation 5(4) or, where relevant, the date referred to in regulation 5(5) (ending active membership).

(8) In paragraphs (4) and (6) "benefit" includes a return of contributions.

(9) Any question concerning what rate of contribution a member is liable to pay to the appropriate fund must be decided by the member's Scheme employer.

(10) Other questions in relation to any member or prospective member must be decided by the member's Scheme employer as soon as is reasonably practicable after the member or prospective member becomes a member or a material change affects his or her employment.

Notification of first instance decisions

68.—(1) Every person whose rights or liabilities are affected by a decision under regulation 67 (first instance decisions) must be notified of it in writing by the body which made it as soon as is reasonably practicable.

(2) A notification of a decision that the person is not entitled to a benefit must include the grounds for the decision.

(3) A notification of a decision about the amount of a benefit must include a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

- (a) refer to the rights available under regulations 69 (applications to resolve disagreements) and 71 (reference of disagreement for reconsideration by Scottish Ministers);
- (b) specify the time limits within which the rights under those regulations may be exercised; and
- (c) specify the job title and the address of the person to whom applications under regulation 69 (applications to resolve disagreements) may be made.

Applications to resolve disagreements

69.—(1) This regulation applies where there is a disagreement about a matter in relation to the Scheme between a member (or an alternative applicant) and a Scheme employer or the administering authority.

(2) For the purposes of this Regulation, the following persons are alternative applicants—

- (a) a widow, widower or surviving civil partner or cohabiting partner of a deceased member;
- (b) a dependant of a deceased member or any other person to whom benefits in respect of the member may be paid;
- (c) a prospective member;
- (d) a person who ceased to be a member, or to fall within any of sub-paragraphs (a) to (c), during the period of 6 months ending with the date of the application; and
- (e) in the case of a disagreement relating to the question whether a person claiming to be a member or to fall within any of sub-paragraphs (a) to (d) does so, the claimant.

(3) The member or, as the case may be, the alternative applicant may apply to—

- (a) the person specified under regulation 68(5)(c) (notification of first instance decision) to give a decision on the disagreement; or
- (b) the appropriate administering authority for that authority to refer the disagreement to a person for decision.

(4) An application for a decision under paragraph (3) must—

- (a) set out the applicant's full name, address and date of birth;
- (b) include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;
- (c) be signed by or on behalf of the applicant; and
- (d) be accompanied by a copy of any written notification under regulation 68 (notification of first instance decision).

(5) An application by—

- (a) a member or prospective member;
 - (b) a person who ceased to be a member or prospective member during the period of 6 months ending with the date of the application; or
 - (c) a person claiming to be a person within sub-paragraph (a) or (b),
- must also set out their national insurance number (if any) and the name of their Scheme employer.

(6) An application by any other person must also set out—

- (a) that person's relationship to the member; and
- (b) the member's full name, address, date of birth and national insurance number (if any) and the name of the member's Scheme employer.

(7) An application must be made before the end of—

- (a) the period of 6 months beginning with the relevant date; or
- (b) such longer period as the person giving the decision on the disagreement considers reasonable.

(8) The relevant date is—

- (a) in the case of a disagreement relating to a decision under regulation 67 (first instance decisions), the date notification of the decision is given under regulation 68 (notification of first instance decision); and
- (b) in any other case, the date of the act or omission which is the cause of the disagreement or, if there is more than one, the last of them.

(9) Paragraph (7)(b) does not apply where an appeal has been made under regulation 74(1) (appeals by administering authorities) in respect of a matter that is the subject of an application under this regulation.

Notice of decisions on disagreements

70.—(1) Subject to paragraph (2), a decision on a disagreement to which an application under regulation 69 (applications to resolve disagreements) relates must be given by notice in writing to—

- (a) the applicant;
- (b) the Scheme employer; and
- (c) if the Scheme employer is not the appropriate administering authority, to that authority,

before the expiry of the period of 2 months beginning with the date the application was received.

(2) If no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out—

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision.

(3) A notice under paragraph (1) must include—

- (a) a statement of the decision;
- (b) a reference to any legislation or provisions of the Scheme on which the person making the decision relied;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (d) a reference to the rights of the applicant and the Scheme employer's right to refer the disagreement for reconsideration by the Scottish Ministers under regulation 71 (reference of disagreement for reconsideration by Scottish Ministers) and to the time within which the applicant may do so; and

- (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme that remains unresolved including the address at which the Pensions Advisory Service may be contacted.

Reference of disagreement for reconsideration by Scottish Ministers

71.—(1) This regulation applies where an application about a disagreement has been made under regulation 69 (applications to resolve disagreements) and—

- (a) notice of a decision has been given under regulation 70(1) (notice of decisions on disagreements);
- (b) an interim reply has been sent under regulation 70(2) but no such notice has been given before the expiry of the period of one month beginning with the expected decision date; or
- (c) no such notice has been given or interim reply sent before the expiry of the period of 3 months beginning with the date the application was made.

(2) The applicant under regulation 69 (applications to resolve disagreements) may, before the expiry of the period of 6 months beginning with the relevant date, make an application to the Scottish Ministers to reconsider the disagreement.

(3) The relevant date is—

- (a) in a case falling within paragraph (1)(a), the date of the notice given under regulation 70(1) (notice of decisions on disagreements);
- (b) in a case falling within paragraph (1)(b), the date on which the period mentioned in that sub-paragraph expires; and
- (c) in a case falling within paragraph (1)(c), the date on which the period mentioned in that sub-paragraph expires.

(4) The application must—

- (a) set out the applicant's full name, address and date of birth;
- (b) set out details of the grounds on which it is made (including any relevant supporting documentation);
- (c) include a statement that the applicant wishes the disagreement to be reconsidered by the Scottish Ministers;
- (d) be accompanied by a copy of any written notification under regulation 70 (notice of decisions on disagreements); and
- (e) be signed by or on behalf of the applicant.

(5) An application by a member or prospective member or a person claiming to be such must also set out his or her national insurance number (if any) and the name of the Scheme employer.

(6) An application by any other person must also set out—

- (a) the person's relationship to the member; and
- (b) the member's full name, address, date of birth and national insurance number (if any) and the name of the member's Scheme employer.

(7) Where notice of a decision on the disagreement has been given under regulation 70 (notice of decisions on disagreements), the application must also—

- (a) state why the applicant is dissatisfied with that decision; and
- (b) be accompanied by a copy of that notice.

(8) The Scottish Ministers must determine—

- (a) the procedure to be followed when exercising their functions under this regulation; and

- (b) the manner in which those functions are to be exercised.

Notice of decisions on reconsideration of disagreement

72.—(1) Subject to paragraph (2), the Scottish Ministers must give their decision on an application under regulation 71 (reference of disagreement for reconsideration by Scottish Ministers) by notice in writing to—

- (a) the applicant; and
- (b) the Scheme employer,

before the expiry of the period of 2 months beginning with the date the application was received.

(2) If no such notice is given before the expiry of that period an interim reply must immediately be sent to those parties setting out—

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision.

(3) A notice under paragraph (1) must include—

- (a) a statement of the decision;
- (b) in a case where a decision was given under regulation 70 (notice of decisions on disagreements), an explanation of whether and, if so, the extent to which that decision is confirmed or replaced;
- (c) a reference to any legislation or provisions of the Scheme on which the authority relied;
- (d) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme which remains unresolved including the address at which the Pensions Advisory Service may be contacted; and
- (f) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes Act 1993⁽¹⁾ including the address at which the Pensions Ombudsman may be contacted.

Rights of representation

73.—(1) An application under regulation 69 (applications to resolve disagreements) or 71 (reference of disagreement for reconsideration by Scottish Ministers) may be made or continued on behalf of the applicant by a representative nominated by the applicant.

(2) Where a person who has the right to make or has made such an application dies, the application may be made or continued on the person's behalf by the person's executor.

(3) Where such a person is under a legal disability because of nonage or is or becomes otherwise incapable of acting for himself or herself, the application may be made or continued on the person's behalf by a member of the person's family or some other person suitable to represent the person.

(4) Where a representative is nominated before an application is made, the application must specify the representative's full name and address and whether that address is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used the representative must be sent a copy of—

(1) 1993 c.48.

- (a) a notice under regulation 70(1) (notice of decisions on disagreements) or 72(1) (notice of decisions on reconsideration of disagreement); or
- (b) an interim reply under regulation 70(2) (notice of decisions on disagreements) or 72(2) (notice of decisions on reconsideration of disagreement).

Appeals by administering authorities

74.—(1) This regulation applies where a Scheme employer—

- (a) has decided, or failed to decide, any question falling to be decided by that employer under regulation 67 (first instance decisions) (otherwise than in the exercise of a discretion); and
- (b) is not an administering authority.

(2) The administering authority maintaining the pension fund to which the Scheme employer pays contributions may appeal to the Scottish Ministers to decide the question.

(3) Such an appeal must be made by notice in writing given before the end of—

- (a) the period of 6 months beginning with the relevant date; or
- (b) such longer period as the Scottish Ministers consider reasonable.

(4) The relevant date is—

- (a) in the case of an appeal relating to a decision notified under regulation 68(1), the date of the notification of the decision; and
- (b) in the case of an appeal relating to a failure to decide any question, the date of that failure.

(5) For the purposes of paragraph (4)(b), a Scheme employer is to be taken to have failed to decide a question at the expiry of the period of 3 months beginning with the date on which the administering authority have requested a decision in writing.

(6) The Scottish Ministers must issue their decision on the appeal by notice in writing to the appellant and to any other person appearing to them to be affected by it.

(7) Paragraph (8) applies where any other person—

- (a) has made an application under regulation 69 (applications to resolve disagreements) or 71 (reference of disagreement for reconsideration by Scottish Ministers) which has not been determined in respect of any of the matters which are the subject of an appeal under this regulation; or
- (b) makes such an application—
 - (i) at the same time as such an appeal is made; or
 - (ii) after such an appeal is made and before it is determined.

(8) The appeal must be sisted—

- (a) pending notification of a decision under regulation 70 (notice of decisions on disagreements) or 72 (notice of decision on reconsideration of disagreement); or
- (b) until the application is withdrawn.

Exchange of information

75.—(1) A Scheme employer must—

- (a) inform the appropriate administering authority of all decisions made by the employer under regulation 67 (first instance decisions) or given under regulation 70 (notice of decisions on disagreements) by a person appointed by the Scheme employer under regulation 68(5)(c) (notification of first instance decisions) concerning members; and

- (b) give that authority such other information as it requires for discharging its Scheme functions.

(2) If—

- (a) an administering authority makes any decision under regulations 67 (first instance decisions) or 70 (notice of decisions on disagreements) about a person for whom it is not the Scheme employer; and
- (b) information about that decision is required by the person's Scheme employer for discharging that employer's Scheme functions,

that authority must give that employer that information if asked to supply it.

(3) Within 3 months of the end of each Scheme year, each Scheme employer must give a statement to the appropriate administering authority giving the following details in respect of each employee who has been an active member during the Scheme year—

- (a) the employee's name and gender;
- (b) the employee's date of birth and national insurance number;
- (c) a unique reference number relating to each employment in which the employee has been an active member; and
- (d) the information relating to the employee for the Scheme year in question for each employment which is specified in paragraph (4).

(4) The information required by paragraph (3)(d) is—

- (a) the dates of active membership;
- (b) the pensionable pay received and employee contributions deducted while regulation 9 (contributions) applied;
- (c) the pensionable pay received and employee contributions deducted while regulation 10 (temporary reduction in contributions) applied;
- (d) any contributions by the employer in relation to the employee's pensionable pay;
- (e) any contributions by employee or employer under regulation 16 (additional pension contributions); and
- (f) any contributions by employee or employer under regulation 17 (additional voluntary contributions).

Interest on late payment of certain benefits

76.—(1) Where all or part of a pension or lump sum payment due under these Regulations (other than a payment due under regulation 17 (additional voluntary contributions)) is not paid within the relevant period after the due date, an administering authority must pay interest on the unpaid amount to the person to whom it is payable.

(2) The relevant period is—

- (a) in the case of a survivor pension, the period ending one month after the date on which the administering authority receives notification of the member's death;
- (b) in the case of any other pension, one year; or
- (c) in the case of a lump sum payment, one month.

(3) The due date is—

- (a) in the case of a pension, the date on which it becomes payable;
- (b) in the case of a lump sum under regulation 32 (election for lump sum instead of pension) the benefit crystallisation event date;

- (c) in the case of a death grant, the date on which the member dies or, where notification of death is received more than 2 years after the date of death, the date of notification; or
- (d) in the case of a lump sum under regulation 33 (commutation and small pensions) the date of the commutation election or, if later, the nominated date within the meaning of paragraph 7(3) of Part 1 of schedule 29 of the Finance Act 2004⁽²⁾.

(4) Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with 3-monthly rests.

Payments due in respect of deceased persons

77.—(1) Paragraph (2) applies if, when a person dies, the total amount due to that person's personal representatives under the Scheme (including anything due at that person's death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965⁽³⁾ and applying in relation to that person's death.

(2) An administering authority may pay the whole or part of the amount due from its pension fund to—

- (a) a person's personal representatives; or
- (b) any person or persons appearing to the authority to be beneficiaries to the estate,

without the production of confirmation of the person's estate.

(3) Such a payment discharges that authority from accounting for the amount paid.

Payments for persons incapable of managing their affairs

78. If it appears to an administering authority that a person is entitled to payment of benefits under the Scheme but is incapacitated (within the meaning of section 1 of the Adults with Incapacity (Scotland) Act 2000)⁽⁴⁾—

- (a) the authority may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the authority may determine, to be applied for the benefit of the person entitled; and
- (b) in so far as the authority does not pay the benefits in that manner, the authority may apply them in such manner as the authority may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

Non-assignability

79.—(1) Every benefit to which a person is entitled under the Scheme is payable to or in trust for that person.

(2) No such benefit may be assigned or charged and any such assignment or charge is void.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with a debtor contribution order fixed by the Accountant in Bankruptcy under section 90(1) of the Bankruptcy (Scotland) Act 2016⁽⁵⁾ or varied by a debtor's trustee under section 95(1) of that Act.

(2) 2004 c.12.

(3) 1965 c.32; there are amendments to section 6 which are not relevant to this instrument.

(4) 2000 asp 4.

(5) 2016 asp 21.

Deduction and recovery of member's contributions

80.—(1) A Scheme employer may deduct from a person's pay any contributions payable by the member under these Regulations.

(2) Sums payable under regulation 13(1) (contributions during reserve forces leave) may be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(6), to the extent that they are payable in respect of the same period.

(3) An administering authority may recover any contributions or sum remaining due and not deducted under paragraph (1) or (2)—

- (a) as a debt arising under a contract in any court of competent jurisdiction; or
- (b) by deducting it from any payment by way of benefits to or in respect of the person in question under these Regulations.

(4) But the sums mentioned in paragraph (2) are only recoverable under paragraph (3) if unpaid for 12 months after the person ceases to perform relevant reserve forces service.

(5) If—

- (a) a Scheme employer deducts in error any amount in respect of contributions from a person's pay or any other sum due to that person; and
- (b) the amount has not been repaid before the expiry of the period of one month beginning with the date of the deduction,

the appropriate body must pay interest on the amount, and the due date for the calculation of the interest payable is the date of the deduction.

(6) Where the employee's contributions have been paid into a fund, the repayment and any interest must be made out of that fund.

(7) Interest must be calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with 3-monthly rests.

(8) The "appropriate body" for the purposes of paragraph (5) is—

- (a) the appropriate administering authority, where the employee's contributions have been paid into a fund; and
- (b) the person's Scheme employer where the employee's contributions have not yet been paid into a fund.

Joint liability in respect of annual allowance charge

81.—(1) This regulation applies where a member gives notice to the appropriate administering authority of joint and several liability under section 237B (liability of scheme administrator) of the Finance Act 2004(7) in respect of the member's annual allowance charge.

(2) Where the joint liability amount specified in the notice is met by the pension fund, the appropriate administering authority must reduce the value of the member's rights accrued under the Scheme in accordance with actuarial guidance issued by the Scottish Ministers.

(6) 1951 c.65. Part 5 has been amended by the Police and Magistrates' Court Act 1994 (c.29), schedule 9(2), paragraph 1, the Fire and Rescue Services Act 2004 (c.21), schedule 1, paragraph 12(2), the Civil Partnership Act 2004 (c.33), schedule 26, paragraph 26, S.I. 2004/2306, S.I. 2014/560 and S.S.I. 2014/3229.

(7) 2004 c.12. Section 237B was inserted by the Finance Act 2011 (c.11), schedule 17(1), paragraph 15 and is amended by the Finance Act 2013 (c.29), schedule 46(4), paragraph 129, the Taxation of Pensions Act 2014 (c.30), schedule 1(4), paragraph 68, S.I. 2015/80, S.I. 2015/1810 and S.I. 2017/468.

Tax

82. The appropriate administering authority may deduct from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.

Pension increase under the Pension Schemes Act 1993

83. Any increase of pension required by reason of Chapter 3 of Part 4 of the Pension Schemes Act 1993 (protection of increases in guaranteed minimum pensions: anti-franking)⁽⁸⁾ must be paid from the appropriate fund held by the administering authority.

Annual benefit statements

84.—(1) An administering authority must issue an annual benefit statement to each of its active, deferred and pension credit members.

(2) Subject to paragraph (3), the statement must be issued no later than 5 months after the end of the Scheme year to which it relates.

(3) A statement must be issued before the end of the 5 month period mentioned in paragraph (2) where a member makes a request in writing to the administering authority, unless that authority is unable to comply with the request because relevant data is not available.

(4) The statement for an active member must be provided in accordance with section 14 of the Public Services Pensions Act 2013⁽⁹⁾.

Information to be supplied by employees

85.—(1) Before the expiry of 3 months beginning with the date on which a person becomes a member, the Scheme employer must ask the member in writing for the documents specified in paragraph (2).

(2) Those documents are—

- (a) a statement in writing listing all the person's previous periods of membership of a public service pension scheme (including the Scheme); and
- (b) copies of all notifications previously given to the member under these Regulations and their equivalents under any previous Regulations.

(3) A request under this regulation must contain a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining the member's rights under the Scheme.

(4) The Scheme employer need not request any documents if it is satisfied that it, or the appropriate administering authority (if different), already has all material information.

⁽⁸⁾ 1993 c.48 amended by S.I. 2005/2050 and the Pensions Act 2014 (c.19), schedule 13(1), paragraph 38.

⁽⁹⁾ 2013 c.25.