
STATUTORY RULES OF NORTHERN IRELAND

2000 No. 177

**Local Government Pension Scheme
Regulations (Northern Ireland) 2000**

Part J

Decisions and Appeals

Initial decisions

J1.—(1) Any question concerning the rights or liabilities under these regulations of any person other than a LGPS employer shall be decided in the first instance by the relevant body.

(2) Where the body by which any such question falls to be decided is ascertainable by reference to regulation J2 or J3, for the purposes of this Part that body shall be the relevant body.

(3) Where the Committee is considering whether—

- (a) a person who has ceased to hold a local government employment is entitled to a benefit under regulation D7 or D8, or
- (b) for the purposes of regulation D11, the appropriate date in relation to a person is to be ascertained under paragraph (2)(b) of that regulation,

it shall refer for decision to an independent registered medical practitioner appointed by the Committee who is qualified in occupational health medicine, the following questions—

- (i) whether at the time that employment ceased, in the case of entitlement under regulation D7 or D8, or at the date in question, in the case of regulation D11, the person was, on the balance of probabilities, permanently incapable of discharging efficiently the duties of the local government employment he had ceased to hold and, if so,
- (ii) whether the permanent incapacity was by reason of ill-health or infirmity of mind or body.

(4) The decision of the independent registered medical practitioner on the questions referred to him under paragraph (3) shall be expressed in the form of a certificate.

(5) In paragraph (3)—

- (a) “permanently incapable” means incapable until, at the earliest, the member’s 65th birthday, and
- (b) “qualified in occupational health medicine” means holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State (which has the meaning given by the European Specialist Medical Qualifications Order 1995)(1) or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

Decisions as to status of employees

- J2.**—(1) A LGPS employer shall decide in relation to each of its employees who is a member—
- (a) whether he is an officer or a manual worker,
 - (b) whether he is a whole-time, a variable-time or a part-time employee, and whether his employment is of a casual nature,
 - (c) which of his emoluments are remuneration on which contributions are payable, and
 - (d) if he is a part-time employee—
 - (i) the proportion which his contractual minimum hours of employment in each week bear to those of a comparable whole-time employment, and
 - (ii) if paragraph (4)(iii) of regulation B3 applies to his contractual hours, the average number of those hours for the purposes of that paragraph.
- (2) In relation to any employment in which a person is a member, the Committee is to decide—
- (a) what previous service or employment (if any) he is entitled to count as a period of membership or a period to which Part II of Schedule B1 applies,
 - (b) whether any, and if so what, periods of service as a part-time employee are included in such a period,
 - (c) what proportion of whole-time service his service during any such period represents,
 - (d) whether a payment in lieu of contributions has been made or equivalent pension benefits have been assured under Part III of the Insurance Act in respect of any period of non-participating employment,
 - (e) what rate of contribution the employee is liable to pay to the fund,
 - (f) whether he is entitled to count as a period of membership—
 - (i) any, and if so how many, added years, or
 - (ii) any, and if so what, additional period, and
 - (g) whether for the purposes of Schedule C4 he is a Class A member, a Class B member or a Class C member (within the meaning of that Schedule).
- (3) The questions specified in paragraph (1) shall be decided as soon as is reasonably practicable after—
- (a) the person becomes a member, or
 - (b) any change occurs in the number of the member's regular or usual hours of employment, or
 - (c) any other material change occurs in or in relation to the employment.
- (4) The questions specified in paragraph (2) shall be decided as soon as is reasonably practicable after the person becomes a member of the Scheme in respect of the relevant employment.

Decisions as to benefits

- J3.**—(1) Any question as to whether a person is entitled to a benefit under these regulations is to be decided by the Committee.
- (2) Where a person is or may become entitled to a benefit payable out of the fund, the Committee shall decide the amount of the benefit.
- (3) In this regulation “benefit” includes a return of contributions and a benefit specified in regulation F6(11) or (14) of the 1992 regulations.
- (4) The decision under paragraph (1) shall be made as soon as is reasonably practicable after the cessation of the employment or, as the case may be, the death of the employee and that under

paragraph (2) as soon as is reasonably practicable after the occurrence of the event by virtue of which the entitlement arises or may arise.

Notification of decisions

J4.—(1) A body which has decided any question under regulations J1 to J3 shall, as soon as is reasonably practicable after doing so, send a written notification of its decision to every person whose rights or liabilities are affected.

(2) The notification shall include—

- (a) in the case of a decision that the person is not entitled to a benefit, the grounds for the decision,
- (b) in the case of a decision as to the amount of a benefit, a statement showing how the amount is calculated,
- (c) in the case of a notification under (a) or (b) a conspicuous statement directing the person's attention—
 - (i) to the address from which he may obtain further information about the decision, including details of any calculation of service or benefits;
 - (ii) to his right under regulation J5 to make an application to an appointed person, the address at which he may be contacted and his job title; and
 - (iii) to his right under regulation J7 to apply to the Committee for a reconsideration of the matter within the time limit referred to in that regulation.
- (d) in the case of a decision by a LGPS employer made under regulation J2(1), a conspicuous statement directing the person's attention—
 - (i) to the address from which he may obtain further information about the decision, and
 - (ii) to his right of appeal to the county court under regulation J10.

Appointment of persons to resolve disputes

J5.—(1) The Committee shall appoint a panel of persons it considers to be suitably qualified for resolving disagreements in respect of which an application is made under regulation J6(1).

(2) The members of such a panel are the appointed persons for the purposes of this Part of the regulations.

(3) A disagreement in respect of which an application is made under regulation J6(1) may be decided by one or more appointed persons.

(4) An appointed person shall hold and vacate office under the terms of the instrument under which he is appointed by the Committee but may resign by notice in writing to the Committee.

(5) The Committee shall prescribe the procedure to be followed by the appointed persons in the exercise of their functions under these regulations and the manner in which their functions are to be exercised.

(6) An application under regulation J6 shall not be referred to an appointed person for a decision where the appointed person has previously been involved in the subject matter of the disagreement.

Application for a decision

J6.—(1) Where a complainant disagrees with a decision made under regulations J1(3), J2(2) and J3 in relation to the Scheme, the complainant may make a written application—

- (a) to the appropriate appointed person, or
- (b) to the Committee to refer to the appointed person to give a decision on such a disagreement.

(2) An application under this regulation may be made or continued on behalf of a complainant by a representative nominated by him.

(3) Where a complainant dies or is a minor or is otherwise incapable of acting for himself, an application may be made or continued on his behalf—

- (a) in the case of his death, by his personal representative, or
- (b) in any other case, by a member of his family or some other person suitable to represent him.

(4) An application for a decision shall set out particulars of the disagreement in respect of which a decision is sought.

(5) The particulars shall include—

- (a) where the complainant is a person described in either regulation J11(a)(i), (iii) or (iv) or a person claiming to be such under regulation J11(a)(v), the full name, address, date of birth, national insurance number (if applicable) of the complainant and the name of his employing authority;
- (b) where the complainant is a person described in regulation J11(a)(ii), or a person claiming to be such under regulation J11(a)(v), the full name, address and date of birth of the complainant, his relationship to the member and the full name, date of birth and national insurance number of the member and the name of his employing authority;
- (c) the full name and address of any representative acting on behalf of the complainant and whether such address is the address to be used for service on the complainant of any documents in connection with the disagreement;
- (d) a statement as to the nature of the disagreement with sufficient details to show why the complainant is aggrieved; and
- (e) a copy of any written notification issued under regulation J4(1).

(6) The application shall be signed by or on behalf of the complainant.

(7) An appointed person shall not consider an application unless it is received by him before the end of the period of six months beginning with the relevant date or such further period as the appointed person considers reasonable.

(8) Where the disagreement relates to a decision notified under regulation J4(1), the relevant date is the date of that notification.

(9) In any other case, the relevant date is the date of the act or omission complained of or, if there is more than one of them, the last of them.

(10) The appropriate appointed person in relation to a complainant is any appointed person appointed by the Committee.

Notice of a decision

J7.—(1) Subject to paragraph (3), a decision on the matters raised by an application under regulation J6 shall be issued by the appointed person to the complainant or where applicable, his representative by notice in writing within two months from the date on which the particulars specified in regulation J6(5) were received.

(2) The notice shall include—

- (a) a statement of the decision;
- (b) a reference to any legislation relied upon;
- (c) a reference to such parts of these regulations relied upon and, where a discretion has been exercised, a reference to such parts of these regulations by which such discretion is conferred;

- (d) a reference to the right of the complainant to refer the disagreement for reconsideration by the Committee within the time limit described in regulation J8(1); and
- (e) a statement that OPAS (the Pensions Advisory Service)⁽²⁾ is available to assist members and beneficiaries of the Scheme in connection with any difficulty with the Scheme which remains unresolved and the address at which OPAS may be contacted.

(3) If, in any case, written notice of a decision under this regulation is not issued within two months from the date on which particulars of the disagreement were received, an interim reply must immediately be sent to the complainant or, where applicable, his representative, setting out the reasons for the delay and an expected date for issuing the decision.

Referral of disagreement to the Committee

J8.—(1) An application to the Committee to reconsider a disagreement in respect of which a decision referred to in regulation J6 has been made may be made by the complainant or a representative nominated by him within six months from the date of the notice of the decision and shall set out particulars of the grounds on which the application is made.

(2) The particulars shall include—

- (a) where the application is made by or on behalf of the complainant, the matters referred to in regulation J6(5);
- (b) a copy of the notice of the decision made under regulation J7;
- (c) a statement of the reasons why the complainant is dissatisfied with the decision made under regulation J7; and
- (d) a statement that the complainant wishes the disagreement to be reconsidered by the Committee.

(3) An application may also be made by a complainant or a representative appointed by him to the Committee to consider a disagreement and to make a decision where an application has been made to an appointed person under regulation J6 and that person has failed to issue—

- (a) a written notice of a decision or an interim reply within three months from the date on which the application was made; or
- (b) where an interim reply has been sent, a written notice of decision within one month from the expected date for issuing the decision stated in that reply.

(4) An application made under paragraph (3) shall set out particulars of the grounds on which the application is made which shall include—

- (a) the matters referred to in regulation J6(5); and
- (b) a statement that the complainant wishes the disagreement to be considered by the Committee.

(5) An application made under this regulation shall be signed by or on behalf of the complainant as appropriate.

Notice of decision from the Committee

J9.—(1) Subject to paragraph (3), the Committee shall issue to the complainant or, where applicable, his representative, a notice in writing of its decision on the matters raised under regulation J8 within two months from the date on which the particulars specified in regulation J8(2) or J8(4) are received by it.

(2) OPAS Limited is a company limited by guarantee under the Companies Act 1985 (c. 6): registered number 2459671. The Occupational Pensions Advisory Service's address for correspondence is 11 Belgrave Road, London, SW1V 1RB

(2) The notice shall include—

- (a) a statement of the decision and an explanation as to whether and, if so, to what extent that decision either confirms or replaces the decision made under regulation J7;
- (b) a reference to any legislation relied upon;
- (c) a reference to such parts of these regulations as were relied upon and, where a discretion has been exercised, a reference to such parts of these regulations by which such discretion is conferred;
- (d) a statement that OPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with any difficulty with the Scheme which remains unresolved and the address at which OPAS may be contacted; and
- (e) a statement that the Pensions Ombudsman appointed under section 145(2) of the Pension Schemes Act 1993⁽³⁾ may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with that Act and the address at which he may be contacted.

(3) If, in any case, written notice of a decision under this regulation is not issued within two months from the date on which particulars of the disagreement were received under regulation J8, an interim reply must immediately be sent to the complainant or, where applicable, his representative setting out the reasons for the delay and an expected date for issuing the decision.

Referral of decisions under regulation J2(1) to the county court

J10. Where a LGPS employer has either decided or failed to decide any such question as is mentioned in regulation J2(1), that question shall be determined by the county court having jurisdiction in the county in which such member or person as is mentioned in regulation J2(1) is employed or was last employed or, where that member or person is employed in 2 or more counties, in one of those counties.

Definitions

J11. In this Part—

- (a) “complainant” means a person who is—
 - (i) an active member, deferred member or pensioner member of the Scheme;
 - (ii) a widow, widower or surviving dependant of a deceased member of the Scheme;
 - (iii) a prospective member of the Scheme;
 - (iv) a person who ceased to be within any of the categories of persons referred to in sub-paragraphs (i) to (iii) above within the six months immediately preceding the date of an application under regulation J6 of these regulations; and
 - (v) where there is a disagreement which relates to a question whether a person who claims to be such a person as is mentioned in sub-paragraphs (i) to (iv) is such a person, the person so claiming;
- (b) “active member”, “deferred member” and “pensioner member” have the meaning given in Article 121(1) of the Pensions Order⁽⁴⁾ and in this Part of the regulations, a reference to “a member” shall, where the context permits, include a reference to a prospective member, a deferred member and a pensioner member as appropriate;
- (c) “prospective member” means any person who, under the terms of his contract of service or these regulations—

(3) 1993 c. 48

(4) S.I. 1995/3213 (N.I. 22)

- (i) is able, at his own option, to become a member of the Scheme,
 - (ii) will become so able if he continues in the same employment for a sufficiently long period,
 - (iii) will be admitted to the Scheme automatically unless he makes an election not to become a member, or
 - (iv) may be admitted to the Scheme subject to the consent of his employer, and
- in relation to a prospective member, the references to his employing authority, LGPS employer and the Committee shall be construed as references to the body that would be such under these regulations were he to become an active member of the Scheme.