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STATUTORY RULES OF NORTHERN IRELAND

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**2002 No. 352**

**Local Government Pension Scheme  
Regulations (Northern Ireland) 2002**

**PART IV**

**ADMINISTRATION**

**CHAPTER IV**

*DETERMINATIONS, INFORMATION AND RECORDS*

*Initial determinations of questions*

**First instance decisions**

**98.**—(1) Any question concerning the rights or liabilities under these regulations of any person other than a Scheme 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 this regulation or regulation 99, for the purposes of this Chapter that body shall be the relevant body.

(3) Where the Committee is considering whether a person who has ceased to hold a local government employment is entitled to a benefit under regulation 29 or 33(6), 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 –

(a) whether at the time that employment ceased, in the case of entitlement under regulation 29 or 33, or at the date in question, in the case of regulation 33, 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,

(b) 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) The independent registered medical practitioner must be in a position to certify, and must include in his certification a statement that –

(a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and

(b) he is not acting, and has not at any time acted, as the representative of the member, the Scheme employer or any other party in relation to the same case.

(6) 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<sup>(1)</sup>) 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 and decisions as to benefits**

**99.**—(1) The employing authority 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 whole-time, a variable-time or a part-time employee, or 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 the proportion which his contractual minimum hours of employment in each week bear to those of a comparable whole-time employment.

(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;
- (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 4 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.

(5) Any question as to whether a person is entitled to a benefit under these Regulations is to be decided by the Committee.

(6) 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.

(7) The decision under paragraph (5) 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

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(1) [S.I. 1995/3208](#), amended by [S.I. 1997/2928](#)

paragraph (6) as soon as is reasonably practicable after the occurrence of the event by virtue of which the entitlement arises or may arise.

(8) In this regulation “benefit” includes a return of contributions and a benefit specified in regulation F6(11) or (14) of the 1992 Regulations and Part N of the 2000 Regulations.

### **Notification of decisions**

**100.**—(1) A body which has decided any question under regulation 99 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 sub-paragraph (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 102 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 104 to apply to the Committee for a reconsideration of the matter within the time limit referred to in that regulation; and
- (d) in the case of a decision by an employing authority made under regulation 99, 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 107.

### *Resolution of disputes*

### **Appointment of persons to resolve disputes**

**101.**—(1) The Committee must appoint a panel of persons it considers to be suitably qualified for the purpose of resolving disagreements in respect of which an application is made under regulation 102.

(2) For this Chapter the persons appointed under paragraph (1) are “appointed persons”.

(3) An application under regulation 102 may be decided by one or more appointed persons (and references to “the appropriate appointed person”, in relation to any application, are to the appointed person or persons to whom the application in question is referred).

(4) An application must not be referred to a person who has previously been involved in the subject matter of the disagreement.

(5) An appointed person shall hold and vacate office under the terms of his appointment.

(6) But he may resign by notice in writing to the Committee.

(7) The Committee shall determine –

- (a) the procedure to be followed by the persons appointed by it when exercising their functions as appointed persons; and

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

### **Right to apply for an appointed person to review a decision**

**102.—**(1) Where there is a disagreement about a matter in relation to the Scheme between a member or an alternative applicant and the Committee, the member or, as the case may be, the alternative applicant may –

- (a) apply directly to the appropriate appointed person to decide the disagreement; or
- (b) apply to the Committee for it to refer the disagreement to an appointed person for decision.
- (2) These persons are alternative applicants –
  - (a) a widow, widower or surviving dependant of a deceased member or any other person to whom benefits in respect of him may be paid;
  - (b) a prospective member;
  - (c) a pension credit member;
  - (d) a person entitled to a pension credit;
  - (e) a person who ceased to be a member or to fall within sub-paragraph (a), (b), (c) or (d) during the period of six months ending with the date of the application; and
  - (f) in the case of a disagreement relating to the question as to whether a person claiming to be a member or to fall within sub-paragraph (a), (b), (c), (d) or (e) does so, the claimant.

(3) The application for a decision must set out particulars of the disagreement, including a statement as to its nature with sufficient details to show why the applicant is aggrieved.

- (4) An application by –
  - (a) a member or prospective member;
  - (b) a person who ceased to be such a person during the period of six months ending with the date of the application; or
  - (c) a person claiming to be a person within paragraph (a) or (b),

must set out his full name, address, date of birth, his national insurance number (if any) and the name of his employing authority.

- (5) An application by –
  - (a) a person entitled to a pension credit or a pension credit member;
  - (b) a person who ceased to be such a person or member during the period of six months ending with the date of the application; or
  - (c) a person claiming to be a person or member within sub-paragraph (a) or (b),

must set out his full name, address and date of birth.

- (6) An application by any other person must set out –
  - (a) his full name, address and date of birth;
  - (b) his relationship to the member; and
  - (c) the member's full name, address, date of birth and national insurance number and the name of his employing authority.

(7) The application must be signed by or on behalf of the applicant.

(8) The application must be accompanied by a copy of any written notification issued under regulation 100.

(9) The application must be made before the end of the period of six months beginning with the relevant date or such further period as the appropriate appointed person considers reasonable .

(10) Where the disagreement relates to a decision under regulation 99, the relevant date is the date notification of it is given under regulation 100.

(11) Otherwise, the relevant date is 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.

### **Notice of decisions by the appointed person under regulation 102**

**103.**—(1) A decision on the matters raised by an application under regulation 102 must be issued by the appropriate appointed person –

- (a) to the applicant; and
- (b) to the Committee,

by notice in writing before the expiry of the period of two months beginning with the date the application was received.

(2) But, if no such notice is issued before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1) setting out the reasons for the delay and an expected date for issuing the decision.

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

- (a) a statement of the decision;
- (b) reference to any legislation or provisions of the Scheme relied upon;
- (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 to refer the disagreement for reconsideration by the Committee under regulation 104, specifying the time within which he may do so; and
- (e) a statement that OPAS (the Pensions Advisory Service)<sup>(2)</sup> 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.

### **Reference of disagreement to the Committee**

**104.**—(1) Where an application about a disagreement has been made under regulation 102, an application may be made to the Committee to reconsider the disagreement by the person who applied under regulation 102.

(2) The application must set out particulars of the grounds on which it is made, including a statement that the applicant under this regulation wishes the disagreement to be reconsidered by the Committee.

(3) An application made by the person who applied under regulation 102 must set out the matters required by paragraph (4), (5) or (6), as the case may be, of that regulation to be included in his application.

(4) The application must be accompanied by a copy of any written notification issued under regulation 100.

(5) Where notice of a decision on the application under regulation 102 has been issued, the application under this regulation must state why the applicant is dissatisfied with that decision and be accompanied by a copy of that notice.

(6) The application must be signed by or on behalf of the person making it.

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(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

(7) An application for reconsideration may only be made before the expiry of the period of six months beginning with the relevant date.

(8) Where notice of a decision on the matters raised by the application under regulation 102 has been issued, the relevant date is the date of that notice.

(9) Where –

(a) an interim reply has been sent under regulation 103(2); but

(b) no notice of decision has been issued before the expiry of the period of one month beginning with the date specified in the reply as the expected date for issuing the decision,

the relevant date is the date with which that period expires.

(10) Where no notice of decision has been issued or interim reply has been sent before the expiry of the period of three months beginning with the date the application under regulation 102 was made, the relevant date is the date with which that period expires.

#### **Notice of decisions by the Committee under regulation 104**

**105.**—(1) The Committee must issue its decision on the matters raised by an application under regulation 104 to the parties to the disagreement by notice in writing before the expiry of the period of two months beginning with the date the application was received (but see paragraph (2)).

(2) If no such notice is issued before the expiry of that period, an interim reply must be sent immediately to those parties, setting out the reasons for the delay and an expected date for issuing the decision.

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

(a) a statement of the decision;

(b) in a case where there has been a decision made under regulation 103, an explanation as to whether and, if so, to what extent that decision is confirmed or replaced;

(c) a reference to any legislation or provisions of the Scheme relied upon;

(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 OPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with any difficulties with the Scheme which remain unresolved and of the address at which OPAS (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 (Northern Ireland) Act 1993 and of the address at which he may be contacted.

#### **Rights of representation**

**106.**—(1) An application under regulation 102 or 104 may be made or continued on behalf of the applicant by a representative nominated by him.

(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 his behalf by his personal representative.

(3) Where such a person is a minor or is or becomes otherwise incapable of acting for himself, the application may be made or continued on his behalf by a member of his family or some other person suitable to represent him.

(4) Where a representative is nominated before an application is made, the application must specify his full name and address and whether that 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 appropriate appointed person or the Committee, as the case may be, must send to the applicant a copy of a decision under regulation 103(1) or 105(1) or an interim reply under regulation 103(2) or 105(2).

### **Referral of decisions under regulation 99(1) to the county court**

**107.** Where an employing authority has either decided or failed to decide such question as is mentioned in regulation 99(1), that question shall be determined by the county court having jurisdiction in the county court division in which such member as is mentioned in regulation 99(1) is employed or was last employed or, where that member is or was last employed in two or more county court divisions, in one of those divisions.

### *Information and records*

### **Statements of policy concerning exercise of discretionary functions**

**108.—**(1) The Committee and each employing authority must formulate and keep under review their policy concerning the exercise of their functions under regulation 33 (early leavers) and under Part III.

(2) Before formulating that policy the employing authorities must consult the Committee and the Committee must consult employing authorities.

(3) Before the expiry of the period of four months beginning with the commencement date –

- (a) each employing authority shall send to the Committee, and
- (b) the Committee shall send to each employing authority,

a written statement as to the policy which is being applied by that employing authority, or, as the case may be, the Committee in the exercise of its functions on or after that date, and each such employing authority and the Committee shall publish that statement.

(4) Where, as a result of a review under paragraph (1), an employing authority or the Committee determines to amend its policy, it must send a copy of the statement of the amended policy to the Committee or, as the case may be, the employing authority before the expiry of the period of one month beginning with the date on which it so determines.

(5) In formulating its policy under paragraph (1), the Committee and an employing authority must have regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service.

### **Information to be supplied by employees**

**109.—**(1) Before the expiry of the period of three months beginning with the date a person becomes a member, the employing authority must ask him 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 employment; and
- (b) copies of all notifications previously given to him under these Regulations or the former regulations.

(3) The employing authority must also ask for those documents before the expiry of the period of three months beginning with the occurrence of any change as respects his employment which is material for the Scheme.

(4) A request under paragraph (1) or (3) must include a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining his rights under the Scheme.

(5) The employing authority need not request any documents if satisfied that it or the Committee (if different) already has all material information.

### **Exchange of information by authorities**

**110.**—(1) An employing authority which is not the Committee must inform the Committee of all decisions made by the employing authority under this Chapter concerning members and give the Committee such other information as it requires for discharging its functions under the Scheme.

(2) If –

- (a) the Committee makes any decision under this Chapter about a person for whom it is not the employing authority; and
- (b) information about the decision is required by his employing authority for discharging that employer's functions under the Scheme,

the Committee must give that employing authority that information.

### **Provision of information, charging and prescribed persons**

**111.**—(1) For the purposes of Article 164(1) of the Pensions Order (prescribed circumstances in which information may be provided) ("the prescribed circumstances") the prescribed circumstances are that the individual to whom the information relates, or, where he has died, his personal representatives, has requested or consented in writing to the provision of the information.

(2) For the purposes of Article 164(1) of the Pensions Order (persons to whom information may be provided and the imposition of reasonable fees in respect of expenses incurred in providing that information) the prescribed persons are those persons described in paragraph 1 of Schedule 5.

(3) For the purposes of Article 164(2) of the Pensions Order (persons on whom fees may be imposed in respect of administrative expenses incurred in connection with admission, readmission or payment) the prescribed persons are the persons referred to in paragraph 2 of Schedule 5.

(4) For the purposes of Article 164(4) of the Pensions Order (person prescribed in the case of an occupational pension scheme under Article 9 of the Order of 1972) the Committee is a prescribed person.

(5) Where –

- (a) information is requested by a prescribed person in the prescribed circumstances in relation to an individual to whom regulation 126 applies for the purpose of establishing what payment would need to be made to the Scheme in respect of the individual to restore the position to what it would have been if the individual had been an active member of the Scheme throughout the period in question ("the restitution payment"); or
- (b) an individual to whom regulation 126 applies, applies to become a member of the Scheme or applies to have a restitution payment accepted having become a member of the Scheme after the period in question,

the Committee shall calculate the restitution payment in accordance with the provisions of regulation 126.



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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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