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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 33**

Local Government Pension Scheme (Administration)  
Regulations (Northern Ireland) 2009

PART 6

DETERMINATION OF QUESTIONS AND DISPUTES

**Interpretation of Part**

**49.** In this Part a reference to the employing authority of a prospective member is a reference to the body that would be his employer if he were to become an active member in the employment by virtue of which he would be eligible to join the Scheme.

**First instance decisions – general**

**50.—(1)** The employing authority shall decide in relation to each of its employees who is a member—

- (a) whether he is a whole-time, variable-time or part-time employee;
- (b) which of his emoluments are remuneration on which contributions are payable;
- (c) what rate of contribution the employee is liable to pay to the fund or admission agreement fund; 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 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 National Insurance Act (Northern Ireland) 1966<sup>(1)</sup> in respect of any period of non-participating employment; and
- (e) any question about counting additional periods as membership or crediting additional pension.

(3) The questions specified in paragraph (1) shall be decided as soon as is reasonably practicable after—

- (a) the person becomes a member;

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<sup>(1)</sup> 1966 c. 6 (N.I.).

(b) any change occurs in the number of the member's regular or casual 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 the Scheme shall be decided by the Committee.

(6) Where a person is or may become entitled to benefit payable out of the fund or an admission agreement 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 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 Local Government (Superannuation) Regulations (Northern Ireland) 1992(2), Part N (pension sharing) of the Local Government Pension Scheme Regulations (Northern Ireland) 2000(3) and Part VI (pension sharing) of the 2002 Regulations.

#### **First instance determinations: ill-health**

**51.**—(1) Where the Committee is considering whether a person who has ceased to hold a local government employment is entitled to a benefit under regulation 20 (early leavers: ill-health) or 31 (early payment of pension: ill-health) of the Benefits Regulations, it shall refer for decision to the independent registered medical practitioner, who is qualified in occupational health medicine and who has been appointed by the Committee under regulation 20(4) of those Regulations.

(2) 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 employing authority or any other party in relation to the same case.

(3) The Committee and the independent registered medical practitioner must have regard to guidance given by the Department when carrying out their function under this regulation, when making an ill-health determination.

#### **Notification of first instance decisions**

**52.**—(1) Every person whose rights or liabilities are affected by a decision under regulation 50 (first instance decisions: general) or 51 (first instance determinations: ill-health) shall be notified of it by the Committee or the employing authority which made it as soon as is reasonably practicable.

(2) A 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;

(2) S.R. 1992 No. 547; as amended by other instruments listed in Schedule M3 to the Local Government Pension Scheme Regulations (Northern Ireland) 2000 (S.R. 2000 No. 177).

(3) S.R. 2000 No. 177; as amended by S.R. 2001 No. 61, S.R. 2001 No. 63, S.R. 2001 No. 64, S.R. 2002 No. 115 and S.R. 2002 No. 353.

- (c) in the case of a notification under paragraphs (a) or (b) a conspicuous statement directing the person's attention to—
  - (i) the address from which he may obtain further information about the decision, including details of any calculation of service or benefits;
  - (ii) his right under regulation 54 (right to apply for an appointed person to review a decision) to make an application to an appointed person, the address at which he may be contacted and his job title; and
  - (iii) his right under regulation 56 (reference of disagreement to the Committee) 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 50, a conspicuous statement directing the person's attention to—
  - (i) the employing authority's address from which he may obtain further information about the decision; and
  - (ii) his right of appeal to the county court under regulation 59 (referral of decisions under regulation 50(1) to the county court).

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

**53.**—(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 54 (right to apply for an appointed person to review a decision).

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

(3) An application under regulation 54 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**

**54.**—(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 a 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, surviving civil partner or nominated cohabiting partner (as defined in regulation 25 of the Benefits Regulations) of a deceased member;
- (b) a dependant of a deceased member or any other person to whom benefits in respect of him may be paid;

- (c) a prospective member;
  - (d) a pension credit member;
  - (e) a person entitled to a pension credit;
  - (f) a person who ceased to be a member, or to fall within sub-paragraph (a), (b), (c), (d) or (e) during the period of 6 months ending with the date of the application; and
  - (g) 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), (e) or (f) 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 a prospective member;
  - (b) a person who has 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 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 6 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 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, 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 52 (notification of first instance decisions).
- (9) The application must be made before the end of the period of 6 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 51 (first instance determinations: ill-health), the relevant date is the date notification of it is given under regulation 52.
- (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 54**

- 55.**—(1) A decision on the matters raised by an application under regulation 54 (right to apply for an appointed person to review a decision) 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 2 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 the 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 56 (reference of disagreement to the Committee), specifying the time within which he may do so; and
- (e) a statement that the Pensions Advisory Service<sup>(4)</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 it may be contacted.

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

**56.**—(1) Where an application about a disagreement has been made under regulation 54 (right to apply for an appointed person to review a decision), an application may be made to the Committee to reconsider the disagreement by the person who applied under regulation 54.

(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 54 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 52 (notification of first instance decisions).

(5) Where notice of a decision on the application under regulation 54 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.

(7) An application for reconsideration may only be made before the expiry of the period of 6 months beginning with the relevant date.

(8) Where notice of a decision on the matters raised by the application under regulation 54 has been issued, the relevant date is the date of that notice.

(9) Where—

- (a) an interim reply has been sent out under regulation 55(2) (notice of decisions by the appointed person under regulation 54); 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.

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(4) The Pensions Advisory Service Ltd, company limited by guarantee, No. 2459671; Registered in England and Wales; Registered office is 11 Belgrave Road, London SW1V 1RB.

(10) Where no notice of decision has been issued or interim reply has been sent before the expiry of the period of 3 months beginning with the date the application under regulation 54 was made, the relevant date is the date with which that period expires.

### **Notice of decisions by the Committee under regulation 56**

57.—(1) The Committee must issue its decision on the matters raised by an application under regulation 56 (reference of disagreement to the Committee) to the parties to the disagreement by notice in writing before the expiry of the period of 2 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 the 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 55 (notice of decisions by the appointed person under regulation 54), 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 the Pension 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 the Pension 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 1993 Act<sup>(5)</sup> and of the address at which he may be contacted.

### **Rights of representation**

58.—(1) An application under regulation 54 (right to apply for an appointed person to review a decision) or 56 (reference of disagreement to the Committee) 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 55(1) (notice of decisions by the appointed person under regulation 54) or 57(1) (notice of decisions by the Committee under regulation 56) or an interim reply under regulation 55(2) or 57(2).

(5) 1993 c. 49.

**Referral of decisions under regulation 50(1) to the county court**

**59.** Where an employing authority has either decided or failed to decide such question as is mentioned in regulation 50(1) (first instance decisions: general), 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 50(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.