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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 85**

**PENSIONS**

**The Police Pensions Amendment (Scotland) Regulations 2010**

<i>Made</i>	- - - -	<i>4th March 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>5th March 2010</i>
<i>Coming into force</i>	- -	<i>1st April 2010</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1 of the Police Pensions Act 1976(1) and all other powers enabling them to do so.

In accordance with section 1(1) of that Act they have consulted with the Police Negotiating Board for the United Kingdom(2).

**Citation, commencement, effect, extent and interpretation**

1.—(1) These Regulations may be cited as the Police Pensions Amendment (Scotland) Regulations 2010.

(2) These Regulations come into force on 1st April 2010 and have effect from that date except that regulation 2 has effect from 1st April 2004 until 30th September 2006(3).

(3) These Regulations extend to Scotland only.

(4) In these Regulations, the “1987 Regulations” means the Police Pensions Regulations 1987(4).

**Amendment to the Police Pensions Regulations 1987 having effect from 1st April 2004 until 30th September 2006**

2. After regulation B1(3)(a) (policeman’s ordinary pension) of the 1987 Regulations insert—

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(1) 1976 c. 35 (“the 1976 Act”). Section 1 was amended by section 2(3) of the Police Negotiating Board Act 1980 (c. 10), section 103 and paragraph 28 of Schedule 7 to the Police Act 1996 (c. 16) and section 1(1) of the Police and Firemen’s Pensions Act 1997 (c. 52). These powers were extended by section 42 of the Welfare Reform and Pensions Act 1999 (c. 30). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by S.I. 1999/1750 article 2 and Schedule 1. The requirement for consent by the Minister for the Civil Service under section 1 was transferred to the Treasury by virtue of S.I. 1981/1670, and such consent is not required in the exercise by the Scottish Ministers of the transferred functions by virtue of S.I. 1999/1750 and section 63 of the Scotland Act 1998 (c. 46).

(2) See section 61 of the Police Act 1996 (c. 16).

(3) Retrospective effect is permitted by section 1(5) of the 1976 Act.

(4) S.I. 1987/257; relevant amendments were made by S.I. 1987/341 and 2215, 1988/1339, 1989/733, 1990/805, 1991/1517, 1992/1343 and 2349, 1994/641, 1996/867, 1997/1429 and 2852 and 1998/577 and S.S.I. 2000/193, 2001/459, 2003/406, 2004/486, 2005/200 and 495, 2006/285, 2007/68, 2008/327 and 2009/185.

“(aa) being a chief officer of police, deputy chief constable or an assistant chief constable and not being subject to any procedures under regulations made under section 26 of the Police Scotland Act 1967(5), he retires or retired on or after attaining the age of 50 years having given to the police authority 6 months’ written notice of his intention to retire, or”.

### **Amendments to the Police Pensions Regulations 1987**

3. The 1987 Regulations are amended in accordance with regulations 4 to 18.
4. In regulation A17 (retirement)—
  - (a) in paragraph (1)(e) omit “with such consent as is mentioned in paragraph (2)”; and
  - (b) omit paragraph (2).
5. In regulation B5(2)(b) (policeman’s deferred pension) omit “or to an award under regulation 11 of the Injury Benefit Regulations”.
6. After regulation B7(4) (commutation-general provision) insert—
 

“(4A) The police authority may, at the request of a regular policeman who retires or retired—

  - (a) no more than one day before being entitled to reckon 30 years’ pensionable service, and
  - (b) before attaining the age of 50 years,

decide that the limitation contained in paragraph (4)(b) should not apply in his case.”.
7. For regulation B8 (commutation-small pensions) substitute—

#### **“Commutation – small pensions**

**B8.**—(1) Where the annual rate of any pension payable to or in respect of a regular policeman under this Part, regulation J1(2) (policeman with a guaranteed minimum for the purposes of the Social Security Pensions Act 1975) or Part M (pension sharing) does not exceed the small pensions commutation maximum, the police authority may pay the person entitled to the pension a lump sum of such an amount as the Scheme Actuary advises represents the capital value of the pension if—

- (a) that person consents, and
  - (b) where the pension payable to that person is one which may not be less than that person’s guaranteed minimum, he has reached state pension age.
- (2) If—
- (a) a person is entitled to more than one pension under this Part or regulation J1(2),
  - (b) a person is entitled to more than one relevant award in respect of the same regular policeman, or
  - (c) a pension credit member is entitled—
    - (i) to more than one pension under Part M, or
    - (ii) to one or more pensions under this Part or regulation J1(2) in addition to one or more pensions under Part M,

those pensions may only be commuted under this regulation if they do not in aggregate exceed the amount that is permitted to be commuted under all the commutation requirements that apply in the circumstances in question.

(3) The payment of a lump sum under this regulation in respect of pension discharges the relevant police authority from all liability in respect of that pension.

(4) In this regulation—

“commutation requirements” means requirements permitting the commutation of small pensions that are imposed—

- (a) by regulation 19, 20 or 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(6),
- (b) by regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(7),
- (c) by regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000(8), or
- (d) by paragraph 7 of Schedule 29 to the Finance Act 2004(9) (which defines trivial commutation lump sums for the purposes of Part 1 of that Schedule);

“relevant award” means an award under any of the following—

- (a) these Regulations,
- (b) the Police Pensions (Scotland) Regulations 2007(10),
- (c) the Injury Benefit Regulations(11), and
- (d) the Police Pensions (Additional Voluntary Contributions) Regulations 1991(12); and

“small pensions commutation maximum” means the amount that is permitted to be commuted, having regard to all the commutation requirements that apply in the circumstances in question.”.

8. In regulation B11 (deduction of tax from certain awards)—

- (a) in paragraph (1) for “repayment of contributions within the meaning of paragraph 2 of Part II of Schedule 5 to the Finance Act 1970” substitute “short service refund lump sum within the meaning of section 205 of the Finance Act 2004”; and
- (b) in paragraph (2) for “the tax for the time being chargeable thereon under paragraph 2 of the said Part II” substitute “the charge to income tax arising under that section”.

9. For regulation E3A(4) (lump sum death grant) substitute—

“(4) The grant is to be paid to any widow who qualifies for it; but if there is no such widow, the police authority may in their discretion pay the grant to the personal representatives.”.

10. In regulation E8 (increase of widow’s pension or child’s allowance during first 13 weeks)—

- (a) in paragraph (2A)(b) for “regulations 49 to 52B of the Police Regulations 1987” substitute “Schedule 3 to the Police (Scotland) Regulations 2004(13)”; and

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(6) S.I. 1996/1172; relevantly amended by S.I. 1997/786, 2000/2975, 2002/681, 2005/2050 and 2006/744.

(7) S.I. 1997/785; relevantly amended by S.I. 2002/681, 2005/706 and 2877 and 2006/572 and 744.

(8) S.I. 2000/1054; relevantly amended by S.I. 2006/744, 2007/1930 and 2009/615.

(9) 2004 c. 12.

(10) S.S.I. 2007/201.

(11) S.S.I. 2007/68.

(12) S.I. 1991/1304.

(13) S.S.I. 2004/257.

- (b) in paragraph (2B)(a) after “Part V of that Schedule (member’s injury award)” insert “or to an injury award under regulation 11 of the Injury Benefit Regulations”.
11. In regulation E9(2) (increase of awards (other than flat-rate awards) by reference to the Pensions (Increase) Acts)—
- (a) omit “Where the relevant award is a child’s allowance,”; and
- (b) for “so long as the allowance is payable” substitute “so long as the pension is payable”.
12. For regulation F3(1)(e) (previous service reckonable without payment) substitute—
- “(e) where he was previously engaged on a period of relevant service with the Police Service of Northern Ireland and he exercises the right of reversion to a home police force conferred by section 38A(3) of the Police (Scotland) Act 1967(14) or, on that right arising does not exercise it but joins another home police force, any period of pensionable service which was reckonable by him for the purposes mentioned in subparagraph (d), immediately before he left the Police Service of Northern Ireland;”.
13. In regulation F6(1A) (previous service reckonable under current interchange arrangements) omit “, other than rights to benefits arising out of a free-standing additional voluntary contributions scheme”.
14. In regulation F8(1)(b) (transfer values payable between police authorities) omit “with such consent as mentioned in regulation A17(2)”.
15. In regulation F10(4) (transfer values payable following cessation of contributions) in the proviso omit “disciplinary proceedings or”.
16. In regulation G4(5) (election not to pay pension contributions) in the proviso omit subparagraph (i).
17. Omit regulation J1(6)(a) (policeman with a guaranteed minimum for the purposes of the Social Security Pensions Act 1975).
18. In Part 1 (personal awards) of Schedule J (special cases – exceptions and modifications) omit paragraph 9(4).

### **Amendments of references to the Government Actuary in the Police Pensions Regulations 1987**

19. The 1987 Regulations are amended in accordance with regulations 20 and 21.
20. On each occasion where it occurs in the following provisions, for “Government Actuary” substitute “Scheme Actuary”—
- (a) regulation B7(7) (commutation-general provision);
- (b) regulation B9(8) (allocation);
- (c) regulation B12(a) (pension debit members);
- (d) regulation C6(3) (widow’s requisite benefit and temporary pension);
- (e) regulation C10 (pension debit members);
- (f) regulation E3(2)(c) (gratuity-estate);
- (g) regulation E6(3) (limitation on discretion to grant a gratuity in lieu of a pension or allowance);
- (h) regulation F11(7) (mis-sold pensions);
- (i) regulation G6(4A) (payments by women to enhance widowers’ awards);

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(14) 1967 c. 77. Section 38A was inserted by the Police and Magistrates’ Courts Act 1994 (c.29), section 60.

- (j) regulation G7(5) (eligibility for pension awards payable on the ground of permanent disablement);
- (k) regulation G8(3) and (7) (appeals against decisions on eligibility for pension awards payable on the ground of permanent disablement);
- (l) regulation K1(5)(b) (cancellation of ill-health pensions);
- (m) regulation M18 (calculation of debits and credits);
- (n) paragraph 3 of Part IV (policeman's short service or ill-health gratuity) of Schedule B (personal awards);
- (o) Part II (gratuity in lieu of widow's pension) of Schedule E (awards on death – additional provisions);
- (p) Part III (gratuity in lieu of child's allowance) of Schedule E (awards on death – additional provisions);
- (q) paragraphs 6(2), 10(2) and 13 of Section 1 (transfer value payable by police authority under regulation F8 or F9) of Part II (transfers and current interchange arrangements) of Schedule F (pensionable service and transfer values);
- (r) paragraphs 4 and 5 of Section 1 (calculation of transfer values) of Part IV (calculation of transfer values and reckonable service by reference to accrued rights) of Schedule F (pensionable service and transfer values);
- (s) paragraph 1(aa)(iii) of Section 2 (calculation of reckonable service) of Part IV (calculation of transfer values and reckonable service by reference to accrued rights) of Schedule F (pensionable service and transfer values); and
- (t) paragraph 3(4) (payments by way of special contributions or reduction in pension) of Part VI (pensionable pay and contributions etc.) of Schedule J (special cases-exceptions and modifications).

21. In Schedule A (glossary of expressions) in the appropriate place insert—

““the Scheme Actuary” means the actuary for the time being appointed by the Scottish Ministers to provide a consulting service on actuarial matters relevant to these Regulations;”.

### **Amendments to the Police Pensions (Scotland) Regulations 2007**

22. The Police Pensions (Scotland) Regulations 2007(15) are amended in accordance with regulations 23 and 24.

23. In regulation 5(b) (transfers) omit the words from “subject” to the end.

24. On each occasion where it occurs in regulation 74(10)(b) and (c) (procedure and costs on appeals under regulation 72) for “excluding” substitute “including”.

St Andrew's House,  
Edinburgh  
4th March 2010

*JOHN SWINNEY*  
A member of the Scottish Executive

**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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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Regulation 2 amends the Police Pensions Regulations 1987 (“the 1987 Regulations”) to give senior police officers the right to retire on or after reaching the age of 50 years, if they give 6 months notice to the police authority and are not subject to any disciplinary proceedings. This amendment has effect from 1st April 2004 until 30th September 2006. Retrospective effect is permitted by section 1(5) of the Police Pensions Act 1976.

Regulation 6 amends the 1987 Regulations to allow a police authority to disapply the regulation which limits the size of lump sum for which a police officer with less than 30 years’ service can commute his or her pension, in the limited circumstances where the officer retires one day before reaching 30 years’ service, and below the age of 50.

The remainder of the Regulations make various amendments to the 1987 Regulations to make the wording more consistent with that of the Police Pensions (Scotland) Regulations 2007 as well as minor amendments to those Regulations.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.