
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 142

The Police Pension Scheme (Scotland) Regulations 2015

PART 13

Supplementary

CHAPTER 5

Forfeiture and set-off

Pension supervising authority

200.—(1) For the purpose of this Chapter, the pension supervising authority is the Scottish Police Authority.

(2) The pension supervising authority may require the scheme manager to withhold benefits payable to a member under this Chapter.

Forfeiture: offences committed by members

201.—(1) If a member is convicted of a relevant offence, the pension supervising authority may, to the extent the pension supervising authority considers appropriate, require the scheme manager to withhold benefits payable under this scheme to or in respect of the member.

(2) Paragraph (3) applies if benefits are to be withheld as a result of an offence falling within paragraph (b) of the definition of “relevant offence”.

(3) The scheme manager may only withhold that part of a person’s pension that exceeds any guaranteed minimum to which the person is entitled under—

- (a) section 14 of PSA 1993 (earner’s guaranteed minimum); or
- (b) section 17(1) of that Act (minimum pension for surviving spouses and civil partners).

(4) In this regulation—

“forfeiture certificate” means a certificate given by the Scottish Ministers stating that they consider that the offence—

- (a) has been gravely injurious to the interests of the State; or
 - (b) is liable to lead to serious loss of confidence in service by members of the police force;
- and

“relevant offence” means—

- (a) one or more offences under the Official Secrets Acts 1911 to 1989⁽²⁾ for which the member has been sentenced on the same occasion to—

(1) Section 17 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 1, paragraph 39; the Child Support, Pensions and Social Security Act 2000 (c.19), Schedule 5, paragraph 1 and Schedule 9, Part 3; the Pensions Act 2004 (c.35), section 284(2); the Pensions Act 2007 (c.22), section 14(2); the Marriage (Same Sex Couples) Act 2013 (c.30), Schedule 4, paragraphs 18 and 20; and S.I. 2005/2050 and S.I. 2014/560.

(2) 1989 c.6; see section 16(2) for the meaning of “Official Secrets Acts 1911 to 1989”.

- (i) a term of imprisonment of at least 10 years; or
- (ii) 2 or more consecutive terms of imprisonment which add up to at least 10 years;
- (b) an offence committed in connection with the member's service as a member of the police force and in respect of which the Scottish Ministers have issued a forfeiture certificate.

Forfeiture: offences committed by a member's beneficiary

202.—(1) If the beneficiary of a deceased member of this scheme is convicted of a relevant criminal offence, the pension supervising authority may, to the extent the pension supervising authority considers appropriate, require the scheme manager to withhold benefits payable to the beneficiary in respect of the member.

(2) The scheme manager may withhold benefits but may only withhold that part of a pension that exceeds any guaranteed minimum to which the beneficiary is entitled under section 17 of PSA 1993.

(3) If the scheme manager withholds all of the benefits payable to a beneficiary, Part 9 (death benefits) applies as if the beneficiary had died before the member.

(4) In this regulation—

“beneficiary”, in relation to a deceased member of this scheme, means the surviving adult or eligible child of the member;

“relevant criminal offence” means—

- (a) the murder of the member;
- (b) the culpable homicide of the member; or
- (c) any other offence of which the unlawful killing of the member is an element.

Forfeiture: relevant monetary obligations and relevant monetary losses

203.—(1) If a member (P) owes a relevant monetary obligation or has caused a relevant monetary loss, the pension supervising authority may, to the extent the pension supervising authority considers appropriate, require the scheme manager to withhold benefits payable to P under this scheme.

(2) The scheme manager may withhold benefits but may only withhold that part of P's pension that exceeds any guaranteed minimum to which P is entitled under section 14 of PSA 1993.

(3) The scheme manager may not withhold more than the lesser of—

- (a) the amount of the relevant monetary obligation or relevant monetary loss; and
- (b) the value of P's entitlement to benefits.

(4) The scheme manager may only withhold benefits if—

- (a) there is no dispute as to the amount of the relevant monetary obligation or relevant monetary loss; or
- (b) the relevant monetary obligation or relevant monetary loss is enforceable as follows—
 - (i) under an order of a competent court;
 - (ii) in consequence of an award of an arbiter appointed (failing agreement between the parties) by the sheriff.

(5) In this regulation—

“relevant monetary obligation” means a monetary obligation which—

- (a) was incurred to the Crown or P's employer (if different);
- (b) was incurred after P became an active member of this scheme;
- (c) arose out of P's criminal, negligent or fraudulent act or omission; and

- (d) arose out of or was connected with P’s service as a member of the police force; and
- “relevant monetary loss” means a monetary loss which—
- (a) was caused to this scheme; and
 - (b) arose as a result of P’s criminal, negligent or fraudulent act or omission.

Set-off

204.—(1) The pension supervising authority may require the scheme manager to set off a relevant monetary obligation against a member’s entitlement to benefits under this scheme.

(2) In this regulation, a “relevant monetary obligation” is a monetary obligation owed by a member (P), which satisfies the conditions in paragraph (3), (4) or (5).

(3) The conditions are that the monetary obligation—

- (a) was incurred to the Crown or P’s employer (if different);
- (b) was incurred after P became an active member of this scheme; and
- (c) arose out of or was connected with P’s service as a member of the police force.

(4) The conditions are that the monetary obligation—

- (a) was incurred to this scheme; and
- (b) arose out of P’s criminal, negligent or fraudulent act or omission.

(5) The conditions are that the monetary obligation—

- (a) was incurred to this scheme; and
- (b) arose out of a payment made to P in error by the scheme manager.

(6) Paragraph (7) applies if a set-off is to be applied as a result of P owing a relevant monetary obligation which satisfies the conditions in paragraph (3).

(7) Where this paragraph applies, the scheme manager may not apply a set-off against that part of P’s entitlement to benefits that represents transfer credits within the meaning of section 124(1) of PA 1995(3) (interpretation of Part 1) (other than prescribed transfer credits for the purposes of section 91(5)(d) of PA 1995(4) (exceptions from the inalienability of occupational pensions)).

(8) The scheme manager may only apply a set-off against that part of a member’s pension that exceeds any guaranteed minimum to which the member is entitled under section 14 of PSA 1993.

(9) The value of the set-off applied must not exceed the lesser of—

- (a) the amount of the relevant monetary obligation; and
- (b) the value of P’s entitlement to benefits.

(10) The scheme manager may only set off a relevant monetary obligation against P’s entitlement to benefits if—

- (a) there is no dispute as to the amount of the relevant monetary obligation; or
- (b) the relevant monetary obligation is enforceable—
 - (i) under an order of a competent court;
 - (ii) in consequence of an award of an arbiter appointed (failing agreement between the parties) by the sheriff.

(3) Section 124(1) was amended by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 12, paragraphs 43 and 61, the Child Support, Pensions and Social Security Act 2000 (c.19), Schedule 5, paragraph 8; the Pensions Act 2004, section 7(2), Schedule 12, paragraphs 34, 43 and 69 and Schedule 13, Part 1 and S.I. 2005/2053, 2006/745 and 2014/560.

(4) Section 91(5)(d) was amended by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 12, paragraphs 43 and 57. See S.I. 1997/785 which prescribes the transfer credits.

Forfeiture and set-off: procedure

205.—(1) If the pension supervising authority proposes to require the scheme manager to withhold benefits or apply a set-off against a person’s entitlement to benefits, the pension supervising authority must notify the person of the proposal in writing.

(2) If the scheme manager withholds benefits under regulation 203 (forfeiture: relevant monetary obligations and relevant monetary losses) or applies a set-off against an entitlement to benefits under regulation 204 (set-off), the scheme manager must give the member a certificate showing—

- (a) the amount withheld or set off; and
- (b) the effect of the withholding or set-off on the member’s benefits under this scheme.

Forfeiture: appeals to sheriff

206.—(1) If the pension supervising authority proposes to require the scheme manager to withhold any benefits payable in respect of a person’s service as a member of the police force (“the member”), the member or a person claiming payment of a benefit in respect of the member may, subject to regulation 199 (limitations on appeals), appeal against the proposal to the sheriff.

(2) On an appeal made under paragraph (1), the sheriff may by order—

- (a) confirm or reject the proposal; or
- (b) amend the proposal so as to reduce the extent to which the benefits are withheld.

(3) The scheme manager must comply with any order made by the sheriff.

Forfeiture: appeals to tribunal

207.—(1) If the pension supervising authority proposes to require the scheme manager to withhold any benefits payable to an inspector of constabulary (“the member”), the member or a person claiming payment of a benefit in respect of the member may, subject to regulation 199 (limitations on appeals), lodge an appeal against the proposal with the scheme manager.

(2) Regulation 215 (procedure on appeals to tribunal) sets out the procedure for appeals under this regulation to the tribunal.