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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 19**

**The Firefighters' Pension Scheme (Scotland) Regulations 2015**

**PART 11**

**Appeals and determinations**

**CHAPTER 2**

**Appeals to Board of Medical Referees**

**Appeals against determinations based on medical evidence**

**144.**—(1) A member (P) who wishes to appeal against a scheme manager's determination on an issue of a medical nature may do so to a board of medical referees in accordance with the provisions of regulations 145 to 152.

(2) Subject to paragraph (3), where a determination—

- (a) is made with regard to an opinion obtained under regulation 142(2) (role of IQMP in determinations by the scheme manager) or medical evidence relied on as mentioned in regulation 142(7); or
- (b) is reconsidered under regulation 143(4) (review of medical opinion) with regard to a response under paragraph (2) of that regulation,

the scheme manager must, within 14 days of making, confirming or revising the determination (as the case may be), send to P the documents mentioned in paragraph (4).

(3) Nothing in paragraph (2) requires the supply of documents that have already been supplied under regulation 142(8) (role of IQMP in determinations by the scheme manager) or 143(5) (review of medical opinion).

(4) The documents are—

- (a) a copy of the opinion, response or evidence (as the case may be);
- (b) an explanation of the procedure for appeals under this rule; and
- (c) a statement that, if P wishes to appeal against the scheme manager's determination on an issue of a medical nature, P must give written notice to the scheme manager, stating P's name and address and the grounds of appeal, not later than 28 days after P receives the last of the documents required to be supplied under this paragraph, or within such longer period as the scheme manager may allow.

**Notice of appeal**

**145.**—(1) Subject to paragraph (2), written notice of appeal against a determination on an issue of a medical nature stating—

- (a) the appellant (P)'s name and address; and
- (b) the grounds of the appeal,

must be given to the scheme manager within 28 days of the date on which P receives the documents referred to in regulation 144(4) (appeals against determinations based on medical evidence); and where P receives those documents on different dates, they are to be treated for this purpose as received on the later or latest of those dates.

(2) Where—

- (a) notice of appeal is not given within the period specified in paragraph (1); but
- (b) the scheme manager is of the opinion that P's failure to give it within that period was not due to P's own default,

the scheme manager may extend the period for giving notice for such length, not exceeding six months from the date mentioned in paragraph (1), as the scheme manager considers appropriate.

### **Reference of appeal to the board**

**146.**—(1) On receiving a notice of appeal, the scheme manager must refer the appeal to a board of medical referees ("the board").

(2) The board is to consist of not less than three medical practitioners appointed by, or in accordance with arrangements made by, the scheme manager.

(3) One member of the board must be a specialist in a medical condition relevant to the appeal.

(4) One member of the board must be appointed as chairperson.

(5) Where there is an equality of votes among the members of the board, the chairperson is to have a second or casting vote.

(6) As soon as reasonably practicable after referring an appeal to the board, the scheme manager must supply the board's administrator with three copies of—

- (a) the notice of appeal;
- (b) the notice of the relevant determination;
- (c) the opinion, response or evidence (as the case may be) supplied to the appellant (P); and
- (d) every other document in its possession or under its control which appears to it to be relevant to the issue that is the subject of the appeal.

(7) The board must arrange for one of their number to review those documents ('the reviewing member').

(8) As soon as reasonably practicable after concluding the review, the reviewing member must give written notice to the scheme manager—

- (a) of any other information which the reviewing member considers would be desirable so as to provide the board with sufficient information for the purpose of enabling the board to determine the appeal; and
- (b) if it is the case, that it is the reviewing member's opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded.

(9) On receipt of the reviewing member's notice under paragraph (8)(a), the scheme manager must use its best endeavours to obtain any information specified in that notice.

(10) Where the scheme manager receives a notice under paragraph (8)(b), it must as soon as reasonably practicable—

- (a) send a copy of the opinion to P; and
- (b) by written notice to P—
  - (i) advise P that, if P's appeal is unsuccessful, P may be required to pay the scheme manager's costs, and

(ii) require P to notify it within 14 days of the date of the notice, whether P intends to pursue or withdraw the appeal.

(11) The scheme manager must notify to the board any response by P under paragraph (10)(b)(ii).

### **Procedure where appeal to be pursued**

**147.**—(1) Where an appeal is to be pursued, the board must secure that the appellant (P) and the scheme manager (“the parties”) have been informed—

- (a) that the appeal is to be determined by the board; and
- (b) of an address to which communications relating to the appeal may be delivered to the board.

(2) Subject to paragraph (5), the board—

- (a) must interview and medically examine P at least once; and
- (b) may interview or medically examine P or cause P to be interviewed or medically examined on such further occasions as the board thinks necessary for the purpose of determining the appeal.

(3) The board must appoint, and give the parties not less than two months’ notice of, the time and place for every interview and medical examination; and if the board is satisfied that P is unable to travel, the place must be P’s place of residence.

(4) P must attend at the time and place appointed for any interview and medical examination by the board or any member of the board or any person appointed by the board for that purpose.

(5) If—

- (a) P fails to comply with paragraph (4); and
- (b) the board is not satisfied that there was a reasonable cause for the failure,

the board may dispense with the interview and medical examination, and may determine the appeal on such information as is then available.

(6) Any interview under this regulation may be attended by persons appointed for the purpose by the scheme manager or by P or by each of them.

(7) Where either party intends to submit written evidence or a written statement at an interview held under paragraph (2), the party must, subject to paragraph (8), submit the evidence or statement to the board and to the other party not less than 28 days before the date appointed for the interview.

(8) Where any written evidence or statement has been submitted under paragraph (7) less than 28 days before the date appointed for the interview, any written evidence or statement in response may be submitted by the other party to the board and the party submitting the first-mentioned evidence or statement at any time up to, and including, that date.

(9) Where any written evidence or statement is submitted in contravention of paragraph (7), the board may postpone the date appointed for the interview and require the party who submitted the evidence or statement to pay such reasonable costs of the board and of the other party as arise from the postponement.

### **The board’s report**

**148.** The board must supply the parties with—

- (a) a written report of its decision on the relevant medical issues; and
- (b) if the board is of the opinion that the appeal was frivolous, vexatious or manifestly ill-founded, a statement to that effect (which may form part of the report).

### **Reconsideration by the board**

**149.**—(1) Where the parties have received a report supplied under regulation 148 (the board’s report) and the parties agree that the board has made an error of fact which materially affects the board’s decision, the scheme manager must, within 28 days of receipt of the report, supply the board with two copies of a statement agreed between the parties setting out—

- (a) the error of fact;
- (b) the correct fact; and

invite the board to reconsider its decision.

(2) As soon as reasonably practicable after receiving the statement, the board must reconsider its decision.

(3) Within 14 days of that reconsideration the board must—

- (a) give written notice to the parties that it has confirmed its decision, or revised its decision (as the case may be); and
- (b) if it has revised its decision, supply the parties with a written report of its revised decision.

### **Fees and allowances payable to the board**

**150.**—(1) There must be paid to the board and the reviewing member—

- (a) such fees and allowances (including those payable to the reviewing member for work undertaken on the review of documents under regulation 146(7) (reference of appeal to the board)) as are determined in accordance with arrangements made by the scheme manager; or
- (b) where no such arrangements have been made, such fees and allowances as the scheme manager may from time to time determine.

(2) The fees and allowances payable under paragraph (1) must—

- (a) be paid by the scheme manager; and
- (b) be treated for the purposes of regulation 151 (expenses of each party) as part of the scheme manager’s expenses.

### **Expenses of each party**

**151.**—(1) Subject to regulation 147(9) (procedure where appeal to be pursued) and paragraphs (2) to (5) below, the expenses of each party to the appeal must be borne by that party.

(2) Where the board—

- (a) determines an appeal in favour of the scheme manager; and
- (b) states that, in its opinion, the appeal was frivolous, vexatious or manifestly ill-founded,

the scheme manager may require the appellant (P) to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board under regulation 150(1)(fees and allowances payable to the board), as the scheme manager considers appropriate.

(3) Where—

- (a) P gives notice to the board—
  - (i) withdrawing the appeal,
  - (ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under regulation 147(3) (procedure where appeal to be pursued), and

the notice is given less than 22 working days before the date appointed under regulation 147(3); or

(b) P's acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under regulation 147(3) less than 22 working days before the date appointed, the scheme manager may require P to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board under regulation 150(1) (fees and allowances payable to the board), as the scheme manager considers appropriate.

(4) Where the board—

- (a) determines an appeal in favour of P; and
- (b) does not otherwise direct,

the scheme manager must refund to P the amount specified in paragraph (5).

(5) The amount is the total of—

- (a) any personal expenses actually and reasonably incurred by P in respect of any interview under regulation 147(2) (procedure where appeal to be pursued); and
- (b) if any such interview was attended by a qualified medical practitioner appointed by P, any fees and expenses reasonably paid by P in respect of such attendance.

(6) For the purposes of paragraphs (2) and (4) any question arising as to whether the board's determination is in favour of the scheme manager or of P is to be decided by the board.

#### **Notices etc**

**152.** Any notice, information or document which an appellant (P) is entitled to receive for any purpose of regulations 144 to 151 is, unless the contrary is proved, to be treated as having been received by P if it was posted in a letter addressed to P at P's last known place of residence.