
STATUTORY INSTRUMENTS

1998 No. 366

**The Local Government Pension
Scheme (Scotland) Regulations 1998**

PART IV

ADMINISTRATION

CHAPTER IV

DETERMINATIONS, INFORMATION AND RECORDS

Initial determinations of questions

First instance decisions

96.—(1) Any question concerning the rights or liabilities under the Scheme of any person other than a Scheme employer must be decided in the first instance by the person specified in this regulation.

(2) Any question whether a person is entitled to a benefit under the Scheme must be decided by the Scheme employer who last employed him.

(3) That decision must be made as soon as is reasonably practicable after the employment ends.

(4) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount.

(5) That decision must be made as soon as is reasonably practicable after the event by virtue of which the entitlement arises or may arise.

(6) In relation to any employment in which a person is a member or prospective member, the appropriate administering authority must decide—

- (a) any questions concerning his period of membership or his previous service or employment;
- (b) what rate of contribution he is liable to pay to the appropriate fund;
- (c) any questions about counting added years or additional periods as membership; and
- (d) whether he is a Class A member, a Class B member or a Class C member.

(7) Those decisions must be made as soon as is reasonably practicable after the person becomes a member in the employment.

(8) Other questions in relation to any member or prospective member must be decided by his Scheme employer as soon as is reasonably practicable after he becomes a member or a material change affects his employment.

(9) Before making a decision as to whether a member may be entitled under regulation 26 or 30 on the ground of ill-health, the Scheme employer must obtain a certificate from an independent registered medical practitioner as to whether in his opinion the member is permanently incapable of

discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body.

(10) If the Scheme employer is not the member's appropriate administering authority, before referring any question to any particular registered medical practitioner under paragraph (9) the Scheme employer must obtain that authority's approval.

(11) In paragraphs (2) and (4) "benefit" includes a return of contributions.

(12) In paragraph (4) benefit includes a benefit specified in regulation F6(11) or (15) of the 1987 Regulations.

(13) For this Chapter, references to the Scheme employer or the appropriate administering authority of a prospective member are references to the body that would be his employer or appropriate administering authority if he were to become an active member in the employment by virtue of which he would be eligible to join the Scheme.

Notification of decisions under regulation 96

97.—(1) Every person whose rights or liabilities are affected by a decision under regulation 96 must be notified of it in writing by the body who made it as soon as is reasonably practicable.

(2) A notification of a decision that the person is not entitled to a benefit must include the grounds for the decision.

(3) A notification of a decision as to the amount of a benefit must include a statement showing how it is calculated.

(4) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(5) Every notification must also—

- (a) refer to the rights available under regulations 99 and 101;
- (b) specify the time limits within which those rights may be exercised; and
- (c) specify the name and address of the appointed person and the appropriate administering authority to whom applications under regulation 99 may be made.

Resolution of disputes

Appointment of persons to resolve disputes

98.—(1) Each administering authority must appoint a panel of persons they consider to be suitably qualified for the purpose of resolving disagreements in respect of which an application is made under regulation 99 in cases where they are the appropriate administering authority.

(2) For this Chapter an administering authority are the appropriate administering authority as respects such a disagreement if—

- (a) where the person making the application is a member or prospective member, they are or were his last appropriate administering authority for the other purposes of these Regulations; and
- (b) where the person making the application is the widow, widower or surviving dependant of a deceased member, they were his appropriate administering authority.

(3) For this Chapter the persons appointed under paragraph (1) are "appointed persons".

(4) An application under regulation 99 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).

- (5) An application must not be referred to a person who has previously been involved in the subject matter of the disagreement.
- (6) An appointed person shall hold and vacate office under the terms of his appointment.
- (7) He may resign by notice in writing to the administering authority.
- (8) Each administering authority shall determine—
 - (a) the procedure to be followed by the persons appointed by them 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 decide a disagreement

99.—(1) Where there is a disagreement about a matter in relation to the Scheme between a member or an alternative applicant and a Scheme employer, the member or, as the case may be, the alternative applicant (“the complainant”) may—

- (a) apply directly to the appropriate appointed person to decide the disagreement; or
 - (b) apply to the appropriate administering authority for them 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 person who ceased to be a member or to fall within sub-paragraph (a) or (b) during the period of six months ending with the date of the application; and
 - (d) in the case of a disagreement relating to the question whether a person claiming to be a member or to fall within sub-paragraph (a), (b) or (c) 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 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.
- (6) The application must be signed by or on behalf of the applicant.
- (7) The application must be accompanied by a copy of any written notification issued under regulation 97.

(8) 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 (but see regulation 104(6)).

(9) Where the disagreement relates to a decision under regulation 96, the relevant date is the date on which notification of it is given under regulation 97.

(10) 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.

Decision by appointed person and notice of it

100.—(1) Where an application has been duly made under regulation 99, the appropriate appointed person shall decide on the disagreement.

(2) A decision on the matters raised by the application must be issued by the appropriate appointed person—

- (a) to the applicant;
- (b) to the Scheme employer; and
- (c) if the Scheme employer is not the appropriate administering authority, to that authority,

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

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

(4) A notice under paragraph (2) must include—

- (a) a statement of the decision;
- (b) a 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; and
- (d) a reference to the rights of the applicant and the Scheme employer's right to refer the disagreement for reconsideration by the Secretary of State under regulation 101, specifying the time within which they may do so.

Reference of disagreement to the Secretary of State

101.—(1) Where an application about a disagreement has been made under regulation 99, an application may be made to the Secretary of State to reconsider the disagreement by the person who applied under regulation 99 or the Scheme employer in question.

(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 Secretary of State.

(3) An application made by the person who applied under regulation 99 must set out the matters required by paragraph (4) or, as the case may be, paragraph (5) 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 97.

(5) Where notice of a decision on the application under regulation 99 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 six months beginning with the relevant date.

(8) Where notice of a decision on the matters raised by the application under regulation 99 has been issued, the relevant date is the date of that notice.

(9) Where—

(a) an interim reply has been sent under regulation 100(3); 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 on 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 99 was made, the relevant date is the date on which that period expires.

Decision of the Secretary of State and notice of it

102.—(1) Where an application has been duly made under regulation 101, the Secretary of State shall reconsider and decide on the disagreement.

(2) The Secretary of State must issue his decision on the matters raised by the application to the parties to the disagreement by notice in writing before the expiry of the period of two months beginning with the date on which the application was received (but see paragraph (3)).

(3) 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.

(4) A notice under paragraph (2) must include—

(a) a statement of the decision;

(b) in a case where there has been a decision made under regulation 100, 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 Occupational Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with difficulties which they have failed to resolve with the Secretary of State and of the address at which it 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 Act 1993(1) and of the address at which he may be contacted.

Rights of representation

103.—(1) An application under regulation 99 or 101 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 executor.

(3) Where such a person is under a legal disability because of non-age 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, he must be sent a copy of a notification under 100(2) or 102(2) or an interim reply under 100(3) or 102(3).

Appeals by administering authorities

104.—(1) Where—

- (a) a Scheme employer has decided or failed to decide any question falling to be decided by that employer under regulation 96 (otherwise than in the exercise of a discretion); and
- (b) the Scheme employer is not an administering authority,

the administering authority maintaining the pension fund to which the Scheme employer pays contributions may appeal to the Secretary of State to decide that question.

(2) Such an appeal must be made by notice in writing given before the end of the period of six months beginning with the relevant date or such further period as the Secretary of State considers reasonable.

(3) Where the appeal relates to a decision notified under regulation 97(1), the relevant date is the date of the notification of that decision.

(4) Where the appeal relates to a failure to decide any question, the relevant date is the date of that failure.

(5) For paragraph (4) an employer is to be taken to have failed to decide a question at the expiry of the period of three months beginning with the date on which the administering authority have requested a decision by notice in writing.

(6) Where an appeal has been made under paragraph (1), the period within which an application may be made under regulation 99 may not be extended under regulation 99(8).

(7) The Secretary of State must issue his decision on the appeal by notice in writing to the appellant authority and to any other persons appearing to him to be affected by it.

(8) Where an appeal is made by an authority under this regulation and any other person—

- (a) has made an application under regulation 99 or regulation 101 which has not been determined in respect of any of the matters which are the subject of the appeal; or
- (b) makes such an application contemporaneously with the appeal or after it and before the appeal is determined,

the appeal shall be sisted pending notification of a decision under regulation 100 or, as the case may be, regulation 101 or until the application is withdrawn.

Information and records etc.

Statements of policy concerning exercise of discretionary functions

105.—(1) Each administering authority and Scheme employer must formulate and keep under review their policy concerning the exercise of their functions under regulation 30 (early leavers) and under Part III.

(2) Before formulating that policy an administering authority must consult the authorities who employ active members for whom they are the appropriate administering authority.

(3) Before the expiry of the period of three months beginning with the commencement date—

- (a) each Scheme employer must send each relevant administering authority; and

(b) each administering authority must send each relevant Scheme employer, a written statement as to the policy which is being applied by that employer or, as the case may be, authority in the exercise of their functions on or after that date.

(4) Where, as a result of a review under paragraph (1), a Scheme employer or administering authority determine to amend their policy, they must send a copy of the statement of the amended policy to each relevant administering authority or, as the case may be, relevant Scheme employer before the expiry of the period of one month beginning with the date on which they so determine.

(5) A relevant administering authority, in relation to a Scheme employer, are any authority who are an appropriate administering authority for that employer's employees, and a relevant Scheme employer, in relation to an administering authority, is any Scheme employer for whose employees they are the appropriate administering authority.

(6) In formulating their policy under paragraph (1), an administering authority or Scheme employer 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

106.—(1) Before the expiry of the period of three months beginning with the date a person becomes a member, the Scheme employer 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 old Regulations.

(3) They 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 Scheme employer need not request any documents if satisfied that they or the appropriate administering authority (if different) already have all material information.

(6) The old Regulations are the 1987 Regulations, the 1974 Regulations, the Local Government Superannuation (Administration) (Scotland) Regulations 1954⁽²⁾ the Local Government Superannuation (Administration) (Scotland) Regulations 1938⁽³⁾ and the Local Government Superannuation (Administration) (No.2) (Scotland) Regulations 1938⁽⁴⁾.

Exchange of information by authorities

107.—(1) A Scheme employer who is not an administering authority must inform the appropriate administering authority of all decisions made by the employer under this Chapter concerning members and give that authority such other information as they require for discharging their functions under the Scheme.

(2) If—

(2) S.I.1954/1243.
(3) S.I. 1938/245.
(4) S.I. 1938/1384.

- (a) an administering authority make any decision under this Chapter about a person for whom they are not the Scheme employer; and
- (b) information about the decision is required by his Scheme employer for discharging that employer's functions under the Scheme,

that authority must give that employer that information.

Provision of information and calculation of restitution payment: mis-sold personal pensions

108.—(1) Where—

- (a) in relation to an individual mentioned in regulation 6(9)(c) information is requested by a prescribed person in the prescribed circumstances for the purpose of calculating 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 referred to in that regulation (“the restitution payment”); or
- (b) an individual mentioned in sub-paragraph (a) applies to become a member of the Scheme or applies to have a restitution payment accepted having become a member of the Scheme after that period,

the administering authority who maintain the fund which would be the appropriate fund for that individual must calculate the restitution payment in accordance with regulation 124.

(2) In this regulation “prescribed person” and “prescribed circumstances” have the same meaning respectively as in regulations 3 and 4 of the Local Government, Teachers' and National Health Service (Scotland) Pension Schemes (Provision of Information and Administrative Expenses etc.) Regulations 1996(5).