
STATUTORY INSTRUMENTS

2013 No. 2356

The Local Government Pension Scheme Regulations 2013

PART 2

Administration

Decisions

First instance decisions

72.—(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) In these Regulations, reference to the Scheme employer or appropriate administering authority of a prospective member is a reference to the body that would be that prospective member's Scheme employer or appropriate administering authority if that person were to become an active member in the employment by virtue of which eligibility to join the Scheme would be established.

(3) The appropriate administering authority must decide any question concerning—

- (a) a person's previous service or employment;
- (b) the crediting of additional pension under regulation 16 (additional pension); and
- (c) the amount of any benefit, or return of contributions, a person is or may become entitled to out of a pension fund.

(4) A person's Scheme employer must decide any question concerning any other matter relating to the person's rights or liabilities under the Scheme.

(5) A decision under this regulation must be made as soon as is reasonably practicable.

Notification of first instance decisions

73.—(1) Every person whose rights or liabilities are affected by a decision under regulation 72 (first instance decisions) must be notified of it in writing by the body which made it as soon as is reasonably practicable after the decision is made.

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

(3) A notification of a decision about the amount of a benefit must contain 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) specify the rights available under regulations 74 (applications for adjudication of disagreements) and 76 (references of adjudications to administering authority);

- (b) specify the time limits within which the rights under those regulations may be exercised; and
- (c) specify the job title and the address of the person appointed under regulation 74(1) to whom an application may be made.

Applications for adjudication of disagreements

74.—(1) Each Scheme employer and administering authority must appoint a person (“the adjudicator”) to consider applications from any person whose rights or liabilities under the Scheme are affected by—

- (a) a decision under regulation 72 (first instance decisions); or
- (b) any other act or omission by a Scheme employer or administering authority,

and to make a decision on such applications.

(2) An applicant under paragraph (1)(a) may apply to the adjudicator appointed by the body making the decision, within six months of the date notification of the decision is given under regulation 73 (notification of first instance decisions).

(3) An applicant under paragraph (1)(b) may apply to the adjudicator appointed by the body responsible for the act or omission, within six months of 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.

(4) The adjudicator may extend the time for making an application under paragraph (2) or (3).

(5) An application under paragraph (2) or (3) must—

- (a) set out the applicant’s name, address and date of birth;
- (b) if the applicant is not a member of the Scheme, set out the applicant’s relationship to any relevant member of the Scheme and give that member’s full name, address, date of birth, national insurance number and the name of the member’s Scheme employer;
- (c) include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;
- (d) be accompanied by a copy of any written notification under regulation 73 (notification of first instance decision); and
- (e) be signed by or on behalf of the applicant.

(6) The adjudicator must determine—

- (a) the procedure to be followed when exercising functions under this regulation; and
- (b) the manner in which those functions are to be exercised.

Decisions of the adjudicator

75.—(1) The adjudicator must give written notice of a decision under regulation 74 (applications for adjudication of disagreements) to—

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

before the expiry of two months beginning with the date on which the application was received.

(2) But if no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out—

- (a) the reasons for the delay; and

- (b) an expected date for giving the decision (“the expected decision date”).
- (3) A notice under paragraph (1) must include—
 - (a) a statement of the decision;
 - (b) a reference to any legislation on which the adjudicator relied;
 - (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of these Regulations conferring the discretion;
 - (d) a reference to the right of the applicant to refer the disagreement for reconsideration by the appropriate administering authority under regulation 76 (reference of adjudications to administering authority) and to the time within which the applicant may do so; and
 - (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme that remains unresolved including the address at which it may be contacted.
- (4) A decision under paragraph (1) takes effect as a decision of the Scheme employer or administering authority, as the case may be, except where the matter concerns the exercise of a discretion, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration or, where that body would have been the Scheme employer but that body is no longer a Scheme employer, to the appropriate administering authority.

Reference of adjudications to administering authority

76.—(1) An applicant under regulation 74 (applications for adjudication of disagreements) may refer a decision under regulation 75 (decisions of the adjudicator) for reconsideration by the appropriate administering authority.

- (2) A reference under paragraph (1) must—
 - (a) be made before the relevant date;
 - (b) set out the applicant’s full name, address and date of birth;
 - (c) if the applicant is not a member of the Scheme, set out the applicant’s relationship to any relevant member of the Scheme and give that member’s full name, address, date of birth, national insurance number and the name of the member’s Scheme employer;
 - (d) include a statement that the applicant wishes the decision to be reconsidered by the administering authority;
 - (e) set out the details of the grounds on which the applicant relies;
 - (f) be accompanied by a copy of any written notifications under regulations 73 (notification of first instance decisions) and 75 (decisions of the adjudicator); and
 - (g) be signed by or on behalf of the applicant.
- (3) The relevant date for the purposes of paragraph (2)(a) is—
 - (a) in a case where notice of a decision has been given under regulation 75(1), six months from the date the notice is received;
 - (b) in a case where an interim reply has been sent under regulation 75(2), but no notice has been given under regulation 75(1), seven months from the expected decision date; and
 - (c) in a case where no notice have been given under regulation 75(1) and no interim reply was sent under regulation 75(2), nine months from the date on which the application was made.
- (4) The administering authority must determine—
 - (a) the procedure to be followed when exercising its functions under this regulation; and

(b) the manner in which those functions are to be exercised, but it must ensure that no person who was involved in the making of a first-instance decision or a decision under regulation 75 (decisions of the adjudicator) is involved in a decision on reconsideration.

(5) For the purposes of paragraph (1) of this regulation, the appropriate administering authority is the administering authority which is or was the last appropriate administering authority for the member who is the applicant, or who is the relevant member in relation to any other applicant.

Decisions of the administering authority on reconsideration

77.—(1) An administering authority must give written notice of its decision after reconsideration under regulation 76 (reference of adjudications to administering authority) to—

(a) the applicant; and

(b) where the administering authority is not the Scheme employer, to the Scheme employer, before the expiry of the period of two months beginning with the date the application is received.

(2) But if no such notice is given before the expiry of that period, an interim reply must be sent as soon as is reasonably practicable to the persons mentioned in paragraph (1)(a) and (b) setting out—

(a) the reasons for the delay; and

(b) an expected date for giving the decision (“the expected decision date”)

(3) A notice under paragraph (1) must include—

(a) a statement of the decision;

(b) a reference to any legislation on which the administering authority relied;

(c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of these Regulations conferring the discretion;

(d) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme that remains unresolved;

(e) 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

(f) the addresses at which the Pensions Advisory Service and the Pensions Ombudsman may be contacted.

(4) A decision under paragraph (1) takes effect as a decision of the Scheme employer or administering authority, as the case may be, except where the matter concerns the exercise of a discretion, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration or, where that body would have been the Scheme employer but that body is no longer a Scheme employer, to the appropriate administering authority.

Rights of representation

78.—(1) An application under regulation 74 (applications for adjudication of disagreements) or 76 (reference of adjudications to administering authority) may be made or continued to be made on behalf of the applicant by a representative nominated by the applicant.

(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 the applicant’s behalf by the applicant’s personal representatives.

(3) Where such a person is a minor or is or becomes incapable of acting, the application may be made or continued on the applicant's behalf by a family member or some other suitable representative.

(4) Where a representative is nominated before an application is made, the application must specify the representative's full name and address, and whether that address 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 representative must nevertheless be sent a copy of—

- (a) any notice under regulation 75(1) (decisions of the adjudicator) or 77(1) (decisions of the administering authority on reconsideration); or
- (b) an interim reply under regulation 75(2) or 77(2).

Appeals by administering authorities

79.—(1) This regulation applies where a Scheme employer—

- (a) has decided, or failed to decide any question falling to be decided by that employer under regulation 72 (first instance decisions), otherwise than in the exercise of a discretion; and
- (b) is not an administering authority.

(2) Where this regulation applies, an administering authority maintaining a pension fund into which a Scheme employer pays contributions may appeal to the Secretary of State against the employer's decision on a question or failure to make a decision on a question.

(3) Such an appeal must be made by notice in writing given before the end of—

- (a) the period of six months beginning with the relevant date; or
- (b) such longer period as the Secretary of State allows.

(4) The relevant date is—

- (a) where a Scheme employer has decided a question, the date of the notification of the decision; or
- (b) where a Scheme employer has failed to decide a question, the date of the failure.

(5) For the purposes of paragraph (4)(b) a Scheme employer is to be taken to have failed to decide a question if it has not given a decision in writing at the expiry of three months beginning with the date on which the administering authority has requested a decision in writing.

(6) Subject to paragraph (7), the Secretary of State must make a decision on the appeal which is to take effect as a decision of the Scheme employer and must issue a notice in writing to the appellant and to any other person appearing to the Secretary of State to be affected by it.

(7) The appeal must be stayed if, before the appeal is determined, any application is made to the adjudicator under regulation 74 (applications for adjudication of disagreements), or reference to the administering authority under regulation 76 (reference of adjudications to administering authority) in respect of any of the matters which are the subject of the appeal under this regulation.

(8) The administering authority must inform the Secretary of State whether it wishes to continue with an appeal stayed under paragraph (7), or to withdraw it and if the appeal is continued, the Secretary of State must make a decision under paragraph (6).

Exchange of information

80.—(1) A Scheme employer must—

- (a) inform the appropriate administering authority of all decisions made by the employer under regulation 72 (first instance decisions) or by an adjudicator appointed by the Scheme

employer under regulation 74 (applications for adjudication of disagreements) concerning members; and

- (b) give that authority such other information as it requires for discharging its Scheme functions.

(2) If—

- (a) an administering authority makes any decision under regulations 72 (first instance decisions), 75 (decisions of the adjudicator) or 76 (reference of adjudications to administering authority) about a person for whom it is not the Scheme employer; and
- (b) information about that decision is required by the person's Scheme employer for discharging that employer's Scheme functions,

that authority must give that employer that information if asked to supply it.

(3) Within three months of the end of each Scheme year, each Scheme employer must give a statement to the appropriate administering authority giving the following details in respect of each employee who has been an active member during the Scheme year—

- (a) the employee's name and gender;
- (b) the employee's date of birth and national insurance number;
- (c) a unique reference number relating to each employment in which the employee has been an active member; and
- (d) the information relating to the employee for the Scheme year in question for each employment which is specified in paragraph (4).

(4) The information required by paragraph (3)(d) is—

- (a) the dates of active membership;
- (b) the pensionable pay received and employee contributions deducted while regulation 9 (contributions) applied;
- (c) the pensionable pay received and employee contributions deducted while regulation 10 (temporary reduction in contributions) applied;
- (d) any contributions by the employer in relation to the employee's pensionable pay;
- (e) any contributions by employee or employer under regulation 16 (additional pension contributions);
- (f) any contributions by employee or employer under regulation 17 (additional voluntary contributions).

Interest on late payment of certain benefits

81.—(1) Where all or part of a pension or lump sum payment due under these Regulations (other than a payment due under regulation 17 (additional voluntary contributions)) is not paid within the relevant period after the due date, an administering authority must pay interest on the unpaid amount to the person to whom it is payable.

(2) The relevant period is—

- (a) in the case of a survivor pension, the period ending one month after the date on which the administering authority receives notification of the member's death;
- (b) in the case of any other pension, one year; or
- (c) in the case of a lump sum payment, one month.

(3) The due date is—

- (a) in the case of a pension, the date on which it becomes payable;

- (b) in the case of a lump sum under regulation 33 (election for lump sum instead of pension) the benefit crystallisation event date;
 - (c) in the case of a death grant, the date on which the member dies or, where notification of death is received more than two years after the date of death, the date of notification; or
 - (d) in the case of a lump sum under regulation 34 (commutation and small pensions) the date of the commutation election or, if later, the nominated date within the meaning of paragraph 7(3) of Part 1 of Schedule 29 to the Finance Act 2004⁽²⁾.
- (4) Interest payable under this regulation is calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.

Payments due in respect of deceased persons

82.—(1) Paragraph (2) applies if, when a person dies, the total amount due to that person's personal representatives under the Scheme (including anything due at that person's death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965⁽³⁾ and applying in relation to that person's death.

(2) An administering authority may pay the whole or part of the amount due from its pension fund to—

- (a) a person's personal representatives, or
- (b) any person or persons appearing to the authority to be beneficially entitled to the estate, without the production of probate or letters of administration of the person's estate.

(3) Such a payment discharges that authority from accounting for the amount paid.

Payments for persons incapable of managing their affairs

83. If it appears to an administering authority that a person other than an eligible child is entitled to payment of benefits under the Scheme but is, by reason of mental disorder or otherwise, incapable of managing his or her affairs—

- (a) the authority may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the authority may determine, to be applied for the benefit of the person entitled; and
- (b) in so far as the authority does not pay the benefits in that manner, the authority may apply them in such manner as the authority may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

Non-assignability

84.—(1) Every benefit to which a person is entitled under the Scheme is payable to or in trust for that person.

(2) No such benefit is assignable or chargeable with that person's, or any other person's, debts or other liabilities.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with an income payments order or agreement under section 310 or 310A of the Insolvency Act 1986⁽⁴⁾.

(2) 2004 c. 12.

(3) 1965 c. 32; there are amendments to section 6 which are not relevant to this instrument.

(4) 1986 c. 45; there are amendments to section 310 which are not relevant to this instrument. Section 310A was inserted by the Enterprise Act 2002 (c. 40).

Deduction and recovery of member's contributions

85.—(1) A Scheme employer may deduct from a person's pay any contributions payable by the member under these Regulations.

(2) Sums payable under regulation 13(1) (reserve forces leave) may be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951⁽⁵⁾, to the extent that they are payable in respect of the same period.

(3) An administering authority may recover any contributions or sum remaining due and not deducted under paragraph (1) or (2)—

- (a) as a simple contract debt in any court of competent jurisdiction; or
- (b) by deducting it from any payment by way of benefits to or in respect of the person in question under these Regulations.

(4) But the sums mentioned in paragraph (2) are only recoverable under paragraph (3) if unpaid for 12 months after the person ceases to perform relevant reserve forces service.

(5) If—

- (a) a Scheme employer deducts in error any amount in respect of contributions from a person's pay or any other sum due to that person; and
- (b) the amount has not been repaid before the expiry of the period of one month beginning with the date of the deduction,

the appropriate body must pay interest on the amount, and the due date for the calculation of the interest payable is the date of the deduction.

(6) Where the employee's contributions have been paid into a fund, the repayment and any interest must be made out of that fund.

(7) Interest must be calculated at one per cent above base rate on a day to day basis from the due date of payment and compounded with three-monthly rests.

(8) The "appropriate body" for the purposes of paragraph (5) is—

- (a) the appropriate administering authority, where the employee's contributions have been paid into a fund; and
- (b) the person's Scheme employer where the employee's contributions have not yet been paid into a fund.

Joint liability in respect of annual allowance charge

86.—(1) This regulation applies where a member gives notice to the appropriate administering authority of joint and several liability under section 237B (liability of scheme administrator) of the Finance Act 2004⁽⁶⁾ in respect of the member's annual allowance charge.

(2) Where the joint liability amount specified in the notice is met by the pension fund, the appropriate administering authority must reduce the value of the member's rights accrued under the Scheme in accordance with actuarial guidance issued by the Secretary of State.

Tax

87. The appropriate administering authority may deduct from any payment of benefits under the Scheme any tax to which they may become chargeable under the Finance Act 2004.

(5) 1951 c. 65.

(6) 2004 c. 12; section 237B was inserted by the Finance Act 2011 (c. 11).

Pension increase under the Pensions Schemes Act 1993

88. Any increase of pension required by reason of Chapter 3 of Part 4 of the Pension Schemes Act 1993 (protection of increases in guaranteed minimum pensions: anti-franking)(7) must be paid from the appropriate fund held by the administering authority.

Annual benefit statements

89.—(1) An administering authority must issue an annual benefit statement to each of its active, deferred, deferred pensioner and pension credit members.

(2) Subject to paragraph (3), the statement must be issued no later than five months after the end of the Scheme year to which it relates.

(3) A statement must be issued before the end of the five month period mentioned in paragraph (2) where a member makes a request in writing to the administering authority, unless that authority is unable to comply with the request because relevant data is not available.

(4) The statement for an active member must be provided in accordance with section 14 of the Public Services Pensions Act 2013(8).

(5) The relevant date is 31st March before the date that the statement is issued, or such later date as the authority may choose.

Information to be supplied by employees

90.—(1) Before the expiry of three months beginning with the date on which a person becomes a member, the Scheme employer must ask the member 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 the member under these Regulations and their equivalents under any previous regulations.

(3) A request under this regulation must contain a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining the member's rights under the Scheme.

(4) The Scheme employer need not request any documents if it is satisfied that it, or the appropriate administering authority (if different), already has all material information.

(7) 1993 c. 48.

(8) 2013 c. 25.