

2003 No. 406

PENSIONS

**The Police Pensions (Scotland) Amendment Regulations
2003**

<i>Made</i>	<i>3rd September 2003</i>
<i>Laid before the Scottish Parliament</i>	<i>5th September 2003</i>
<i>Coming into force</i>	<i>1st October 2003</i>

The Scottish Ministers, in exercise of the powers conferred by sections 1 to 6 and 7(1) of the Police Pensions Act 1976(a), and of all other powers enabling them in that behalf, after consultation with the Police Negotiating Board for the United Kingdom(b), hereby make the following Regulations:

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Police Pensions (Scotland) Amendment Regulations 2003 and shall come into force on 1st October 2003, except that—
- (a) the amendment made by paragraph 5 of Schedule 1 has effect in relation to any period of maternity leave falling on or after 15th December 1999;
 - (b) paragraphs 1(a) and (c), 2 and 3 of Schedule 2 have effect from 1st December 2002; and
 - (c) paragraph 6(b) of Schedule 2 has effect from 1st November 1999.
- (2) These Regulations extend to Scotland only.

Amendment of the Police Pensions Regulations 1987

2. The Police Pensions Regulations 1987(c) shall be amended in accordance with Schedule 1.

(a) 1976 c.35. Section 1 of the Police Pensions Act 1976 (c.35) (“the Act”) is amended by section 2(3) of the Police Negotiating Board Act 1980 (c.10) (“the 1980 Act”), 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) (“the 1997 Act”). Section 7(1) is amended by section 1(2) of the 1997 Act. These powers are extended by section 42 of the Welfare Reform and Pensions Act 1999 (c.30). Functions under the Act as regards Scotland are transferred by S.I. 1999/1750, article 2, Schedule 1. The requirement for consent by the Minister for the Civil Service under section 1 of the Act 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.

(b) See section 2(3) of the 1980 Act which substituted the Police Negotiating Board for the United Kingdom for the Police Council for the United Kingdom.

(c) S.I. 1987/257, as relevantly amended 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, 1998/577, and 2001/3649 and S.S.I. 2000/193 and 2001/459.

Amendment of the Police Pensions (Additional Voluntary Contributions) Regulations 1991

3. The Police Pensions (Additional Voluntary Contributions) Regulations 1991(a) shall be amended in accordance with Schedule 2.

St Andrew's House,
Edinburgh
3rd September 2003

TAVISH SCOTT
A member of the Scottish Executive

(a) S.I. 1991/1304, as relevantly amended by S.S.I. 2001/461.

SCHEDULE 1

AMENDMENTS OF THE POLICE PENSIONS REGULATIONS 1987

1. In regulation A9(2), after “policeman” insert “or for the purposes of regulation G6”.
- 2.—(1) After regulation A12(1) insert—

“(1A) For the purpose of deciding if a person’s disablement is likely to be permanent, that person shall be assumed to receive normal appropriate medical treatment for his disablement, and in this paragraph “appropriate medical treatment” shall not include medical treatment that it is reasonable in the opinion of the police authority for that person to refuse.”.

(2) In regulation A12 (2), for “a male or female member of the force, as the case may be” substitute “a member of the force”.

(3) In regulation A12, insert after paragraph (4)—

“(5) In this regulation, “infirmary” means a disease, injury or medical condition, and includes a mental disorder, injury or condition.”.
3. In Regulation A20—
 - (a) after “police authority determine” insert “, having given due consideration to all the circumstances, advice, guidance and information available to them,”; and
 - (b) for “medical referee” substitute “board of medical referees”.
4. In regulation B1(3)(ba) for from “and either” to the end of sub-paragraph (ba) substitute “or, if such a term has extended, at the end of the appointment for the extended term”.
5. In sub-paragraph (c) of regulation F1(1) for “14 weeks” substitute “18 weeks”.
6. In regulation G6—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (b) for “service” substitute “pensionable service that is reckonable by reason of service or employment”; and
 - (ii) in the words following that sub-paragraph, for “service” substitute “pensionable service that is reckonable by reason of service or employment”;
 - (b) at the end of paragraph (3) insert—

“, or

 - (c) if such contributions have ceased to be payable either before or during that period and again become payable more than 2 years after the date of cessation, but on or before 1st October 2003, that date, or
 - (d) if such contributions have ceased to be payable either before or during that period and again become payable more than 2 years after the date of cessation, but after 1st October 2003, the date on which they again become payable.”;
 - (c) for paragraph (4) substitute—

“(4) In a case where the material date is the date given by paragraph (3)(a) or (b), the additional contributions to be paid are calculated, subject to paragraphs (6) to (11), in accordance with the Table in paragraph (18) by reference to the whole of the woman’s pensionable service reckonable by reason of service or employment before 17th May 1990.

(4A) In a case where the material date is the date given by paragraph (3)(c) or (d), the additional contributions to be paid are such amounts as are determined in accordance with such guidance and Tables as the Government Actuary may issue for the purpose or, in any case where that guidance indicates that special considerations apply, such amounts as the Government Actuary determines for the case in question.”;
 - (d) at the beginning of paragraph (5) for “The” substitute “In a case where the material date is the date given by paragraph (3)(a) or (b), the”;
 - (e) in paragraphs (7)(b), (10)(b) and (14) for the word “service” in each place where it occurs substitute “pensionable service”;

- (f) at the beginning of paragraph (13)(a) insert “except where the payments are made in pursuance of an election for which the material date is that given by paragraph (3)(c) or (d),”;
- (g) in paragraph (15) after “pensionable service” in both places it occurs insert “reckonable by reason of service or employment”; and
- (h) in the Table in paragraph (18)–
 - (i) after the words “pensionable service”, in the first place where they occur, insert “reckonable by reason of service or employment”, and
 - (ii) after those words in the second place where they occur insert “so reckonable”.

7. In regulation H1, for paragraph (4) substitute–

“(4) The police authority may decide to refer a question in paragraph (2) or, as the case may be, (3) to a board of duly qualified medical practitioners instead of to a single duly qualified medical practitioner, and in such a case references in this regulation, regulations H2 and H3 (1), (2) and (4), and paragraphs 5(a) and 6 of Schedule H to a medical practitioner shall be construed as if they were references to such a board.

(5) In any case where one or both of questions (a) and (b) in paragraph (2) is or are referred to a selected medical practitioner, the decision of that practitioner on all the questions referred to him shall be expressed in the form of a report and shall, subject to regulations H2 and H3, be final.

(6) Where one or both of questions (c) and (d) in paragraph (2) is or are referred to a selected medical practitioner and paragraph (5) does not apply, the decision of that practitioner on all the questions referred to him shall be expressed in the form of a certificate and shall, subject to regulations H2 and H3, be final.

(7) A copy of any report under paragraph (5) shall be supplied to the person who is the subject of that report.”.

8.—(1) In the heading at Regulation H2 for “Appeal to medical referee” substitute “Appeal to board of medical referees”.

(2) In regulation H2(1) for “on any question which involves the reference of questions under Regulation H1 to a selected medical practitioner” substitute “in any case to which regulation H1(6) applies”.

(3) After regulation H2(2) insert–

“(2A) Where a person is dissatisfied with the decision of the selected medical practitioner as set out in a report under regulation H1(5), he may, within 28 days after he has received a copy of that report or such longer period as the police authority may allow, and subject to and in accordance with the provisions of Schedule H, give notice to the police authority that he appeals against that decision.

(2B) In any case where a person gives notice to the police authority in accordance with paragraph (2A)–

- (a) that person must supply to the police authority within a further 28 days of that notice being received or such longer period as the police authority may allow, a statement of the grounds of his appeal; and
- (b) the police authority shall notify the Scottish Ministers, and the Scottish Ministers shall appoint a board of medical referees to decide the appeal.”.

9. For “medical referee” in each place where it occurs in paragraph (3) of Regulation H2, paragraph (4) of Regulation H3, and paragraphs (a) and (b) of Regulation H4 substitute “board of medical referees”.

10. In regulation H2(3)–

- (a) after “the certificate” insert “or report”;
- (b) after “a certificate” insert “or, as the case may be, a report”;
- (c) for “he” in both places where it occurs substitute “it”; and
- (d) for “his” substitute “its”.

11.—(1) In regulation H3 in each of paragraphs (1) and (2) after “certificate” insert “or report as the case may be”.

(2) In regulation H3(2) omit “on fresh evidence”.

(3) In regulation H3(3)–

(a) after “medical practitioner” insert “or board of medical practitioners”; and

(b) after “his” insert “or, as the case may be, its”.

(4) In regulation H3(4) after “made,” insert “or if, following a notice of appeal to the police authority, the police authority have not yet notified the Scottish Ministers of the appeal,”.

12. In regulation H5(1) after “that granted” insert “or, by a decision of the police authority as to whether a refusal to accept medical treatment is reasonable for the purposes of regulation A12(1A)”.

13. In regulation H6(2) after “that granted” insert “or, by a decision of the Scottish Ministers as police authority as to whether a refusal to accept medical treatment is reasonable for the purposes of regulation A12 (1A)”.

14. In Schedule A–

(a) after the definition of “average pensionable pay” insert ““board of medical referees” has the meaning assigned to it by paragraph 3(2) of Schedule H;”;

(b) after the definition of “husband” insert ““infirmary” has the meaning assigned to it by regulation A12(5);”;

(c) omit the definition of “medical referee”.

15. In Schedule H–

(a) for paragraph 2 substitute–

“**2.** On receiving an appeal against a certificate issued under regulation H1(2)(c) or (d) or an appeal and the appellants grounds for appeal in appeals made against a report issued under regulation H1(5), the police authority, unless Regulation H3(2) applies, shall forward to the Scottish Ministers copies of the appeal and all other documents determined as necessary by the Scottish Ministers.”;

(b) for paragraph 3 substitute–

“**3.—(1)** The Scottish Ministers shall refer an appeal to a board of medical referees and shall supply them with copies of the police authority’s decision, the certificate or report, as the case may be, of the selected medical practitioner, the appellant’s notification of appeal and the appellant’s written statement of the grounds for appeal, and any other relevant information, in appeals made against a report issued under regulation H1(5).

(2) The board of medical referees shall consist of not less than three medical practitioners appointed by, and in accordance with, arrangements made by the Scottish Ministers, provided that–

(a) at least one member of the board of medical referees shall be a specialist in a medical condition relevant to the appeal;

(b) one member of the board of medical referees will be appointed chairman; and

(c) where there is an equality of voting among members of the board of medical referees, the chairman shall have a second or casting vote.

(3) The board of medical referees shall appoint a time and place for interviewing the appellant and for any such further interviews or examinations as it may consider necessary and shall give not less than 21 days notice thereof to the appellant and police authority.”;

(c) for paragraph 4 substitute–

“**4.—(1)** Where either party to the appeal intends to submit written evidence or a written statement at an interview arranged under paragraph 3 above that party shall, subject to paragraph (2) submit it to the board of medical referees, the other party and the Scottish Ministers not less than 10 days before the date appointed for the interview.

(2) Where any written evidence or statement has been submitted under paragraph (1), any written evidence or statement in response may be submitted by the other party to the board of medical referees, the party submitting the first-mentioned evidence or statement and the Scottish Ministers at any time not less than 5 days before the date appointed for the interview.

(3) Where any written evidence or statement is submitted in contravention of paragraphs (1) or (2) the board of medical referees may postpone or adjourn the date appointed for the interview.

(4) References in paragraphs (1) and (2) to periods of days shall exclude weekends and public holidays.”;

(d) for paragraph 6 substitute–

“6. The board of medical referees shall supply the police authority, the appellant and the Scottish Ministers with a written report of its decision on the relevant medical issues. In the case where the selected medical practitioner has issued a certificate and the board of medical referees disagrees with any part of that certificate the board of medical referees shall provide a revised certificate detailing its decision.”;

(e) for paragraph 7 substitute–

“7.—(1) There shall be paid to the board of medical referees–

- (a) such fees as are determined in accordance with arrangements made by the Scottish Ministers; or
- (b) where no such arrangements have been made, such fees and allowances as the Scottish Ministers may from time to time determine.

(2) Any fees and allowances payable to the board of medical referees under paragraph (1) shall be paid by the police authority and shall be treated as part of the expenses of the police authority for the purposes of this Schedule, except that any fees and allowances payable in consequence of–

- (a) the withdrawal or postponement of an interview; or
- (b) a postponement or adjournment which is the result of any written evidence or statement being made to the board of medical referees outwith the time limits specified in paragraph 4 above,

may be recovered, in whole or in part, by the police authority from the party or parties whose actions or omissions resulted in the withdrawal, postponement or adjournment of the interview.”; and

(f) in paragraph 8–

- (i) in sub-paragraph (2) for “medical referee” substitute “board of medical referees” and for “referee’s” substitute “board of medical referees”;
- (ii) after “police authority,” insert “and reports that in its opinion the appeal was frivolous or vexatious”; and
- (iii) in sub-paragraph (3) for “medical referee” substitute “board of medical referees”.

SCHEDULE 2

AMENDMENTS OF THE POLICE PENSIONS (ADDITIONAL VOLUNTARY CONTRIBUTIONS) REGULATIONS 1991

1. In regulation 2—
 - (a) in paragraph (3) insert in the appropriate places—

““approved additional voluntary contributions provider” means The Equitable Life Assurance Society or The Standard Life Assurance Company;” and

““insurance company” means—

 - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000^(a) to effect or carry out contracts of long-term insurance, or
 - (b) an EEA firm, as defined in paragraph 5 of Schedule 3 to that Act, which falls within sub-paragraph (d) of that paragraph and has permission under paragraph 15 of that Schedule to effect or carry out contracts of long-term insurance as a result of satisfying the establishment conditions, as defined in paragraph 13 of that Schedule;”
 - (b) omit the definition of “the Society”; and
 - (c) after paragraph (3) insert—

“(4) The definition of “insurance company” in paragraph (3) must be read with—

 - (a) section 22 (the classes of activity and categories of investment) of the Financial Services and Markets Act 2000,
 - (b) any relevant order under that section, and
 - (c) Schedule 2 to that Act.”.
2. In regulations 5(4) and 6(2)(a) before “the amount to be secured” insert “the approved additional voluntary contributions provider with which the contributions are to be invested and”.
3. In regulation 9—
 - (a) in paragraph (2) for from “with the Society” to the end of that paragraph substitute “with such approved additional voluntary contributions provider and in such investments managed by such provider as may be selected by the basic contributor.”; and
 - (b) in paragraph (3) for “with the Society” substitute “with an approved additional voluntary contributions provider selected by the death benefit contributor”.
4. In regulation 10 (inward transfers) for paragraph (2) substitute—

“(2) A transfer value accepted by a police authority is to be invested by them with an approved additional voluntary contributions provider and in such investments managed by such provider such as may be specified in writing by the basic contributor.”.
5. For regulation 10A (Outward transfers) substitute—

“Outward transfers

10A.—(1) A police authority may pay a transfer value representing the value of a person’s pension credit or of investments made under regulation 12A(2) in the circumstances of Chapter II of Part IVA of the Pension Schemes Act 1993^(b) and regulations made under that Chapter.

(2) This paragraph and paragraphs (3) to (5) of this regulation apply where a police authority receives a request in writing from a participator that they are to apply to the approved additional voluntary contributions provider to realise the pension investments held by the provider in respect of the participator and pay an amount representing the value of the investments made in relation to the participator under these Regulations to the police authority for transmission to the administrator of a scheme or arrangement within paragraph (5) who is willing to receive such a payment in respect of the participator.

(a) 2000, c.8.
 (b) 1993 c.48.

(3) On receiving a request under paragraph (2) the police authority shall transmit it to the approved additional voluntary contributions provider in question and on receiving that amount they shall pay it to the administrator of a scheme or arrangement within paragraph (5).

(4) The payment under paragraph (3) of an amount representing all pension investments in respect of the participator discharges the police authority from all liability in respect of the participator under these Regulations.

(5) A scheme or arrangement is within this paragraph if—

- (a) the participator is a participator in the scheme or arrangement, and
- (b) it is a scheme or arrangement for the time being approved by the Board of Inland Revenue as a scheme or arrangement to which transfers of rights in respect of additional voluntary contributions may be made in the circumstances which apply in the case of the request by the participator in question.”.

6. In regulation 11 (retirement pensions)—

(a) in paragraph (1) for “commencing on the date of his retirement” substitute “commencing—

- (a) in the case of a participator within paragraph (2), on the date of his retirement, and
- (b) in the case of a participator within paragraph (2A), from the date on which the police authority apply the amount obtained under paragraph (6) as mentioned in that paragraph.”;

(b) in paragraph (2) after “participator” insert “who retires before 1st November 1999”;

(c) after paragraph (2) insert—

“(2A) A participator who retires on or after 1st November 1999 is to make a pension election before his 75th birthday.”;

(d) in paragraph (3) for the words following sub-paragraph (c) substitute “and, in the case of a participator within paragraph (2), from which of the pension providers, or, in the case of a participator within paragraph (2A), from which insurance company, the pension is to be purchased.”;

(e) in paragraph (6)—

(i) for “(7) and (8)” substitute “(7) to (8)”; and

(ii) after “pension provider” insert “or, as the case may be, insurance company”;

(f) in paragraph (7) after “paragraph (8),” insert “in the case of a participator who retires before 1st November 1999,”; and

(g) after paragraph (7) insert—

“(7A) Subject to paragraph (8), in the case of a participator who retires on or after 1st November 1999 and does not make a pension election before his 75th birthday, the police authority shall apply the amount obtained to the purchase from an insurance company of such a retirement pension as appears to them to be suitable having regard to the participator’s family circumstances and his age and health.”.

7. In regulation 12 (lump sum death benefit) for “the Society” substitute “the approved additional voluntary contributions provider”.

8.—(1) In regulation 15—

(a) for “police authority” in each case where it occurs, substitute “responsible person”; and

(b) after paragraph (6) insert–

“(7) For the purposes of this regulation “the responsible person” means–

- (a) so far as the regulation relates to the payment of a pension, or to the payment of a lump sum payable under regulation 11(5), the insurance company from which the pension has been purchased under regulation 11; and
- (b) so far as it relates to the payment of any other lump sum, the police authority.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the following Regulations, as they have effect in Scotland: the Police Pensions Regulations 1987 (“the 1987 Regulations”), which provide for the superannuation of members of police forces, and the Police Pensions (Additional Voluntary Contributions) Regulations 1991 (“the AVC Regulations”), which make provision for the payment of additional voluntary contributions by police officers to secure additional pension benefits.

Regulation 1 provides for the citation, commencement and extent of the Regulations. The amendment relating to maternity leave made by paragraph 6 of Schedule 1 applies in relation to any period of maternity leave falling on or after 15th December 1999. Paragraphs 2 and 3 of Schedule 2 and associated changes in definitions have effect from 1st December 2002. Paragraph 6(b) of Schedule 2 has effect from 1st November 1999.

Regulation 2 introduces Schedule 1, which amends the 1987 Regulations in relation to an appeal in respect of an opinion on a medical question obtained by the police authority, and other ill-health issues. It replaces the existing provisions whereby such an appeal is determined by a single medical referee, and such appeal will now be determined by a board consisting of not less than 3 medical referees.

It also amends the procedures relating to retirement on grounds of ill-health and introduces a number of miscellaneous amendments.

In Schedule 1–

1. Paragraph 1 amends regulation A9 so as to enable pensionable service to be apportioned for the purposes of regulation G6.
2. Paragraph 2 amends the definition of permanent disablement to make it clear that disablement should be permanent despite appropriate medical treatment for the condition being applied.
3. Paragraph 3 amends regulation A20 so as to require police authorities, before making their determination in accordance with the regulation, to give due consideration to all the circumstances, advice and information available to them.
4. Paragraph 4 amends regulation B1(3) so as to entitle police officers who retire at the end of fixed term appointments to qualify for a pension under regulation B1, without the term having been extended or an extension having been refused.
5. Paragraph 5 amends regulation F1 so as to increase the period of maternity leave which counts as pensionable service that is reckonable from 14 to 18 weeks.
6. Paragraph 6 amends regulation G6 so as to enable payments to be made by women members to enhance widowers’ awards, in cases where members with service before 17th May 1990 were not able to elect to make such payments under that regulation, because they were not paying contributions throughout the period of 3 months beginning on 1st April 1994, and did not resume paying them within 2 years of ceasing to do so. Following the amendment such elections may be made within the period of 3 months beginning with the date on which these Regulations come into force if the woman’s contributions became payable again on or before that date, or, if they became payable again on a later date, within the period of 3 months of that date.
7. Paragraph 7 amends regulation H1 so that a police authority may refer medical questions to a board of doctors rather than to one individual doctor. Questions as to whether a person’s disablement is the result of an injury received in the execution of duty, and as to the degree of a person’s disablement, remain to be referred to a doctor who shall express his findings in a certificate. Questions as to whether a person is disabled, and as to whether the disablement is likely to be permanent, are to be referred to a doctor who shall express his findings in a report. If both categories of question are referred, the findings are to be expressed in a report. A person who is the subject of a medical report shall automatically be entitled to see a copy of it, rather than having to request it within a limited timescale.

8. Paragraph 8 amends regulation H2 so that a person who is dissatisfied with a medical report may appeal to an independent person appointed by the Scottish Ministers, and makes fresh provision on the submission of written evidence relating to an appeal.

9. Paragraph 9 makes consequential changes to refer to the board of doctors in place of one individual doctor.

10. Paragraph 10 makes minor changes so that all references to a certificate of a medical practitioner for the purposes of regulation H2(3) also include a report.

11. Paragraph 11 amends regulation H5 enables a police authority and a claimant by agreement to seek a reconsideration of a medical authority's decision, without the need for fresh evidence. Sub-paragraph (4) provides that where a claimant has given notice of appeal under regulation H2, the police authority may, with the consent of the claimant, refer a decision back to the medical practitioner for reconsideration, rather than proceeding immediately to an appeal hearing, by notifying the Scottish Ministers.

12. Paragraph 12 amends regulation H6 so that a member of a home police force may appeal to the Sheriff Court against a decision of the police authority as to whether a refusal to accept medical treatment is reasonable.

13. Paragraph 13 clarifies that an overseas policeman, an inspector of constabulary and a central police officer may appeal to an appeal tribunal appointed by the Scottish Ministers against a decision by the Scottish Ministers, acting as the police authority, as to whether a refusal to accept medical treatment is reasonable.

14. Paragraph 14 makes consequential changes to the Glossary of Expressions in the 1987 regulations.

15. Paragraph 15 confirms the structure of the board of medical referees, the appeal process and the provisions on costs.

Regulation 3 introduces Schedule 2 which amends the AVC Regulations.

In Schedule 2–

1. Paragraph 1 amends the definition in regulation 2 so that The Equitable Life Assurance Society (“the Society”) and The Standard Life Assurance Company are each an “approved additional voluntary contributions provider”.

2. The amendments in paragraphs 2 to 4 enable the contributor to select such a provider for the investment of his contributions instead of the contributions having to be invested with the Society. The amendments of regulations 12 and 15 made by paragraphs 7 and 8 are consequential on this.

3. Paragraph 5 introduces an addition to the current regulation 10A under which contributors may request that their investments be transferred from the approved voluntary contributions provider chosen by them, so that they are held outside the scheme constituted by the AVC Regulations.

4. Paragraph 6 amends regulation 11 so that a participator who retires on or after 1st November 1999 may make an election as to his pension at any time before his 75th birthday, and his retirement annuity may be purchased from any insurance company he specifies under that regulation, instead of from the list of pension providers in Schedule 1 to the AVC Regulations.

