

2006 No. 471

LOCAL GOVERNMENT

**The Local Governance (Scotland) Act 2004 (Severance
Payments) Regulations 2006**

Made - - - - - *14th September 2006*

Laid before the Scottish Parliament *15th September 2006*

Coming into force - - - *7th October 2006*

The Scottish Ministers, in exercise of the powers conferred by sections 12 and 16(2) of the Local Governance (Scotland) Act 2004(a) and of all other powers enabling them in that behalf, after consideration of the information, advice and recommendations given to them by the Scottish Local Authorities Remuneration Committee in accordance with the requirements of section 12(3) of that Act, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Local Governance (Scotland) Act 2004 (Severance Payments) Regulations 2006 and shall come into force on 7th October 2006.

Interpretation

2. In these Regulations—

“the 1973 Act” means the Local Government (Scotland) Act 1973(b);

“the 1994 Act” means the Local Government etc. (Scotland) Act 1994(c);

“the 2004 Act” means the Local Governance (Scotland) Act 2004;

“by election” means an election to fill a casual vacancy in the office of councillor in accordance with section 37 of the 1973 Act (filling of casual vacancies)(d);

“connected person” means, in relation to a member of a local authority, their spouse, civil partner, a person the member has been living with as if they were man and wife (as the case may be), a person the member has been living with as if they were civil partners, or a child or parent of the member who is wholly or mainly dependent on the member;

“local authority” means a council constituted under section 2 of the 1994 Act (constitution of councils); and

“ordinary election” means an ordinary election of councillors for local government areas in Scotland that is held after the date on which section 1 of the 2004 Act (electoral wards) comes into force(e).

(a) 2004 asp 9.

(b) 1973, c. 65.

(c) 1994, c. 39.

(d) Section 37 was amended by 2002 asp 1, sections 3 and 4.

(e) Ordinary elections are held in accordance with section 5 of the 1994 Act, as amended by the Scottish Local Government (Elections) Act 2002 (asp 1) and section 5(2) of the 2004 Act.

Persons eligible for severance payment

3.—(1) For the purposes of section 12(1) of the 2004 Act (severance payments for councillors), a person who has satisfied the conditions specified in paragraphs (3) to (5) before the date of the next ordinary election to be held, but excluding a person as described in any of paragraphs (2) to (4) of Regulation 4, is eligible for a severance payment.

(2) The severance payment is payable by the local authority of which that person is a member immediately prior to the date of the next ordinary election.

(3) The condition in this paragraph is that the person is, immediately prior to the date of the next ordinary election, a member of a local authority.

(4) The condition in this paragraph is that the person is not a candidate to be a councillor at the next ordinary election.

(5) The condition in this paragraph is that the person has submitted a valid application for a severance payment (in accordance with the requirements of Regulation 6), to be received by the local authority on or before the date required by Regulation 6(2) or 6(3) (as the case may be).

Persons not eligible for severance payment

4.—(1) The persons described in paragraphs (2) to (4) of this Regulation are not eligible for a severance payment.

(2) A person who, immediately prior to the date of the next ordinary election to be held, is either—

- (a) a member of the Scottish Parliament, or
- (b) a member of the United Kingdom Parliament, or
- (c) a member of the European Parliament.

(3) A person who was elected for the first time as a member of a local authority at the ordinary election held on 1st May 2003.

(4) A person who was elected for the first time as a member of a local authority at a by-election subsequent to the ordinary election held on 1st May 2003.

Amount and calculation of severance payment

5.—(1) For the purposes of section 12(2)(a) of the 2004 Act, the amount of the severance payment is—

- (a) £10,000 for a member of a local authority who shall, at the date of the next ordinary election, have served for a period of 10 complete years or less;
- (b) £15,000 for a member of a local authority who shall, at the date of the next ordinary election, have served for a period of more than 10 complete years but less than 15 complete years;
- (c) £20,000 for a member of a local authority who shall, at the date of the next ordinary election, have served for a period of 15 complete years or more.

(2) For the purposes of the calculation in paragraph (1) of the period of complete years—

- (a) a “complete year” means a period from 1st January until 31st December;
- (b) service as a member of any of the local authorities in Scotland is included, including—
 - (i) service as a member of any council constituted under section 2 (constitution of councils) of the 1994 Act;
 - (ii) service as a member of any of the former regional, district or islands councils constituted under section 2 of the 1973 Act (constitution of councils of regions, islands areas and districts); and

- (iii) service as a member of any of the former councils for the counties, counties of cities, large burghs, small burghs and districts that ceased to exist by virtue of section 1(5) of the 1973 Act (new local government areas in Scotland)(a);
- (c) a continuous period of service of 6 calendar months or more within a complete year shall be rounded up to count as a complete year, but a period of service of less than 6 calendar months within a complete year shall be disregarded.

Application procedures for severance payments

6.—(1) For the purposes of section 12(2)(b) of the 2004 Act, a member of a local authority wishing to apply for a severance payment shall make an application to the local authority of which they are a member.

(2) Unless the circumstances in paragraph (3) apply, an application for a severance payment shall be submitted by a member of a local authority to be received by that authority on or before the date which is the later of—

- (a) 20th October 2006; or
- (b) the date that is 4 weeks after the date when, in respect of that local authority area, the next Order is made by the Scottish Ministers under section 17(2) of the 1973 Act(b) (Commission's reports and their implementation) which Order determines the electoral wards in that area, but provided that where such Order has not been made by 17th November 2006, that date shall be deemed to be 15th December 2006.

(3) Where as at the date of making an application, a connected person has either died within 3 weeks prior to that date, or is terminally ill, then an application for a severance payment shall be submitted by a member of a local authority to be received by that authority on or before 22nd March 2007.

(4) An application for a severance payment shall contain the information relating to the member of the local authority who is applying, as specified in paragraph (5).

(5) That information is—

- (a) the name and residential address of the member;
- (b) the date of birth of the member;
- (c) the political party affiliation of the member (if any);
- (d) the member's assessment of their total number of years of service calculated in accordance with Regulation 5(2);
- (e) the member's assessment of the amount of the severance payment to which they are entitled in accordance with Regulation 5(1);
- (f) a declaration by the member which confirms that the information in the application is accurate as far as the member is aware;
- (g) where the circumstances stated in paragraph (3) apply, and a member decides to make an application by the date provided for in that paragraph, a declaration by the member that those circumstances apply; and
- (h) a declaration by the member to the effect that they do not intend to be a candidate at any ordinary elections.

(6) On or before the date provided for in paragraph (7), each local authority shall—

- (a) compile the information (as specified in paragraph (5)) relating to the members of that local authority who have applied for a severance payment and any other information that the local authority reasonably considers is required to make a severance payment to such members, and

(a) These ceased to exist on 16th May 1975.

(b) The functions of the Secretary of State in section 17(2) transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

- (b) provide in writing to the Scottish Ministers–
 - (i) that information for such members; and
 - (ii) confirmation that either the head of paid service or the monitoring officer of the local authority^(a), as each local authority considers appropriate, has examined the information and confirms that they consider that the information is accurate.

(7) That date is–

- (a) 17th November 2006, for those applications that must be received by the local authority on or before the date specified in paragraph (2)(a);
- (b) 10th January 2007, for those applications that must be received by the local authority on or before the date provided for in paragraph (2)(b);
- (c) 5th April 2007, for those applications that must be received by the local authority on or before the date specified in paragraph (3).

(8) Each local authority shall make a severance payment to each of the persons entitled to receive payment (in accordance with the provisions of Regulations 3 to 5) on or before the date that is 14 calendar days after the date of the next ordinary election to be held.

(9) An application for a severance payment shall remain valid where it does not contain some or all of the information specified in paragraph (5), but it is not valid where either–

- (a) it does not contain the name of the member;
- (b) it is not signed by the member;
- (c) it does not contain the declaration required by paragraph (5)(f);
- (d) where the circumstances stated in paragraph (3) apply, and a member decides to make an application by the date provided for in that paragraph, it does not contain the declaration required by paragraph (5)(g); or
- (e) it does not contain the declaration required by paragraph (5)(h).

(10) The Scottish Ministers shall publish the names of the members who have applied for a severance payment at any time during January 2007.

TOM McCABE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
14th September 2006

^(a) The head of paid service and the monitoring officer are designated by a local authority by virtue of sections 4 and 5 of the Local Government and Housing Act 1989 (c. 42) respectively.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in accordance with section 12 of the Local Government (Scotland) Act 2004 (“the 2004 Act”). They make provision for the payment by local authorities to their members of severance payments, provided they meet specified criteria immediately prior to the date of the next ordinary election that is held after the date on which section 1 of the 2004 Act (electoral wards) will come into force. That section will establish new election arrangements for electoral wards.

Regulation 3 provides for the conditions applying for a person (save for persons described in Regulation 4) to be eligible for a severance payment.

Regulation 4 specifies persons not eligible for a severance payment.

Regulation 5 provides for the amounts of severance payment, depending on the length of service of the member of the local authority, and further provision in regard to calculation of the amounts.

Regulation 6 provides for application procedures to receive a severance payment, the date by which a member must submit an application to be eligible, the information that a member applying for a payment should provide to the local authority, and the date by which each local authority is required to make severance payments to the eligible members of the authority. That Regulation also provides for the date by which a local authority shall provide information to the Scottish Executive in relation to the members applying, and for confirmation by either the head of paid service or the monitoring officer of the authority that they consider the information supplied is accurate.

A member must submit an application to be eligible for a severance payment by a date which is the later of 20th October 2006, or 4 weeks after the date when an Order is made by the Scottish Ministers that reviews the electoral wards in the local authority area. The latter date will be deemed to be 15th December 2006, if it would occur later. Special provision is made for the circumstances set out in Regulation 6(3), where a person connected with the member has recently died before making the application or is terminally ill, when an application can be made by 22nd March 2007.

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