

2006 No. 285

POLICE

PENSIONS

The Police Pensions Amendment (Scotland) Regulations 2006

<i>Made</i> - - - -	<i>24th May 2006</i>
<i>Laid before the Scottish Parliament</i>	<i>31st May 2006</i>
<i>Coming into force</i> - -	<i>22nd June 2006</i>

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

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the Police Pensions Amendment (Scotland) Regulations 2006.

(2) These Regulations come into force on 22nd June 2006 but have effect from 5th December 2005 except for paragraph 8 of Schedule 1 which has effect from 5th April 2006(c).

(3) These Regulations extend to Scotland only.

Amendment of the Police Pensions Regulations 1987

2. The Police Pensions Regulations 1987(d) are amended in accordance with Schedule 1 to these Regulations.

(a) 1976 c.35 (“the Act”). Section 1 is amended by section 2(3) of the Police Negotiating Board Act 1980 (c.10), 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). These powers are extended by section 42 of the Welfare Reform and Pensions Act 1999 (c.30). The functions of the Secretary of State under the Act as regards Scotland are transferred to the Scottish Ministers 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 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 and section 63 of the Scotland Act 1998 (c.46).

(b) See section 2(3) of the Police Negotiating Board Act 1980 (c.10), which substituted the Police Negotiating Board for the United Kingdom for the Police Council for the United Kingdom.

(c) Retrospective effect is permitted by section 1(5) of the Police Pensions Act 1976 (c.35).

(d) S.I. 1987/257; relevant amendments were made 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, 1998/577, 2000/1549, 2001/3888, 2002/2529 and 3202, 2003/27, 2004/1760 and 2354 and S.I. 2000/193, 2001/459, 2003/406, 2004/486, 2005/200 and 495.

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

3. The Police Pensions (Additional Voluntary Contributions) Regulations 1991(a) are amended in accordance with Schedule 2 to these Regulations.

St Andrew's House,
Edinburgh
24th May 2006

GEORGE LYON
Authorised to sign by the Scottish Ministers

(a) S.I. 1991/1304; relevant amendments were made by S.I. 2001/461, S.I. 2003/27 and S.S.I. 2003/406.

AMENDMENTS TO THE POLICE PENSIONS REGULATIONS 1987

1. In regulation B9 (allocation)–
 - (a) in paragraph (2)(c)–
 - (i) after “marry or remarry” insert “or form a civil partnership or a subsequent civil partnership”;
 - (ii) after “spouse by that marriage” insert “or civil partner by that civil partnership”;
 - (b) in paragraph (3)–
 - (i) after “marry or remarry” insert “or form a civil partnership or a subsequent civil partnership”;
 - (ii) after “spouse by that marriage” insert “or civil partner by that civil partnership”;
 - (c) in paragraph (5)(b)–
 - (i) after “marry or remarry” insert “or form a civil partnership or a subsequent civil partnership”;
 - (ii) after “spouse by that marriage” insert “or civil partner by that civil partnership”;
 - (iii) after “intended marriage” insert “or the intended formation of his civil partnership”;
 - (d) in paragraph (6)(b)–
 - (i) after “proposed marriage takes place” insert “or the proposed civil partnership is formed”;
 - (ii) after “date of the marriage” insert “or of the formation of the civil partnership”.
2. (a) In regulation C5 (limitation on award to widow with reference to date of marriage and pension in case of post-retirement marriage) after the words “married to her husband”, in both places where they appear, insert “or, as the case may be, had formed a civil partnership with her civil partner”.
 - (b) For the heading of regulation C5, substitute “limitation on award to widow with reference to date of marriage or formation of a civil partnership and pension in case of post-retirement marriage or formation of a civil partnership”.
3. For regulation C9 (termination of widow’s award on remarriage) substitute–

“C9 Termination of widow’s or civil partner’s pension on remarriage, formation of new civil partnership or cohabitation

(1) Where a widow entitled to a pension under this Part was widowed before 5th December 2005 or was widowed after that date but her husband had ceased to serve as a member of a police force by that date, and–

- (a) remarries or has remarried,
- (b) forms or has formed a civil partnership, or
- (c) with a person to whom she is not married lives together as husband and wife,

she shall not be entitled to receive any payment on account of the pension in respect of any period after her marriage, or after the formation of her civil partnership or after her cohabitation begins.

(2) Where the surviving civil partner of a member of a police force who had ceased to serve as a member of a police force by 5th December 2005 is entitled to a pension under this Part and—

- (a) marries or has married,
- (b) forms or has formed a new civil partnership, or
- (c) with a person who is not her civil partner lives together as if they were civil partners,

she shall not be entitled to receive any payment on account of the pension in respect of any period after her marriage, or after the formation of her civil partnership, or after her cohabitation begins.

(3) Where a widow who does not fall within paragraph (1) or a surviving civil partner who does not fall within paragraph (2) is entitled to a pension under this Part and—

- (a) marries or has married,
- (b) remarries or has remarried,
- (c) forms or has formed a civil partnership or new civil partnership,
- (d) with a person to whom she is not married lives together as husband and wife, or
- (e) with a person who is not her civil partner lives together as if they were civil partners,

she shall not be entitled to receive any payment on account of the pension in respect of any period after her marriage or remarriage, or after the formation of her civil partnership, or after her cohabitation begins.

(4) But if, at any time after her marriage, remarriage, the formation of her civil partnership or the beginning of her cohabitation, a person in any of paragraphs (1) to (3) has again become a widow or her civil partner dies or that marriage or civil partnership has been dissolved or annulled or that cohabitation ceases, the police authority may, in their discretion, bring the pension into payment.

C9A Termination of widow's or civil partner's gratuity on remarriage, formation of new civil partnership or cohabitation

(1) Where a widow entitled to a gratuity under this Part was widowed before 5th December 2005 or was widowed after that date but her husband had ceased to serve as a member of a police force by that date, and—

- (a) remarries or has remarried,
- (b) forms or has formed a civil partnership, or
- (c) with a person to whom she is not married lives together as husband and wife,

so much of the gratuity as has not been paid before her remarriage or the formation of her civil partnership or the beginning of her cohabitation shall not be payable thereafter.

(2) Where the surviving civil partner of a member of a police force who had ceased to serve as a member of a police force by 5th December 2005 is entitled to a gratuity under this Part and—

- (a) marries or has married,
- (b) forms or has formed a new civil partnership, or
- (c) with a person who is not her civil partner lives together as if they were civil partners,

so much of the gratuity as has not been paid before her marriage or remarriage or the formation of her civil partnership or the beginning of her cohabitation shall not be payable thereafter.

(3) Where a widow who does not fall within paragraph (1) or a surviving civil partner who does not fall within paragraph (2) is entitled to a gratuity under this Part and—

- (a) marries or has married,
- (b) remarries or has remarried,
- (c) forms or has formed a civil partnership or new civil partnership,
- (d) with a person to whom she is not married lives together as husband and wife, or
- (e) with a person who is not her civil partner lives together as if they were civil partners,

so much of the gratuity as has not been paid before her remarriage or the formation of her civil partnership or the beginning of her cohabitation shall not be payable thereafter.

(4) But if, at any time after her marriage, remarriage, the formation of her civil partnership or the beginning of her cohabitation, a person in any of paragraphs (1) to (3) has again become a widow or her civil partner dies or that marriage or civil partnership has been dissolved or annulled or that cohabitation ceases, the police authority may, in their discretion, pay to her the sums which they were actually or contingently liable to pay to her in respect of the gratuity immediately before her remarriage or the formation of her civil partnership or the beginning of her cohabitation.”

4. In regulation C10 (pension debit members) after “spouse” insert “or civil partner”.

5. In regulation D5 (child’s allowance or special gratuity – limitations)—

- (a) in paragraph (1)(a) after “of a marriage which took place” insert “or of a civil partnership which was formed”;
- (b) for paragraph (1)(b) substitute the following sub-paragraph—
 - “(b) by reason of his being a step-child,—
 - (i) to the child of a spouse whose marriage to the relevant parent took place on or after the relevant date, or
 - (ii) to the child of a civil partner whose civil partnership with the relevant parent was formed on or after the relevant date;”;

(c) after paragraph (1) insert the following paragraph—

“(1A) The reference in paragraph (1)(a) to a child born of a civil partnership means a child—

- (a) who is a child of a member of a civil partnership and has been adopted by the other member of that civil partnership; or
- (b) who has been adopted by two persons who have formed a civil partnership.”.

6. In regulation E1(1) (adult dependent relative’s special pension), after sub-paragraph (c) insert the following—

“or

- (d) where the member was a woman in a civil partnership whose civil partner was permanently disabled at the time the member died, to the surviving civil partner.”.

7. In regulation E4(4) (gratuity in lieu of widow’s pension) for “provisions of Regulation C9 relating to the termination of a widow’s award on remarriage” substitute “provisions of Regulations C9 and C9A relating to the termination of a widow’s or civil partner’s award on remarriage or the formation of a new civil partnership”.

8. In regulation G4 (election not to pay pension contributions)—

- (a) in paragraph (5) for “Subject to paragraph (6)” substitute “Subject to paragraphs (6) to (8)”;

- (b) after paragraph (6) insert the following paragraphs–
- “(7) A notice under paragraph (5) cancelling an election given to a police authority after 5th April 2006 shall be of no effect.
- (8) Where, following a notice of cancellation under paragraph (5), an election under paragraph (1) would, but for this paragraph, cease to have effect as from a date after 5th April 2006, that election shall cease to have effect as from 5th April 2006.”
- 9.** In regulation G6 (payments by women members to enhance widowers’ awards)–
- (a) in paragraph (1) after “Subject to paragraph” insert “(1A) and”;
- (b) after paragraph (1) insert the following paragraph–
- “(1A) An election under this regulation which is made by virtue of the amendments to these Regulations by the Police Pensions Amendment (Scotland) Regulations 2006 may not secure the counting of pensionable service before 6th April 1988.”.
- (c) after paragraph (3)(d) insert–
- “or
- (e) in the case of a woman by whom contributions are payable under regulation G2 on or before the date on which the Police Pensions Amendment (Scotland) Regulations 2006 come into force who elects to secure the counting of pensionable service after 5th April 1988 and before 17th May 1990 (not being service which is already the subject of an election to enhance her widower’s or surviving civil partner’s award), the date on which those Regulations come into force, or
- (f) in the case of a woman by whom contributions become payable under regulation G2 after the date on which the Police Pensions Amendment (Scotland) Regulations 2006 come into force who elects to secure the counting of pensionable service after 5th April 1988 and before 17th May 1990 (not being service which is already the subject of an election to enhance her widower’s or surviving civil partner’s award), the date on which those contributions become payable.”;
- (d) in paragraph (4A) for “paragraph (3)(c) or (d)” substitute “paragraph (3)(c), (d), (e) or (f)”;
- (e) in paragraph (13) for “paragraph (3)(c) or (d)” substitute “paragraph (3)(c), (d), (e) or (f)”.
- 10.** In regulation J1 (policeman with a guaranteed minimum for the purposes of the Social Security Pensions Act)–
- (a) in paragraph (4) after “remarries or has remarried” insert “or forms a civil partnership”;
- (b) in paragraph (4)(b) after “as husband and wife” insert “or during which she lives with another woman as if they were civil partners”;
- (c) in paragraph (4A) after “remarries or has remarried” insert “or forms a civil partnership”;
- (d) in paragraph (4A)(b) after “as husband and wife” insert “or during which he lives with another man as if they were civil partners”;
- (e) after paragraph (4A) insert the following paragraph–
- “(4B) In a case to which this regulation applies, where the regular policeman dies or has died on or after 5th December 2005 leaving a civil partner then, unless any pension to which he has been entitled has been forfeited under regulation K5(2), that surviving civil partner shall be entitled to a pension of a weekly amount equal to one-half of that part of the policeman’s guaranteed minimum which is attributable to earnings factors for the tax year, 1988-89 and subsequent tax years increased in accordance with regulation E9 (increase by reference to the Pensions (Increase) (Acts)) but that entitlement shall cease if he marries, remarries or has married or remarried or forms a civil partnership before attaining the age of 65 years and no payment shall be made on account of the pension–

- (a) in respect of any period for which the amount of any pension payable to him under Part C exceeds the pension which, disregarding this sub-paragraph, would be payable hereunder, or
 - (b) in respect of any period before he attains the age of 65 years during which he and another person to whom he is not married and with whom he has not formed a civil partnership are living together as husband and wife or as if they were civil partners.”;
- (f) after paragraph (5A) insert the following paragraph–
- “(5B) Where a surviving civil partner is entitled to a pension under paragraph (4B) then, in respect of any period in respect of which a payment is made on account of that pension, no payment shall be made on account of any pension payable to him under Part C.”
- 11. In regulation L3(5) (payment and duration of awards)–**
- (a) after “remarries” insert “or enters into a civil partnership”;
 - (b) after “remarriage” insert “or civil partnership”.
- 12. In regulation M2 (pension sharing mechanism in the Scheme)–**
- In paragraph (2) after “spouse” insert “, surviving civil partner”.
- 13. In regulation M7 (discharge of pension credit liability)–**
- (a) In paragraph (1) after “ex-spouse” insert “or former civil partner”;
 - (b) In paragraph (3) after “ex-spouse” insert “or former civil partner”.
- 14. In regulation M9 (implementation period for discharge of pension credit)–**
- (a) In paragraph (1)(b)(i) after “matrimonial” insert “or civil partnership”;
 - (b) In paragraph (2) at the end of sub paragraph (b) add “or (c) the order responsible for the dissolution or annulment of the civil partnership”.
- 15. In regulation M10 (failure to discharge liability in respect of pension credit within the implementation period and death of ex-spouse before implementation has taken place)–**
- (a) In paragraph (5) after “ex-spouse” insert “or former civil partner” and after “deceased’s spouse” insert “or deceased’s former civil partner”;
 - (b) In paragraph (6) after “ex-spouse” insert “or former civil partner”;
 - (c) For the heading of regulation M10, substitute “Failure to discharge liability in respect of pension credit within the implementation period and death of ex-spouse or former civil partner before implementation has taken place”.
- 16. In regulation M15 (charges in respect of pension sharing costs)–**
- In paragraph (4) after “spouse” insert “or civil partner” in both places where it appears.
- 17. In Schedule A (glossary of expressions)–**
- (a) in the definition of “child”, after “spouse” insert “or civil partner”;
 - (b) for the definition of “husband” substitute–
 - “husband”, except in regulations C9, C9A and J1, includes wife and civil partner;”;
 - (c) at the appropriate place insert–
 - ““step-child” includes a person who is the child of the civil partner of the member of a police force concerned, but is not the child of that member;”;
 - (d) for the definition of “widow” substitute–
 - ““widow”, except in regulation J1, includes widower and, except in regulations C9, C9A and J1, includes surviving civil partner;” and

- (e) for the definition of “wife” substitute–
““wife”, except in regulations C9, C9A and J1, includes husband and civil partner.”.

18. In Schedule C (widows’ awards)–

- (a) in paragraph 1(2A) of Part I, for “man” substitute “widower or to the surviving civil partner of a female police officer”;
- (b) after paragraph 1(2A) of Part I insert the following sub-paragraphs–

“(2B) But where a pension becomes payable to the surviving civil partner of a female police officer and as a consequence of an election under regulation G6–

- (a) account would, but for this sub-paragraph, be taken of pensionable service before 6th April 1988, then account shall be taken only of service after 5th April 1988;
- (b) sub-paragraph (1)(b) would, but for this sub-paragraph, have effect with the substitution for “5th April 1978” of a date before 6th April 1988, then that sub-paragraph shall have effect with the substitution for “5th April 1978” of “5th April 1988”.

(2C) Where a pension becomes payable under regulation C1 to the surviving civil partner of a male police officer–

- (a) the pension or notional pension referred to in sub-paragraph (1)(a) shall be taken to be that which would be payable if no account were taken of any pensionable service before 6th April 1988, and
- (b) sub-paragraph (1)(b) has effect with the substitution for “5th April 1978” of “5th April 1988.”;
- (c) in paragraph 3 of Part I, after the words “a man” insert “or a surviving civil partner of a woman”;
- (d) in paragraph 1(1A) of Part III, for “man” substitute “widower or to the surviving civil partner of a female police officer”;
- (e) after paragraph 1(1A) of Part III insert the following sub-paragraphs–

“(1B) But where a pension becomes payable under regulation C4 to the surviving civil partner of a female police officer and as a consequence of an election under regulation G6 account would, but for this sub-paragraph, be taken of pensionable service before 6th April 1988, then account shall be taken only of service after 5th April 1988.

(1C) Where a pension becomes payable under regulation C4 to the surviving civil partner of a male police officer, the amount of the deceased’s deferred pension shall for the purposes of sub-paragraph (1) be taken to be what it would be if no account were taken of any pensionable service before 6th April 1988.”;

- (f) in paragraph 3(4) of Part III, after the words “a man” insert “or a surviving civil partner of a woman”;
- (g) for the heading of Part IV, substitute “Widow’s pension in case of post-retirement marriage or formation of a civil partnership”;
- (h) in paragraph 4 of Part IV, for “man” substitute “widower or to the surviving civil partner of a female police officer”;
- (i) after paragraph 4 of Part IV insert the following paragraphs–

“5. But where a pension becomes payable under regulation C5(3) to the surviving civil partner of a female police officer and as a consequence of an election under regulation G6, paragraphs 2(a)(ii) and (3) above would, but for this sub-paragraph, have effect with the substitution for “5th April 1978” of a date before 6th April 1988, then those paragraphs shall have effect with the substitution for “5th April 1978” of “5th April 1988”.

6. Where a pension becomes payable under regulation C5(3) to the surviving civil partner of a male police officer, paragraphs 2(a)(ii) and 3 above have effect with the substitution for “5th April 1978” of “5th April 1988”.”;

(j) in paragraph 1 of Part V, for the words from “where the pension” to the end substitute the following sub-paragraphs–

“(a) where the pension is payable to a widower or to the surviving civil partner of a female police officer this paragraph has effect with the substitution for “5th April 1978” of “16th May 1990” or, as the case may be, the day before the date from which service before 17th May 1990 counts, subject to paragraph (1A), in consequence of an election under regulation G6, and

(b) where the pension is payable to the surviving civil partner of a male police officer this paragraph has effect with the substitution for “5th April 1978” of “5th April 1988”.”;

(k) after paragraph 1 of Part V, insert the following paragraph–

“(1A) Where a widow’s requisite pension is payable to the surviving civil partner of a female police officer and, as a consequence of an election under regulation G6, paragraph 1 would, but for this paragraph, have effect with the substitution for “5th April 1988” of a date before 6th April 1988, then that paragraph shall have effect with the substitution for “5th April 1978” of “5th April 1988”.”.

19. In Schedule E (awards on death-additional provisions)–

(a) in paragraph 2(a)–

(i) after “married woman” insert “or a woman in a civil partnership”;

(ii) after “widower” insert “or surviving civil partner”;

(b) in paragraph 2(b) after “married woman” insert “or a woman in a civil partnership”.

SCHEDULE 2

Regulation 3

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

1. In regulation 15(2) (payment by police authority) after the words “widow or widower”, in both places they appear, insert “or surviving civil partner”.
2. For the heading of regulation 10B, substitute “Pension sharing on divorce or nullity of marriage or on the dissolution or nullity of a civil partnership”.
3. For the heading of regulation 12A, substitute “Pension sharing on divorce or on the dissolution of a civil partnership”.
4. In Schedule 1A (pension sharing), in paragraph 1(7)(a) after “spouse” insert “or civil partner”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Police Pensions Regulations 1987 and the Police Pensions (Additional Voluntary Contributions) Regulations 1991. The amendments ensure parity of treatment between police officers who form civil partnerships and those who marry, and restrict the ability of a police officer who has opted out of the police pension scheme to opt back into it.

In particular, these Regulations make amendments consequent on the coming into force of the Civil Partnership Act 2004 with retrospective effect from 5th December 2005, which is the date on which the substantive provisions of that Act came into effect. In general, provisions which apply to married couples are amended so as to apply to couples who form a civil partnership.

The Regulations also amend regulation G6 of the Police Pensions Regulations 1987 so as to enable payments to be made by women members to enhance widowers' and surviving civil partners' 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 two 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.

Paragraph 8 of Schedule 1 to these Regulations imposes a cut-off date of 5th April 2006 for cancelling elections not to pay pension contributions and has retrospective effect from that date. This is because a new police pension scheme is to be introduced with retrospective effect from 6th April 2006 and it is intended that any person who has previously made such an election but then wishes to reinstate themselves as a member of the police pension scheme should, from 6th April, join the new scheme.

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