
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 228

**The Local Government Pension Scheme
(Administration) (Scotland) Regulations 2008**

PART 6

DETERMINATION OF QUESTIONS AND DISPUTES

Interpretation of Part

50. In this Part a reference to the employing authority or the appropriate administering authority of a prospective member is a reference to the body that would be the prospective member's employer or appropriate administering authority if the prospective member were to become an active member in the employment by virtue of which the prospective member would be eligible to join the Scheme.

First instance decisions

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

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

- (a) any question concerning the person's previous service or employment;
- (b) any question about counting additional periods as membership or crediting additional pension.

(3) Such a decision must be made as soon as is reasonably practicable after the person becomes a member in the employment.

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

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

(6) Any question whether a person is entitled to a benefit under the Scheme must be decided by the employing authority who last employed the person.

(7) That decision must be made as soon as is reasonably practicable after the earlier of—

- (a) the date the employment ends; or
- (b) the date specified in the notification mentioned in regulation 11(4) (ending of membership).

(8) In paragraphs (4) and (6) "benefit" includes a return of contributions.

(9) Any question concerning what rate of contribution a member is liable to pay to the appropriate fund must be decided by the member's employing authority.

(10) Other questions in relation to any member or prospective member must be decided by the member's employer as soon as is reasonably practicable after the member or prospective member becomes a member or a material change affects his or her employment.

First instance determinations: ill-health

52.—(1) The independent registered medical practitioner referred to in regulation 20(6) (early leavers: ill health) of the Benefit Regulations must be in a position to certify that the practitioner—

- (a) has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and
- (b) is not acting, and has not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case.

(2) If the employing authority is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of registered medical practitioner for the purposes of regulation 20 (early leavers: ill health) and 31 (early payment of pension: ill health) of the Benefit Regulations.

Notification of first instance decisions

53.—(1) Every person whose rights or liabilities are affected by a decision under regulation 51 (first instance decisions) must be notified of it in writing by the body which made it as soon as is reasonably practicable.

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

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

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

(5) Every notification must also—

- (a) refer to the rights available under regulations 54 (applications to resolve disagreements) and 56 (reference of disagreement);
- (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 to whom applications under regulation 54 may be made.

Applications to resolve disagreements

54.—(1) This regulation applies where there is a disagreement about a matter in relation to the Scheme between a member (or an alternative applicant) and an employing authority or the administering authority.

(2) These persons are alternative applicants—

- (a) a widow, widower or surviving civil partner or nominated cohabiting partner (as defined in regulation 25 of the Benefits Regulations) of a deceased member;
- (b) a dependant of a deceased member or any other person to whom benefits in respect of him or her may be paid;
- (c) a prospective member;

- (d) a person who ceased to be a member, or to fall within any of sub paragraphs (a) to (c), during the period of six months ending with the date of the application; and
 - (e) in the case of a disagreement relating to the question whether a person claiming to be a member or to fall within any of sub paragraphs (a) to (d) does so, the claimant.
- (3) The member or, as the case may be, the alternative applicant may apply to—
- (a) the person specified under regulation 53(5)(c) (notification of first instance decision) to give a decision on the disagreement; or
 - (b) the appropriate administering authority for that authority to refer the disagreement to a person for decision.
- (4) An application for a decision must—
- (a) set out the applicant’s full name, address and date of birth;
 - (b) include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;
 - (c) be signed by or on behalf of the applicant; and
 - (d) be accompanied by a copy of any written notification under regulation 53 (notification of first instance decision).
- (5) An application by—
- (a) a member or prospective member;
 - (b) a person who ceased to be a member or prospective member during the period of six months ending with the date of the application; or
 - (c) a person claiming to be a person within sub paragraph (a) or (b),
- must also set out his or her national insurance number (if any) and the name of his or her employing authority.
- (6) An application by any other person must also set out—
- (a) that person’s relationship to the member; and
 - (b) the member’s full name, address, date of birth and national insurance number (if any) and the name of the member’s employing authority.
- (7) An application must be made before the end of—
- (a) the period of six months beginning with the relevant date; or
 - (b) such longer period as the person giving the decision on the disagreement considers reasonable.
- (8) The relevant date is—
- (a) in the case of a disagreement relating to a decision under regulation 51 (first instance decisions), the date notification of the decision is given under regulation 53 (notification of first instance decision); and
 - (b) in any other case, 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.
- (9) Paragraph (7)(b) does not apply where an appeal has been made under regulation 59(1) (appeals by administering authorities) in respect of a matter that is the subject of an application under this regulation.

Notice of decisions on disagreements

55.—(1) Subject to paragraph (2), a decision on a disagreement to which an application under regulation 54 (applications to resolve disagreements) relates must be given by notice in writing to—

(a) the applicant;
 (b) the employing authority; and
 (c) if the employing authority is not the appropriate administering authority, to that authority, by notice in writing before the expiry of the period of two months beginning with the date the application was received.

(2) 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 or provisions of the Scheme on which the person making the decision relied;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (d) a reference to the rights of the applicant and the employing authority’s right to refer the disagreement for reconsideration by the Scottish Ministers under regulation 56 (reference of disagreement for reconsideration by Scottish Ministers) 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.

Reference of disagreement for reconsideration by Scottish Ministers

56.—(1) This regulation applies where an application about a disagreement has been made under regulation 54 (applications to resolve disagreements) and—

- (a) notice of a decision has been given under regulation 55(1) (notice of decision on disagreements); or
- (b) an interim reply has been sent under regulation 55(2) but no such notice has been given before the expiry of the period of one month beginning with the expected decision date; or
- (c) no such notice has been given or interim reply sent before the expiry of the period of three months beginning with the date the application was made.

(2) The applicant under regulation 54 may, before the expiry of the period of six months beginning with the relevant date, make an application to the Scottish Ministers to reconsider the disagreement.

(3) The relevant date is—

- (a) in a case falling within paragraph (1)(a), the date of the notice given under regulation 55(1);
- (b) in a case falling within paragraph (1)(b), the date on which the period mentioned in that sub paragraph expires; and
- (c) in a case falling within sub paragraph (1)(c), the date on which the period mentioned in that sub paragraph expires.

(4) The application must—

- (a) set out the applicant’s full name, address and date of birth;
- (b) set out details of the grounds on which it is made (including any relevant supporting documentation);

- (c) include a statement that the applicant wishes the disagreement to be reconsidered by the appropriate administering authority;
 - (d) be accompanied by a copy of any written notification under regulation 53; and
 - (e) be signed by or on behalf of the applicant.
- (5) An application by a member or prospective member or a person claiming to be such must also set out his or her national insurance number (if any) and the name of the employing authority.
- (6) An application by any other person must also set out—
- (a) the person’s relationship to the member; and
 - (b) the member’s full name, address, date of birth and national insurance number (if any) and the name of the member’s employing authority.
- (7) Where notice of a decision on the disagreement has been given under regulation 55, the application must also—
- (a) state why the applicant is dissatisfied with that decision; and
 - (b) be accompanied by a copy of that notice.
- (8) The Scottish Ministers must determine—
- (a) the procedure to be followed when exercising its functions under this regulation;
 - (b) the manner in which those functions are to be exercised.

Notice of decisions on reconsideration of disagreement

57.—(1) Subject to paragraph (2), the Scottish Ministers must give their decision on an application under regulation 56 by notice in writing to—

- (a) the applicant; and
- (b) the employing authority,

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

(2) If no such notice is given before the expiry of that period an interim reply must immediately be sent to those parties setting out—

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision.

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

- (a) a statement of the decision;
- (b) in a case where a decision was given under regulation 55, an explanation of whether and, if so, the extent to which that decision is confirmed or replaced;
- (c) a reference to any legislation or provisions of the Scheme on which the authority relied;
- (d) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (e) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty with the Scheme which remains unresolved including the address at which it may be contacted; and
- (f) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with the Pension Schemes Act 1993 including the address at which the Pensions Ombudsman may be contacted.

Rights of representation

58.—(1) An application under regulation 54 (applications to resolve) or 56 (reference of disagreements) may be made or continued 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 person's behalf by the person's executor.

(3) Where such a person is under a legal disability because of non age or is or becomes otherwise incapable of acting for himself or herself, the application may be made or continued on the person's behalf by a member of the person's family or some other person suitable to represent the person.

(4) Where a representative is nominated before an application is made, the application must specify the representatives 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 be sent a copy of—

- (a) a notice under regulation 55(1) or 57(1); or
- (b) an interim reply under regulation 55(2) or 57(2).

Appeals by administering authorities

59.—(1) This regulation applies where an employing authority—

- (a) has decided, or failed to decide, any question falling to be decided by that employer under regulation 51 (first instance decisions) (otherwise than in the exercise of a discretion); and
- (b) is not an administering authority.

(2) The administering authority maintaining the pension fund to which the employing authority pays contributions may appeal to the Scottish Ministers to decide the 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 Scottish Ministers consider reasonable.

(4) The relevant date is—

- (a) in the case of an appeal relating to a decision notified under regulation 53(1), the date of the notification of the decision; and
- (b) in the case of an appeal relating to a failure to decide any question, the date of that failure.

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

(6) The Scottish Ministers must issue their decision on the appeal by notice in writing to the appellant and to any other person appearing to them to be affected by it.

(7) Paragraph (8) applies where any other person—

- (a) has made an application under regulation 54 or 56 which has not been determined in respect of any of the matters which are the subject of an appeal under this regulation, or
- (b) makes such an application—
 - (i) at the same time as such an appeal is made; or
 - (ii) after such an appeal is made and before it is determined.

(8) The appeal must be sisted—

- (a) pending notification of a decision under regulation 55 or 57; or

(b) until the application is withdrawn.