
STATUTORY INSTRUMENTS

1997 No. 674 (S.44)

PENSIONS

**The Local Government Superannuation
(Scotland) Amendment Regulations 1997**

<i>Made</i>	- - - -	<i>5th March 1997</i>
<i>Laid before Parliament</i>		<i>14th March 1997</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State, in exercise of the powers conferred on him by section 7 of the Superannuation Act 1972(1) and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate in accordance with section 7(5) of that Act, and not having considered consultation with any individual local authority desirable, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Local Government Superannuation (Scotland) Amendment Regulations 1997 and shall come into force on 6th April 1997.

Amendment of the Local Government Superannuation (Scotland) Regulations 1987

2. The Local Government Superannuation (Scotland) Regulations 1987(2) (hereinafter referred to as “the principal Regulations”) shall be amended in accordance with regulations 3 to 8 below.

Initial decisions

3. Regulation N1 shall be amended—

- (a) in paragraph (2) by substituting for the words “this regulation and of regulation N8 (appeals)” the words “this Part”; and
- (b) in paragraph (3) by inserting after the words “any other scheduled body” the words “, an appointed person”.

(1) 1972 c. 11.

(2) S.I. 1987/1850; relevant amending instrument is S.I. 1992/3025.

Notification of decisions

4. For paragraph (2)(c)(ii) of regulation N7 there shall be substituted the following:–
- “(ii) to his right under regulation N9 to make an application to an appointed person, the address at which the appointed person may be contacted and his job title; and
 - (iii) to his right under regulation N11 to apply to the Secretary of State for a reconsideration or, as the case may be, consideration of the matter within the time limit referred to in that regulation.”.

Appeals

5. For regulation N8 there shall be substituted the following:–

“Appointment of persons to resolve disputes

N8.—(1) Each administering authority shall appoint a panel of persons whom they consider to be suitably qualified for the purpose of resolving disagreements in respect of which an application is made under regulation N9(1).

(2) The members of such panel are the appointed persons for the purposes of this Part of the Regulations.

(3) A disagreement in respect of which an application is made under regulation N9(1) may be decided by one or more appointed persons.

(4) An appointed person shall hold and vacate office under the terms of the instrument under which he is appointed by the administering authority but may resign by notice in writing to the administering authority.

(5) The administering authority shall prescribe the procedure to be followed by the appointed persons in the exercise of their functions under these Regulations and the manner in which their functions are to be exercised.

(6) An application under regulation N9 shall not be referred for a decision to any appointed person who has previously been involved in the subject matter of the disagreement.

Application for a decision

N9.—(1) Where there is a disagreement between a complainant and the body concerned about a matter in relation to the superannuation scheme constituted under these Regulations, the complainant may make a written application to–

- (a) the appropriate appointed person, or
- (b) the appropriate administering authority to refer to the appropriate appointed person,

to make a decision on the disagreement.

(2) An application under this regulation may be made or continued on behalf of a complainant by a representative nominated by him.

(3) Where a complainant dies or is a person under legal disability by reason of nonage or otherwise, an application may be made or continued on his behalf–

- (a) in the case of his death, by his executor; and
- (b) in any other case, by a member of his family or some other person suitable to represent him.

(4) An application for a decision shall set out particulars of the disagreement in respect of which a decision is sought.

(5) The particulars shall include—

- (a) where the complainant is a person described in regulation N14(a)(i), (iii) or (iv), or a person claiming to be such under regulation N14(a)(v), the full name, address, date of birth and the national insurance number of the complainant and the name of his employing authority;
- (b) where the complainant is a person described in regulation N14(a)(ii), or a person claiming to be such under regulation N14(a)(v), the full name, address and date of birth of the complainant, his relationship to the pensionable employee and the full name, address, date of birth and national insurance number of the pensionable employee and the name of his employing authority;
- (c) the full name and address of any representative acting on behalf of the complainant and whether such address is the address to be used for service on the complainant of any documents in connection with the disagreement;
- (d) a statement as to the nature of the disagreement with sufficient details to show why the complainant is aggrieved; and
- (e) a copy of any relevant written notification issued under regulation N7(1).

(6) The application shall be signed by or on behalf of the complainant.

(7) An appointed person shall not consider an application unless it is received by him before the end of the period of six months beginning with the relevant date or such further period as the appointed person considers reasonable.

(8) Where the disagreement relates to a decision notified under regulation N7(1) the relevant date is the date of that notification.

(9) In any other case the relevant date is the date of the act or omission complained of or, if there is more than one such act or omission, the last of them.

(10) The appropriate administering authority in relation to a complainant is—

- (a) where the complainant is a pensionable employee, the administering authority that are or were his last appropriate administering authority under these Regulations; and
- (b) where the complainant is the widow, widower or surviving dependant of a deceased pensionable employee, the administering authority that were the appropriate administering authority in relation to that deceased pensionable employee.

(11) The appropriate appointed person in relation to a complainant is any appointed person appointed by the complainant's appropriate administering authority.

Decision and notice of it

N10.—(1) Where an application has been duly made in accordance with regulation N9, the appointed person shall decide on the disagreement.

(2) Subject to paragraph (4), the decision shall be issued by the appointed person to the complainant or, where applicable, his representative and to the body concerned and, if different, the appropriate administering authority by notice in writing within two months from the date on which the particulars specified in regulation N9(5) were received.

(3) The notice shall include—

- (a) a statement of the decision;

- (b) a reference to any legislation relied upon;
- (c) a reference to such parts of these Regulations as are relied upon and, where a discretion has been exercised, a reference to such parts of these Regulations by which such discretion is conferred; and
- (d) a reference to the right of—
 - (i) the complainant; and
 - (ii) the body concerned,to refer the disagreement for reconsideration by the Secretary of State within the time limit described in regulation N11(1).

(4) If, in any case, written notice of a decision under this regulation is not issued within two months from the date on which particulars of the disagreement were received, an interim reply must immediately be sent to the complainant or, where applicable, his representative, the body concerned and, if different, the appropriate administering authority setting out the reasons for the delay and an expected date for issuing the decision.

Referral of disagreement to the Secretary of State

N11.—(1) An application to the Secretary of State to reconsider a disagreement in respect of which a decision referred to in regulation N9 has been made and to make a decision on it may be made by—

- (a) the complainant or a representative nominated by him, or
- (b) the body concerned,

within six months from the date of the notice of the decision and shall set out particulars of the grounds on which the application is made.

(2) The particulars shall include—

- (a) where the application is made by or on behalf of the complainant, the matters referred to in regulation N9(5)(a) to (c);
- (b) a copy of the notice of the decision made under regulation N9;
- (c) a statement of the reasons why the complainant or the body concerned is dissatisfied with the decision made under regulation N9; and
- (d) a statement that the complainant or the body concerned wishes the disagreement to be reconsidered by the Secretary of State.

(3) An application may also be made by a complainant or a representative nominated by him to the Secretary of State to consider a disagreement and to make a decision where an application has been made to an appointed person under regulation N9 and that person has failed to issue—

- (a) a written notice of a decision or an interim reply within three months from the date on which the application was made; or
- (b) where an interim reply has been sent, a written notice of decision within one month from the expected date for issuing the decision stated in that reply.

(4) An application made under paragraph (3) shall set out particulars of the grounds on which the application is made which shall include—

- (a) the matters referred to in regulation N9(5)(a) to (d); and
- (b) a statement that the complainant wishes the disagreement to be considered by the Secretary of State.

(5) An application made under this regulation shall be signed by or on behalf of the complainant or the body concerned, as the case may be.

Decision of the Secretary of State and notice of it

N12.—(1) Where an application has been duly made in accordance with regulation N11, the Secretary of State shall reconsider or, as the case may be, consider and decide on the disagreement.

(2) Subject to paragraph (4), the Secretary of State shall issue to the complainant or, where applicable, his representative, and to the body concerned and, if different, the appropriate administering authority a notice in writing of his decision within two months from the date on which the particulars specified in regulation N11(2) or (4) are received by him.

(2) The notice shall include—

- (a) a statement of the decision and an explanation as to whether and, if so, to what extent that decision either confirms or replaces the decision made under regulation N10;
- (b) a reference to any legislation relied upon;
- (c) a reference to such parts of these Regulations as are relied upon and, where a discretion has been exercised, a reference to such parts of these Regulations by which such discretion is conferred;
- (d) a statement that OPAS (The Pensions Advisory Service)⁽³⁾ is available to assist pensionable employees and beneficiaries of the superannuation scheme constituted under these Regulations in connection with difficulties which they have failed to resolve with the Secretary of State and the address at which it may be contacted; and
- (e) a statement that the Pensions Ombudsman appointed under section 145(2) of the Pension Schemes Act 1993⁽⁴⁾ may investigate and determine any complaint or dispute of fact or law in relation to the said superannuation scheme made or referred in accordance with that Act and the address at which he may be contacted.

(3) If, in any case, written notice of a decision under this regulation is not issued within two months from the date on which particulars of the disagreement were received under regulation N11, an interim reply must immediately be sent to the complainant or, where applicable, his representative and to the body concerned and, if different, the complainant's appropriate administering authority setting out the reasons for the delay and an expected date for issuing the decision.

Appeals by an administering authority

N13.—(1) Where—

- (a) the body concerned has decided or failed to decide any such question as is mentioned in regulation N1, and
- (b) that body is not an administering authority,

then, subject to the following provisions of this regulation, the administering authority maintaining the superannuation fund to which the body concerned pays employer's contributions may appeal to the Secretary of State.

⁽³⁾ OPAS Limited is a company limited by guarantee under the Companies Act 1985 (c. 6): registered number 2459671.

⁽⁴⁾ 1993 c. 48.

(2) The Secretary of State shall not determine any question that fell to be decided by the body concerned in the exercise of a discretion conferred on them by these Regulations.

(3) This paragraph applies where an appeal is made to the Secretary of State by an administering authority under this regulation and any other person has made or makes, whether contemporaneously or subsequently, an application under regulation N9 or N11 in respect of any of the matters which are the subject of the appeal.

(4) Where paragraph (3) applies, the appeal made under this regulation shall be sisted pending notification of a decision under regulation N10 or, as the case may be, regulation N11 or until the application is withdrawn.

(5) An appeal under this regulation shall be made by notice in writing before the end of the period of six months beginning at the relevant date or such further period as the Secretary of State considers reasonable.

(6) Where the appeal relates to a decision notified under regulation N7(1), the relevant date is the date of that notification.

(7) In any other case, the relevant date is the date of the act or omission complained of or, if there is more than one such act or omission, the last of them.

Definitions

N14. In this Part—

- (a) “Complainant” means a person who is—
 - (i) an active, deferred or pensioner member of the superannuation scheme constituted under these Regulations;
 - (ii) a widow, widower or surviving dependant of a deceased pensionable employee;
 - (iii) a prospective member of the said superannuation scheme;
 - (iv) a person who ceased to be within any of the categories of persons referred to in sub-paragraphs (i) to (iii) above within the six months immediately preceding the date of an application under regulation N9 of these Regulations; and
 - (v) where there is a disagreement which relates to a question whether a person who claims to be such a person as is mentioned in sub-paragraphs (i) to (iv) is such a person, the person so claiming;
- (b) “active member”, “deferred member” and “pensioner member” have the meaning given in section 124(1) of the Pensions Act 1995(5), and in this Part, a reference to a pensionable employee shall, where the context permits, include a reference to a prospective member, a deferred member and a pensioner member, as appropriate; and
- (c) “prospective member” means any person who, under the terms of his contract of service or these Regulations—
 - (i) is able, at his own option, to become a pensionable employee;
 - (ii) will become so able if he continues in the same employment for a sufficiently long period;
 - (iii) will become a pensionable employee automatically unless he makes an election not to become one; or

(iv) may become a pensionable employee subject to the consent of his employer; and in relation to a prospective member, the references to the employing authority, the body concerned and the appropriate administering authority shall be construed as references to the body that would be such were he to become an active member of the superannuation scheme constituted under these Regulations.”

Revocation

6. Regulation N9 (saving for appeals concerning provision of motor vehicles) shall be revoked.

Records to be kept by authorities

7. Regulation R2 shall be amended—

(a) in paragraph (1)—

(i) by inserting after the reference “N2” the words “and all applications under regulation N9 or N11”; and

(ii) by adding at the end “or prospective members”; and

(b) by adding at the end the following paragraph:—

“(3) In this regulation “prospective member” has the same meaning as in regulation N14.”

Transmission of documents and information

8. Regulation R3 shall be amended—

(a) in paragraph (1) by inserting after sub-paragraph (b) the following:—

“(bb) copies of all applications made by them under regulation N11,”; and

(b) by adding at the end the following paragraph:—

“(6) When an administering authority make an application under regulation N11 in relation to a person who is not in their employment, they shall send a copy of that application to the body who are the employing authority or were the last employing authority in relation to that person.”

Transitional and Savings

9.—(1) The substitution by regulation 5 of new regulations N8 to N14 in the principal Regulations shall not affect the rights of any person who made an appeal before 6th April 1997 and accordingly, so far as is necessary to give effect to those rights and to make provision for any matters incidental to them, the provisions of Part N shall be treated as if they had continued in effect without the amendments made by these Regulations.

(2) A person who made an appeal under regulation N8 of the principal Regulations before 6th April 1997 may make a complaint under regulation N9 as substituted by these Regulations if—

(a) the question to be determined concerns an act or omission which occurred not more than six months before 6th April 1997; and

(b) the Secretary of State has not issued a determination of the question.

(3) If a person exercises his right under paragraph (2), the earlier appeal shall be treated as withdrawn.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

St Andrew's House Edinburgh
5th March 1997

James Douglas-Hamilton
Minister of State, Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend part N (decisions and appeals) of the Local Government Superannuation (Scotland) Regulations 1987, with effect from 6th April 1997 to comply with section 50 of the Pensions Act 1995 which requires the Local Government Superannuation Scheme constituted by these Regulations (“the Scheme”) to have arrangements for the resolution of disputes between prospective members, members, deferred pensioners, pensioners and their widows, widowers and dependants on the one hand and the Scheme managers on the other.

Regulation 5 of these Regulations introduces new regulations N8 to N14 in place of the existing regulation N8 dealing with appeals to the Secretary of State. A disagreement relating to the Scheme may be referred first to a person appointed by the appropriate administering authority for that person to decide and then, if the complainant or the body concerned wishes that person’s decision reconsidered or a decision is not made timeously, it may be referred to the Secretary of State. The new Regulations comply with the requirements of the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996 (S.I. [1996/1270](#)) in connection with time limits and other procedural matters.

Regulations 3, 4, 7 and 8 make minor amendments consequential on the main changes introduced by these Regulations. Regulation 6 revokes regulation N9 of the principal Regulations which is now spent.

Regulation 9 contains transitional provisions in connection with appeals commenced before 6th April 1997.