

2004 No. 486

PENSIONS

The Police Pensions Amendment (Scotland) Regulations 2004

Made - - - - *9th November 2004*

Laid before the Scottish Parliament *9th November 2004*

Coming into force in accordance with regulation 1(2)

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 Amendment (Scotland) Regulations 2004.

(2) These Regulations shall come into force on 1st December 2004, except that—

- (a) the amendments made by paragraphs 1, 5, 8 and 14 of the Schedule have effect from 1st April 2003;
- (b) the amendments made by paragraphs 2 and 3 of the Schedule have effect from 25th June 2004;
- (c) the amendment made by paragraph 4 of the Schedule has effect in relation to any period of maternity leave falling on or after 6th April 2003;
- (d) the amendments made by paragraphs 6 and 15 of the Schedule have effect in accordance with Regulation 5; and
- (e) the amendment made by paragraph 12 of the Schedule has effect from 1st April 2002.

(3) These Regulations extend to Scotland only.

(a) 1976 c. 35. 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). Section 7(1) is amended by section 1(2) of the Police and Firemen's Pensions Act 1997. 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 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 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.

Interpretation

2. In these Regulations, unless the context otherwise requires—
“the 1987 Regulations” means the Police Pensions Regulations 1987(a);
and expressions defined in the 1987 Regulations have the same meaning in these Regulations.

Amendment of the Police Pensions Regulations 1987

3. The 1987 Regulations are amended in accordance with the Schedule to these Regulations.

Transitional provisions relating to unpaid parental leave

4.—(1) In a case where the period specified in sub-paragraph (a) of regulation F1(1D) of the 1987 Regulations has ended prior to, or shall end within, the period of 3 months beginning with 1st December 2004 (“the commencement date”), that sub-paragraph has effect as if the period within which notice shall require to be given is a period of 3 months beginning with the commencement date:

Provided that where the police authority are satisfied that it was not reasonably practicable for notice to be given within that period, they may at their discretion accept such notice at any time on or prior to 30th November 2005.

(2) In a case where notice is given within the period of 3 months beginning with the commencement date, in accordance with paragraph (1), regulation F1(1D)(d) of the 1987 Regulations has effect as if after “30 months” in paragraph (ii), there is inserted “or such longer period ending not later than 4 years and 6 months after the due date, as the police authority at their discretion may allow”.

Retrospective effect in certain cases

5.—(1) In relation to a case where a person transferred from the British Transport Police Force to become a regular policeman on or after 1st February 2001, but before 1st December 2004, and either—

- (a) the British Transport Police Force Superannuation Fund has prior to 1st December 2004 paid to the police authority concerned a transfer value in respect of that transfer, and his pensionable service in respect of his former service would if recalculated in accordance with the amendments made by these Regulations, satisfy the condition stated in paragraph (4); or
- (b) no such payment has been made prior to 1st December 2004, but the regular policeman applies in writing to the police authority by 30th November 2005 for such a transfer payment to be accepted, and for the period of pensionable service in respect of his former service to be calculated in accordance with the amendments made by these Regulations,

then paragraphs 6 and 15 of the Schedule to these Regulations have effect in relation to that regular policeman from 1st February 2001(b).

(2) In relation to a case where—

- (a) a person transferred from the British Transport Police Force to become a regular policeman on or after 30th April 1998, but before 1st February 2001, and either—
 - (i) the British Transport Police Force Superannuation Fund has prior to 1st December 2004 paid to the police authority concerned a transfer value in respect of that transfer and that policeman applies to that authority by 28th February 2005 for his pensionable service in respect of his former service to be recalculated in accordance

(a) 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 and 2852, 1998/577 and 2001/3649 and S.S.I 2000/193, 2001/459 and 2003/406.

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

with the amendments made by these Regulations, in circumstances where the condition stated in paragraph (4) applies; or

- (ii) no such payment has been made prior to 1st December 2004 but the policeman applies to the police authority concerned by 28th February 2005 for such a transfer payment to be accepted and for the period of pensionable service in his former service to be calculated in accordance with the amendments made by these Regulations; and

- (b) the police authority concerned agree to such a recalculation or calculation as the case may be;

then paragraphs 6 and 15 of the Schedule to these Regulations have effect in relation to that regular policeman from 30th April 1998.

(3) In relation to any other case where a person transfers from the British Transport Police Force to become a regular policeman on or after 1st December 2004, paragraphs 6 and 15 have effect from 1st December 2004.

(4) The condition mentioned in paragraphs (1)(a) and (2)(a)(i) is that the period of pensionable service reckonable in respect of the policeman's former service as a result of recalculation, as if the transfer value had been a transfer payment accepted in accordance with the amendments made by these Regulations, is no less than the period already reckonable.

(5) References in paragraphs (1)(a) and (2)(a)(i) to the recalculation of pensionable service in respect of a regular policeman's former service include references to a recalculation of any resulting award to him or in respect of him, in accordance with the amendments made by these Regulations, where he has ceased to be a regular policeman, and the reference in paragraph (2)(a)(i) to an application by that policeman shall include an application by or on behalf of the person who is entitled to such an award.

(6) The requirements in paragraphs (1)(b) and (2)(a)(i) and (ii) for an application to be made by a particular date shall be met if—

- (a) the police authority are satisfied that there is good cause why the application could not be made by that date;
- (b) the application is made by such later date as the police authority specify; and
- (c) the administrators of the British Transport Police Force Superannuation Fund agree that the requirement may be met by that later date.

TAVISH SCOTT

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,
Edinburgh
9th November 2004

SCHEDULE

Regulations 1, 3, 4 and 5

AMENDMENT OF THE POLICE PENSIONS REGULATIONS 1987

1. In regulation A10(2)(h), after “unpaid maternity leave” insert “or unpaid parental leave”.
2. In regulation A18(1)–
 - (a) in sub-paragraph (a) (i), after “chief constable” insert “, a deputy chief constable”;
 - (b) in sub-paragraph (a) (ii), before “superintendent” insert “chief superintendent,”.
3. In regulation B1(2)(b), for “assistant chief constable or commander” substitute “deputy chief constable or assistant chief constable”.
4. In paragraph (c) of the proviso to regulation F1(1), for “18 weeks” substitute “26 weeks”.
- 5.—(1) After paragraph (d) of the proviso to regulation F1(1), insert the following sub-paragraph–
 - “(da) any period of unpaid parental leave taken after 1st April 2003 in respect of which the conditions specified in paragraph (1B) are not satisfied;”.
 - (2) In regulation F1(1B), after “in sub- paragraph (c)” insert “or (da)”.
 - (3) In regulation F1(1B)(a), after each occurrence of the word “maternity” insert “or parental”.
 - (4) In regulation F1(1B)(b), after each occurrence of “unpaid maternity leave” insert “or unpaid parental leave”.
6. In regulation F6, after paragraph (1A) insert the following paragraph–

“(1B) References in paragraph (1) to a transfer value include references to a transfer payment which has been received under an arrangement with the British Transport Police Force Superannuation Fund in circumstances where the conditions set out in paragraph 1(aa) of Section 2 of Part IV of Schedule F are satisfied.”
7. In regulation F10(2)(b), for “2 years’ pensionable service” substitute “3 months’ pensionable service”.
8. In regulation G1(3), for “sick leave or maternity leave”, substitute “sick leave, maternity leave or parental leave”.
- 9.—(1) For regulation H1(5), substitute–

“(5) The decision of the selected medical practitioner on the question or questions referred to him under this regulation shall be expressed in the form of a report and shall, subject to regulations H2 and H3, be final.”

 - (2) For regulation H1(6), substitute–

“(6) A copy of any such report shall be supplied to the person who is the subject of that report.”
 - (3) Regulation H1(7) is omitted.
- 10.—(1) Regulation H2(1) and (2) are omitted.
 - (2) In regulation H2(3)–
 - (a) for “(2)”, substitute “(2A)”;
 - (b) for “certificate or report”, substitute “report”;
 - (c) for “certificate or, as the case may be, a report”, substitute “report”.
- 11.—(1) In regulation H3(1)–
 - (a) after “him”, insert “, or, as the case may be, it,”;

- (b) after “his”, insert “, or, as the case may be, its,”;
- (c) for “certificate or report as the case may be”, substitute “report”.

(2) For regulation H3(2), substitute—

“(2) The police authority and the claimant may, by agreement, refer any final decision of a medical authority who has given such a decision to him, or as the case may be it, for reconsideration, and he, or as the case may be it, shall accordingly reconsider his, or as the case may be its, decision and, if necessary, issue a fresh report, which, subject to any further reconsideration under this paragraph or paragraph (1), or an appeal where a right of appeal exists under regulation H2, shall be final.”

12. For regulation K4(1), substitute—

“(1) Subject to paragraph (2), a police authority by whom a pension is payable under Part B of these Regulations or under Regulation E1 (adult dependent relative’s special pension) may, in their discretion, withdraw the whole or any part of the pension for any period during which the pensioner is serving as a regular policeman in any police force, save that such withdrawal shall not apply to any pension credit under Part M; and, where they have done so, they shall be discharged from all actual or contingent liability in respect of the pension, or the part thereof, withdrawn for the period in question.”

13. After regulation K5(8), insert the following paragraph—

“(9) The police authority may, to such extent as they at any time in their discretion think fit—

- (a) apply for the benefit of any dependant of the pensioner; or
- (b) restore to the pensioner,

any amount or amounts of any pension that have been forfeited under this regulation.”.

14. In Schedule A—

(a) for the definition “maternity leave”, substitute the following definition—

““maternity leave” has the same meaning as in regulation 4(1) of the Police (Scotland) Regulations 2004(a);”;

(b) after the definition “overseas service”, insert the following definition—

““parental leave” means leave granted in accordance with regulation 33(8) of the Police Regulations 2003(b);”;

(c) for the definition of “sick leave”, substitute the following definition—

““sick leave” means leave in respect of injury or illness taken in accordance with the determination of the Scottish Ministers under regulation 33(5) of the Police (Scotland) Regulations 2004(c);”.

15.—(1) After paragraph 1(a) of Section 2 of Part IV of Schedule F, insert the following sub-paragraph—

“(aa) where his former superannuation arrangements were contained in the British Transport Police Force Superannuation Fund, and the police authority are satisfied that—

- (i) the transfer value represents all his accrued rights to awards under those arrangements,
- (ii) the transfer value is one which he has, within 12 months of his last becoming a regular policeman, requested the police authority to accept under regulation F6,

(a) S.S.I. 2004/257.
(b) S.I. 2003/527.
(c) S.S.I. 2004/257.

- (iii) the transfer value is calculated in accordance with guidance approved by the Government Actuary, and
- (iv) either–
 - (a) the regular policeman has not reached the age of 55 at the time of the transfer; or
 - (b) he has reached that age at the time of the transfer, but the police authority and the administrators of the British Transport Police Force Superannuation Fund agree that the calculation shall be made in accordance with paragraph 2,

in accordance with paragraph 2, and”.

(2) After paragraph 1 of Section 2 of Part IV of Schedule F, insert the following paragraph–

“1A. References in paragraph 1(aa) to a transfer include–

- (a) any transfer where there is an interval of no longer than one month between the regular policeman’s service with the British Transport Police Force and his service as a regular policeman; and
- (b) any transfer where there is an interval of longer than one month between those periods of service, and the police authority concerned and the administrators of the British Transport Police Force Superannuation Fund agree that the calculation shall be made in accordance with paragraph 2.”

(3) In paragraph 2 of Section 2 of Part IV of Schedule F, after “paragraph 1(a)” insert “and (aa)”.

16. In Schedule H–

(a) For paragraph 1, substitute–

“1. Every notice of appeal under Regulation H2(2A) and statement of grounds under Regulation H2(2B)(a) shall be in writing.”.

(b) For paragraph 2, substitute–

“2. On receiving a notice of appeal against a report issued under regulation H1 and the appellant’s statement of grounds for appeal, the police authority, unless Regulation H3(2) applies, shall forward to the Scottish Ministers copies of the appeal and all other documents that are determined as necessary by the Scottish Ministers.”.

(c) In paragraph 3(1)–

- (i) for “certificate or report, as the case may be” substitute “report”;
- (ii) omit “, in appeals made against a report issued in regulation H1(5)”.

(d) For paragraph 5, substitute–

“5.—(1) Any hearing (including any examination) may be attended by–

- (a) the selected medical practitioner; and
- (b) a duly qualified medical practitioner appointed for the purpose by the appellant,

although they may only observe any examination.

(2) If the selected medical practitioner does not attend any examination then a duly qualified medical practitioner appointed for that purpose by the police authority may attend the examination as an observer.

(3) If any hearing includes an examination, then only medical practitioners may be present for that part of the hearing.”.

(e) For paragraph 6, substitute–

“6. The board of medical referees shall supply the police authority, the appellant and the Scottish Ministers with a written statement of its decision, and where the board of medical

referees disagrees with any part of the selected medical practitioner's report, the board of medical referees shall provide a revised report.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Police Pensions Regulations 1987 (“the 1987 Regulations”) as they apply in Scotland.

Regulation 1 provides for the citation, commencement and extent of the Regulations noting, where applicable, earlier dates of coming into force of provisions that apply to some of the amendments made in the Schedule to the Regulations.

Regulation 3 refers to the Schedule which amends the 1987 Regulations, introducing changes relating to the period of pensionable service for maternity leave, unpaid parental leave, medical questions and appeals, dependants’ potential entitlements in cases of a forfeiture of a member’s pension, transfers of pensionable service from transferees from the British Transport Police, and other miscellaneous changes.

Regulation 4 makes transitional provisions relating to periods of unpaid parental leave that occurred before the commencement of these Regulations. Regulation 5 allows transfers from the British Transport Police Force Superannuation Fund to the Police Pension Scheme to be automatically considered under the more beneficial terms introduced from 1 December 2004, for all transfers that took place from 1st February 2001. Transfers from 30th April 1998 can also be considered, at the discretion of the police authority.

In Schedule 1–

Paragraphs 1, 5, 8 and 14 make a number of changes to ensure that the provisions for buying back time spent on parental leave are the same as those already in place for maternity leave. These amendments are backdated to 1st April 2003.

Paragraphs 2 and 3 amend the 1987 Regulations to take into account the re-introduction of the rank of deputy chief constable.

Paragraph 4 amends Regulation F1 of the 1987 Regulations to increase the period of maternity leave which counts as pensionable service that is reckonable from 18 to 26 weeks.

Paragraphs 6 and 15 make the necessary amendments to the 1987 Regulations to provide for the transfer payment of the pension of a person who becomes a police officer, having previously served in the British Transport Police Force, to be treated on the more favourable basis that is already currently accorded to the pensions of police officers who have previously served in other public sector posts. In the case of a person who is aged 55 or over at the time of the transfer, that more favourable treatment will require the agreement of the British Transport Police Force Superannuation Fund, and of the police authority concerned.

Paragraph 7 amends Regulation F10 of the 1987 Regulations to reduce from 2 years to 3 months the period of pensionable service a member of the police pension scheme must accrue before becoming eligible for a transfer of the value of his pension fund to another pension scheme.

Paragraphs 9, 10 11 and 16 make amendments to Regulation H and Schedule H of the 1987 Regulations concerning medical questions and appeals. All responses by the selected medical practitioner to questions referred under Regulation H1 will be in the form of a report. An officer will have 28 days to appeal against all such decisions and must also within 28 days of making an appeal supply the grounds for the appeal. Both the appeal and grounds for appeal must be in writing. These conditions previously only applied to questions under Regulation H1(2)(a) and (b).

Paragraph 12 corrects typographical errors in Regulation K4(1). The amendment is backdated to 1st April 2002.

Paragraph 13 amends Regulation K5 to offer a police authority the opportunity to protect dependants' potential entitlements in cases where a member's pension is subject to forfeiture, or to restore to the pensioner any forfeited pension.

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