

2016 No. 75

PENSIONS

**The Police Pensions (Miscellaneous Amendments) (Scotland)
Regulations 2016**

<i>Made</i>	- - - -	<i>2nd February 2016</i>
<i>Laid before the Scottish Parliament</i>		<i>4th February 2016</i>
<i>Coming into force</i>	- -	<i>1st April 2016</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1 of the Police Pensions Act 1976(a) and all other powers enabling them to do so.

In accordance with section 1(1) of that Act, they have consulted with the Police Negotiating Board for the United Kingdom(b).

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 and come into force on 1st April 2016.

(2) These Regulations have effect as follows—

- (a) regulation 31 has effect from 27th October 2008;
- (b) regulations 3, 7, 8 and 11 have effect from 7th October 2013;
- (c) regulations 4, 9, 10, 12 to 15, 24, 25, 28, 32 and 33 have effect from 16th December 2014;
- (d) regulations 16 to 22 have effect from 6th April 2015;
- (e) regulations 5, 6, 26, 27, 29 and 30 have effect from 1st October 2015.

(3) These Regulations extend to Scotland only.

(a) 1976 c.35. Section 1 was amended by section 2(3) of the Police Negotiating Board Act 1980 (c.10), section 1(1) of the Police and Firemen's Pensions Act 1997 (c.52) and paragraph 129 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13). These powers were extended by section 42 of the Welfare Reform and Pensions Act 1999 (c.30). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and 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 and section 63 of the Scotland Act 1998 (c.46).

(b) See section 61 of the Police Act 1996 (c.16) and 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. Section 131 of the Anti-social Behaviour, Crime and Policing Act 2014 (c.12) abolishes the Police Negotiating Board, but this provision remains to be commenced in relation to Scotland.

Amendment of the Police Pensions Regulations 1987

2. The Police Pensions Regulations 1987(a) are amended in accordance with regulations 3 to 15.
3. In regulation A6 (meaning of certain expressions)—
 - (a) in paragraph (5B)—
 - (i) in sub-paragraph (b), omit “pension”; and
 - (ii) omit sub-paragraph (c); and
 - (b) in paragraph (5C), for “to (6)” substitute “to (5)”.
4. In paragraph (2) of regulation A12 (disablement), omit “or the widower of a member of a police force”.
5. After paragraph (4) of regulation C9 (termination of widow’s or civil partner’s pension on remarriage, formation of new civil partnership or cohabitation), insert—
 - “(5) Paragraphs (1) to (3) do not apply where the widow or surviving civil partner is entitled to a special pension under regulation 13 (including such a pension granted by way of an augmented award under regulation 14) of the Police (Injury Benefit) (Scotland) Regulations 2007.
 - (6) Where entitlement to a pension under this Part was removed by virtue of paragraphs (1) to (3) prior to 1st October 2015 and the recipient of the pension was in receipt of a special pension referred to in paragraph (5), entitlement to a pension under this Part is reinstated with effect from that date.
 - (7) Nothing in paragraph (6) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 1st October 2015.”.
6. After paragraph (4) of regulation C9A (termination of widow’s or civil partner’s gratuity on remarriage, formation of new civil partnership or cohabitation), insert—
 - “(5) Paragraphs (1) to (3) do not apply where the widow or surviving civil partner is entitled to a special pension under regulation 13 (including such a pension granted by way of an augmented award under regulation 14) of the Police (Injury Benefit) (Scotland) Regulations 2007.
 - (6) Where entitlement to any portion of a gratuity under this Part was removed by virtue of paragraphs (1) to (3) prior to 1st October 2015 and the recipient of the gratuity was in receipt of a special pension referred to in paragraph (5), entitlement to the outstanding portion of the gratuity is reinstated.
 - (7) Nothing in paragraph (6) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 1st October 2015.”.
7. In paragraph (2A)(b) of regulation E8 (increase of widow’s pension or child allowance during first 13 weeks), for “Schedule 3 to the Police Regulations 2003” substitute “regulation 26 of the Police Service of Scotland Regulations 2013(b)”.
8. In paragraph (1) of regulation G1 (pensionable and average pensionable pay), for “Secretary of State under regulation 22 of the Police Regulations 2003” substitute “Scottish Ministers under regulation 14 of the Police Service of Scotland Regulations 2013”.
9. In regulation G6 (payments by women to enhance widowers’ awards)—
 - (a) in paragraph (1A), after “2006” insert “or the Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016”;

(a) S.I. 1987/257; relevant amending instruments are S.I. 1989/733, S.I. 1990/805, S.I. 1992/1343, S.I. 1992/2349, S.I. 1994/641, S.I. 1997/1429, S.S.I. 2000/193, S.S.I. 2003/406, S.S.I. 2004/486, S.S.I. 2005/495, S.S.I. 2006/285, S.S.I. 2007/68, S.S.I. 2008/387, S.S.I. 2010/85, S.S.I. 2011/154, S.S.I. 2013/184 and S.I. 2013/2318.

(b) S.S.I. 2013/35.

- (b) in paragraph (3), at the end insert—
 - “, or
 - (g) in the case of a woman by whom contributions are payable under regulation G2 on or before the date on which the Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 come into force, and 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 surviving spouse’s or surviving civil partner’s award), the date on which those Regulations come into force; or
 - (h) in the case of a woman by whom contributions become payable under regulation G2 after the date on which the Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 come into force, and 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 surviving spouse’s or surviving civil partner’s award), the date on which those contributions become payable”;
- (c) in paragraph (4A), for “or (f)” substitute “, (f), (g) or (h)”; and
- (d) in paragraph (13)(a), for “or (f)” substitute “, (f), (g) or (h)”.

10. In regulation J1 (policeman with a guaranteed minimum)—

- (a) in paragraph (4B)—
 - (i) after “leaving”, insert “a surviving spouse who is the same sex as the policeman or”;
 - and
 - (ii) before “surviving civil partner”, insert “surviving spouse or”;
- (b) after paragraph (4B), insert—
 - “(4C) Where—
 - (a) the regular policeman who has died was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004(a); and
 - (b) at the time of her death the regular policeman was married to a woman and that marriage subsisted before the time when the certificate was issued,
 the widow of the regular policeman is to be treated for the purposes of this regulation as if the certificate had not been issued.”; and
- (c) in paragraph (5B), after “Where a” insert “surviving spouse or”.

11. In Schedule A (glossary of expressions)—

- (a) in the definition of “maternity leave”, for “has the same meaning as in regulation 3 of the Police Regulations 2003” substitute “means leave taken in accordance with a determination under regulation 25(7) of the Police Service of Scotland Regulations 2013”;
- (b) in the definition of “parental leave”, for “regulation 33(8) of the Police Regulations 2003” substitute “regulation 25(8)(b) of the Police Service of Scotland Regulations 2013”;
- (c) in the definition of “part-time service”, for “regulation 5(1) of the Police Regulations 2003” substitute “regulation 3 of the Police Service of Scotland Regulations 2013”; and
- (d) in the definition of “sick leave”, for “taken in accordance with regulation 33(5) of the Police Regulations 2003” substitute “in respect of injury or illness taken in accordance with the determination of the Scottish Ministers under regulation 25(5) of the Police Service of Scotland Regulations 2013”.

(a) 2004 c.7.

12. In Part I of Schedule C (widow's ordinary pension)—

- (a) in paragraph 1—
 - (i) in sub-paragraph (2A), for “a widower” substitute “the surviving spouse”;
 - (ii) in sub-paragraph (2B), after “payable to” insert “a woman who is the surviving spouse or who is”;
 - (iii) after sub-paragraph (2B), insert—

“(2BA) Where—

 - (a) a female police officer who has died was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
 - (b) at the time of her death the female police officer was married to a woman and that marriage subsisted before the time when the certificate was issued,

the widow of the female police officer is to be treated for the purposes of this Part as if the certificate had not been issued.”; and

 - (iv) in sub-paragraph (2C), after “regulation C1 to” insert “a man who is the surviving spouse or who is”; and
- (b) in paragraph 3, for “man” substitute “surviving spouse”.

13. In Part III of Schedule C (widow's accrued pension)—

- (a) in paragraph 1—
 - (i) in sub-paragraph (1A), for “a widower” substitute “the surviving spouse”;
 - (ii) in sub-paragraph (1B), after “regulation C4 to” insert “a woman who is the surviving spouse or who is”;
 - (iii) after sub-paragraph (1B), insert—

“(1BA) Where—

 - (a) a female police officer who has died was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
 - (b) at the time of her death the female police officer was married to a woman and that marriage subsisted before the time when the certificate was issued,

the widow of the female police officer is to be treated for the purposes of this Part as if the certificate had not been issued.”; and

 - (iv) in sub-paragraph (1C), after “regulation C4 to” insert “a man who is the surviving spouse or who is”; and
- (b) in paragraph 3(4), for “man” substitute “surviving spouse”.

14. In Part IV of Schedule C (widow's pension in case of post-retirement marriage)—

- (a) in paragraph 4, for “a widower” substitute “the surviving spouse”;
- (b) in paragraph 5, after “regulation C5(3) to” insert “a woman who is the surviving spouse or who is”;
- (c) after paragraph 5, insert—

“**5A.** Where—

 - (a) a female police officer who has died was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and
 - (b) at the time of her death the female police officer was married to a woman and that marriage subsisted before the time when the certificate was issued,

the widow of the female police officer is to be treated for the purposes of this Part as if the certificate had not been issued.”; and

- (d) in paragraph 6, after “regulation C5(3) to” insert “a man who is the surviving spouse or who is”.

15. In Part V of Schedule C (widow’s requisite benefit pension)—

- (a) in paragraph 1—

(i) in sub-paragraph (a), for “a widower” substitute “the surviving spouse”;

(ii) in sub-paragraph (b), after “payable to” insert “a man who is the surviving spouse or who is”;

- (b) in paragraph 1A, after “payable to” insert “a woman who is the surviving spouse or who is”; and

- (c) after paragraph 1A, insert—

“1B. Where—

(a) a female police officer who has died was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and

(b) at the time of her death the female police officer was married to a woman and that marriage subsisted before the time when the certificate was issued,

the widow of the female police officer is to be treated for the purposes of this Part as if the certificate had not been issued.”.

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

16. The Police Pensions (Additional Voluntary Contributions) Regulations 1991(a) are amended in accordance with regulations 17 to 22.

17. In paragraph (3) of regulation 2 (interpretation), insert the following definitions before the definition of “approved additional voluntary contributions provider”—

““the 2014 Act” means the Taxation of Pensions Act 2014(b);

“the 2009 Regulations” means the Registered Pension Schemes (Authorised Payments) Regulations 2009(c);”.

18. For regulation 11, substitute—

“Retirement pensions

11.—(1) A participator may apply some or all of the proceeds of an investment made under regulation 9 to arrange with an insurer—

(a) payment of a lifetime annuity;

(b) payment of a lifetime annuity and a pension commencement lump sum;

(c) a lump sum commutation payment that—

(i) reflects the value of benefits referred to in sub-paragraph (a) or (b); and

(ii) meets the requirements of regulations 11 and 12 of the 2009 Regulations;

(d) any payment to the participator that complies with the requirements of the 2014 Act.

(2) Paragraph (1) is subject to paragraphs (10) to (13).

(a) S.I. 1991/1304.

(b) 2014 c.30.

(c) S.I. 2009/1171.

(3) Subject to paragraphs (4) and (5), the approved additional voluntary contributions provider must provide a participator with an option to receive benefits under paragraph (1)(a) to (c).

(4) Any annuity payable in accordance with paragraph (1)(a) or (b) must—

- (a) be incapable, in whole or in part, of surrender, assignation or commutation;
- (b) commence not earlier than the participator's normal minimum pension age (within the meaning of section 279(1) of the Finance Act 2004(a));
- (c) be payable to the participator for life.

(5) A lump sum commutation payment referred to in paragraph (1)(c) may be paid in respect of benefits payable under paragraph (1)(a), (b) or (d).

(6) The approved additional voluntary contributions provider may, in addition to providing a participator with benefits under paragraph (3), provide a participator with alternative benefit options under paragraph (1)(d).

(7) A participator must, not earlier than 3 months before the date from which the participator wishes those benefits under these Regulations to be provided, make a benefits election to the police authority specifying—

- (a) whether and which benefits are to be provided under paragraph (3) or, alternatively, paragraph (6);
- (b) the approved additional voluntary contributions provider who is to provide each benefit;
- (c) for whom, if anyone, a dependant's benefit is to be provided;
- (d) if more than one benefit is to be provided, either—
 - (i) the proportion of the amount secured by the total investments made under regulation 9 that is to be applied to the purchase or arrangement of each of them; or
 - (ii) the dependants' benefits to be provided expressed as a percentage of the participator's benefits;
- (e) in respect of every annuity to be provided—
 - (i) the annual rate of the annuity;
 - (ii) whether it is to be payable for life or for a fixed period;
 - (iii) whether its rate is to be fixed or to vary in accordance with the Index or to increase yearly by a specified percentage or (if lower) to increase by the increase in the Index for the year in question;
 - (iv) whether the rate may reduce; and
- (f) in the case of a participator who chooses a life-time annuity referred to in paragraph (1)(a) or (b) and who dies within the period of 5 years beginning with the date on which the annuity commences, whether, if the annuity had continued at the rate in force at the time of the participator's death, a lump sum is to be paid equal to the balance that would have been payable during the remainder of that period.

(8) If there are exceptional circumstances of serious ill-health, the police authority may in their discretion realise the pension investments without purchasing any pension, and in that event the amount obtained becomes payable as a lump sum.

(9) More than one benefits election may be made under paragraph (7) and an election must—

- (a) be in writing, and
- (b) contain such information as the police authority request.

(10) Upon receipt of a notice of election under paragraph (7), the police authority must, as soon as reasonably practicable, realise the investments made under regulation 9 and apply the proceeds in the manner specified in it.

(11) Where a participator dies before retirement or after retirement but before the benefits under this regulation are paid, the investments made under regulation 9 must be realised and are payable as a lump sum in accordance with regulation 15(2).

(12) The police authority may realise the investments made under regulation 9 and apply the proceeds to the purchase of benefits under these Regulations from an insurer in such form as appears to the police authority to be suitable where the conditions in paragraph (13) are satisfied.

(13) Those conditions are—

- (a) the participator's retirement date falls on or after 1st December 1999; and
- (b) the participator has attained the age of 75 and has not given a notice of election under paragraph (7) before doing so."

19. In regulation 12A (pension sharing on divorce or on the dissolution of a civil partnership)—

- (a) in paragraph (3), for "regulation 11(6)" substitute "regulation 11(12)"; and
- (b) in paragraph (7)—
 - (i) for "Paragraphs (2) to (10) of regulation 11 apply", substitute "Regulation 11 applies";
 - (ii) for sub-paragraph (c), substitute—

"(c) the reference to lifetime annuity shall be a reference to a pension credit member's lifetime annuity;"; and
 - (iii) omit sub-paragraph (e) and the word "and" immediately before it.

20. Omit regulation 13 (benefit limits).

21. In regulation 15 (payment by responsible person)—

- (a) in paragraph (2)(a), for "regulation 11(5)" substitute "regulation 11(7)(f)";
- (b) omit paragraphs (4) and (5); and
- (c) for sub-paragraph (a) of paragraph (7), substitute—

"(a) so far as the regulation relates to a payment under regulation 11(1), the authorised additional voluntary contributions provider;".

22. Omit Schedule 2 (benefit limits).

Amendment of the Police (Injury Benefit) (Scotland) Regulations 2007

23. The Police (Injury Benefit) (Scotland) Regulations 2007(a) are amended in accordance with regulations 24 to 32.

24. In paragraph (4) of regulation 7 (disablement), for "widower" substitute "surviving spouse".

25. In regulation 13 (adult survivor's special award)—

- (a) in paragraph (10), for "a widower" substitute "the surviving spouse";
- (b) in paragraph (11), after "paragraph (7) to" insert "a woman who is the surviving spouse or who is"; and
- (c) in paragraph (12), after "paragraph (7) to" insert "a man who is the surviving spouse or who is".

26. Omit regulation 16 (termination of adult survivor's award on remarriage or other event).

(a) S.S.I. 2007/68; relevant amending instrument is S.S.I. 2007/201.

27. After regulation 16, insert—

“Reinstatement of entitlement to adult survivor’s award

16A.—(1) The revocation of regulation 16 by the Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 has the effect of reinstating entitlement to—

- (a) a pension with effect from 1st October 2015; and
- (b) any portion of a gratuity which has not been paid due to operation of that regulation.

(2) Nothing in paragraph (1) requires the making of any payment where the person to whom the payment would otherwise have been made has died prior to 1st October 2015.”.

28. In paragraph (1) of regulation 20 (adult dependent relative’s special pension), for paragraphs (c) and (d) substitute—

- “(c) where the member was a woman who was married or in a civil partnership, and where her spouse or civil partner was permanently disabled at the time the member died, to her surviving spouse or surviving civil partner,”.

29. In paragraph (3)(a) of regulation 21 (death gratuity), omit “or 16”.

30. In paragraph (3) of regulation 43 (payment and duration of awards), omit sub-paragraph (a).

31. In paragraph 7(3)(c) of Schedule 3 (police officer’s injury award), after “(dependants)” insert—

- “; or
- (iii) any employment and support allowance under Part 1 of the Welfare Reform Act 2007(a) (other than one which is income-related)”.

32. In paragraph 2(a) of Schedule 5 (adult dependent relative’s special pension), for “widower” substitute “surviving spouse”.

Amendment of the Police Pensions (Scotland) Regulations 2007

33. In paragraph (2)(a)(iii) of regulation 40 (survivors) of the Police Pensions (Scotland) Regulations 2007(b), omit the words after “marry each other”.

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A member of the Scottish Government

St Andrew’s House,
Edinburgh
2nd February 2016

(a) 2007 c.5.
(b) S.S.I. 2007/201.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to existing instruments concerning police pensions in Scotland.

Regulations 3, 7, 8 and 11 remedy errors which occurred when the Police Pensions Regulations 1987 (“the 1987 Regulations”) were amended in 2013 in consequence of the creation of the National Crime Agency. The 1987 Regulations apply throughout Great Britain and the amendments made in 2013 (by way of an Order made by a Home Office Minister) failed to take adequate account of Scottish terminology.

Regulations 4, 9, 10, 12 to 15, 24, 25, 28, 32 and 33 make amendments consequential on the commencement of the legislation allowing same sex marriage in Scotland.

Regulations 5, 6, 26, 27, 29 and 30 amend the 1987 Regulations and the Police (Injury Benefit) (Scotland) Regulations 2007 (“the Injury Benefit Regulations”) so as to allow widows or surviving civil partners who are in receipt of certain pensions or gratuities under those Regulations to retain them following upon remarriage, forming a civil partnership or starting to cohabit. Pensions and gratuities which have been withdrawn due to existing legislation in this connection are reinstated with effect from 1st October 2015.

Regulations 17 to 22 make various amendments to the Police Pensions (Additional Voluntary Contributions) Regulations 1991.

Regulation 31 makes a minor amendment of the Injury Benefit Regulations so as to authorise a deduction from an injury benefit award in respect of employment and support allowance payable to the recipient of the award.

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