
STATUTORY INSTRUMENTS

1995 No. 1019

The Local Government Pension Scheme Regulations 1995

PART J

DETERMINATIONS AND APPEALS

Initial decisions

J1.—(1) Any question concerning the rights or liabilities under these regulations of any person other than a LGPS employer shall be decided in the first instance by the relevant LGPS employer.

(2) Where the LGPS employer by whom any such question falls to be decided is ascertainable by reference to regulations J2 or J3, for the purposes of this regulation and of regulation J5 that employer shall be the relevant employer.

(3) A decision by the relevant employer does not bind any other LGPS employer or the Secretary of State.

Decisions as to status of employees

J2.—(1) A LGPS employer shall decide in relation to each of their employees who is a member—

- (a) whether he is an officer or a manual worker,
- (b) whether he is a whole-time, a variable-time or a part-time employee,
- (c) which of his emoluments are remuneration on which contributions are payable, and
- (d) if he is a part-time employee—
 - (i) the proportion which is contractual minimum hours of employment in each week bear to those of a comparable whole-time employment, and
 - (ii) if paragraph (4)(iii) of regulation B3 applies to his contractual hours, the average number of those hours for the purposes of that paragraph.

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

- (a) what previous service or employment (if any) he is entitled to count as a period of membership or a period to which Part II of Schedule B6 applies,
- (b) whether any, and if so what, periods of service as a part-time employee are included in such a period,
- (c) what proportion of whole-time service his service during any such period represents,
- (d) whether a payment in lieu of contributions has been made or equivalent pension benefits have been assured under Part III of the National Insurance Act 1965⁽¹⁾ in respect of any period of non-participating employment,
- (e) what rate of contribution the employee is liable to pay to the appropriate pension fund,

(1) 1965 c. 51.

- (f) whether he is entitled to count as a period of membership—
 - (i) any, and if so how many, added years, or
 - (ii) any, and if so what, additional period, and
 - (g) whether for the purposes of Schedule C5 he is a Class A member, a Class B member or a Class C member (within the meaning of that Schedule).
- (3) The questions specified in paragraph (1) shall be decided as soon as is reasonably practicable after—
- (a) the person becomes a member, or
 - (b) any change occurs in the number of the member’s regular or usual hours of employment, or
 - (c) any other material change occurs in or relation to the employment.
- (4) The questions specified in paragraph (2) shall be decided as soon as is reasonably practicable after the person becomes a member of the Scheme in respect of the relevant employment.

Decisions as to benefits

- J3.**—(1) Any question whether a person is entitled to a benefit under these regulations is to be decided by the LGPS employer who last employed the person in respect of whose employment the question arises. *
- (2) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund shall decide the amount of the benefit.
- (3) In this regulation “benefit” includes a return of contributions and for the purposes of paragraph (2) (but not for paragraph (1) it includes a benefit specified in regulation F6(12) or (16) of the 1986 regulations.
- (4) The decision under paragraph (1) shall be made as soon as is reasonably practicable after the cessation of the employment or, as the case may be, the death of the employee and that under paragraph (2) as soon as is reasonably practicable after the occurrence of the event by virtue of which the entitlement arises or may arise.

Notification of decisions

- J4.**—(1) A body who have decided any question under this Part shall, as soon as is reasonably practicable after doing so, send a written notification of their decision to every person whose rights or liabilities are affected.
- (2) The notification shall include—
- (a) in the case of a decision that the person is not entitled to a benefit, the grounds for the decision,
 - (b) in the case of a decision as to the amount of a benefit, a statement showing how the amount is calculated, and
 - (c) in any case, a conspicuous statement directing the person’s attention—
 - (i) to the address from which he may obtain further information about the decision, including details of any calculation of service or benefits, and
 - (ii) to his right under regulation J5 to appeal to the Secretary of State.

Appeals

- J5.**—(1) Where—

(a) the relevant employer has decided or failed to decide any such question as is mentioned in regulation J1, and

(b) an appeal is duly made to the Secretary of State,

then, subject to the following provisions of this regulation, the question shall be determined by him and his determination of it shall be final.

(2) Subject to paragraph (3), the Secretary of State shall not determine any question that fell to be decided by the relevant employer in the exercise of a discretion conferred on them by these regulations.

(3) Paragraph (2) does not apply—

(a) where the appeal relates to a pension (within the meaning of section 12 of the Superannuation Act 1972(2)) which is being paid or may become payable to or in respect of a person who ceased to hold his local government employment or died before 1st October 1981; or

(b) where notice of appeal is served by the Common Council of the City of London in respect of a resolution under regulation B17(1).

(4) No appeal may be made requiring a determination that a person's remuneration in respect of a period ending on or before 31st December 1992 includes the money value to him of the provision of a motor vehicle.

(5) An appeal under this regulation shall be made by notice in writing which—

(a) shall be served (whether by being sent by post or otherwise) as soon as is reasonably practicable, and

(b) may be served—

(i) by any person whose rights or liabilities the question concerns, and

(ii) where the relevant employer is not an administering authority, by the administering authority maintaining the pension fund to which the employer pays employer's contributions.