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STATUTORY INSTRUMENTS

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**1997 No. 329**

**PENSIONS**

**The Local Government Pension Scheme (Internal  
Dispute Resolution Procedure) Regulations 1997**

<i>Made</i>	- - - -	<i>13th February 1997</i>
<i>Laid before Parliament</i>		<i>20th February 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, the local authorities with whom consultation appeared to him to be desirable and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate, hereby makes the following Regulations:—

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Internal Dispute Resolution Procedure) Regulations 1997 and shall come into force on 6th April 1997.

(2) In these Regulations “the principal Regulations” means the Local Government Pension Scheme Regulations 1995(2).

**Internal dispute resolution procedure**

2. Part J of the principal Regulations is amended—

- (a) in regulation J1(2) by substituting for the words “this regulation and of regulation J5” the words “this Part”;
- (b) by deleting paragraph (3) of regulation J1;
- (c) in regulation J4(1) by substituting for the words “under this Part” the words “under regulations J1 to J3”;
- (d) in regulation J4(2)(c) by substituting for paragraph (ii) the following—
  - “(ii) to his right under regulation J6 to make an application to an appointed person, the address at which the appointed person may be contacted and his job title; and

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(1) 1972 c. 11.

(2) S.I. 1995/1019, amended by S.I. 1995/1985, 2249, 2953, 1996/185, 711, 1428, 1497, 2180, 1997/218.

- (iii) to his right under regulation J8 to apply to the Secretary of State for a reconsideration of the matter within the time limit referred to in that regulation.”; and
- (e) by substituting for regulation J5 the following—

**“Appointment of persons to resolve disputes**

- J5.**—(1) Each administering authority must appoint a panel of persons they consider to be suitably qualified for the purpose of resolving disagreements in respect of which an application is made under regulation J6(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 J6(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 J6 shall not be referred to an appointed person for a decision where the appointed person has previously been involved in the subject matter of the disagreement.

**Application for a decision**

- J6.**—(1) Where there is a disagreement between a complainant and an LGPS employer about a matter in relation to the Scheme, the complainant may make a written application—
- (a) to the appropriate appointed person, or
  - (b) to the appropriate administering authority to refer to the appropriate appointed person
- to give a decision on such a 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 minor or is otherwise incapable of acting for himself, an application may be made or continued on his behalf—
- (a) in the case of his death, by his personal representative; 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 either regulation J11(a)(i), (iii) or (iv) or a person claiming to be such under regulation J11(a)(v), the full name, address, date of birth, national insurance number (if applicable) of the complainant and the name of his employing authority;

- (b) where the complainant is a person described in regulation J11(a)(ii), or a person claiming to be such under regulation J11(a)(v), the full name, address and date of birth of the complainant, his relationship to the member and the full name, date of birth and national insurance number of the member 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 written notification issued under regulation J4(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 J4(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 of them, the last of them.
- (10) The appropriate administering authority in relation to a complainant is—
- (a) where the complainant is the member, 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 member, the administering authority that were the appropriate administering authority in relation to that deceased member.
- (11) The appropriate appointed person in relation to a complainant is any appointed person appointed by the complainant's appropriate administering authority.

#### **Notice of a decision**

**J7.—**(1) Subject to paragraph (3), a decision on the matters raised by an application under regulation J6 shall be issued by the appointed person to the complainant or where applicable, his representative and to the respondent and, where different, the appropriate administering authority by notice in writing within two months from the date on which the particulars specified in regulation J6(5) were received.

- (2) 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 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 respondent

to refer the disagreement for reconsideration by the Secretary of State within the time limit described in regulation J8(1).

(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, an interim reply must immediately be sent to the complainant or, where applicable, his representative, the respondent 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**

**J8.**—(1) An application to the Secretary of State to reconsider a disagreement in respect of which a decision referred to in regulation J6 has been made may be made by—

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

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 J6(5);
- (b) a copy of the notice of the decision made under regulation J7;
- (c) a statement of the reasons why the complainant or the respondent is dissatisfied with the decision made under regulation J7; and
- (d) a statement that the complainant or the respondent wishes the disagreement to be reconsidered by the Secretary of State.

(3) An application may also be made by a complainant or a representative appointed 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 J6 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 J6(5); 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 respondent as appropriate.

#### **Notice of decision from the Secretary of State**

**J9.**—(1) Subject to paragraph (3), the Secretary of State shall issue to the complainant or, where applicable, his representative, and to the respondent and, if different, the appropriate administering authority a notice in writing of his decision on the matters raised under regulation J8 within two months from the date on which the particulars specified in regulation J8(2) or J8(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 J7;
- (b) a reference to any legislation relied upon;
- (c) a reference to such parts of these regulations as were 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)<sup>(3)</sup> is available to assist members and beneficiaries of the Scheme 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<sup>(4)</sup> may investigate and determine any complaint or dispute of fact or law in relation to the 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 J8, an interim reply must immediately be sent to the complainant or, where applicable, his representative and to the respondent and, if different, to the complainant's appropriate administering authority setting out the reasons for the delay and an expected date for issuing the decision.

#### **Appeals from an administering authority**

**J10.**—(1) Where—

- (a) the relevant employer has decided or failed to decide any such question as is mentioned in regulation J1, and
- (b) the relevant employer is not an administering authority

then, subject to the following provisions of this regulation, the administering authority maintaining the pension fund to which the relevant employer pays employer's contributions may make an appeal to the Secretary of State.

(2) 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) 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 regulations J6 or J8 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 stayed pending notification of a decision under regulation J7 or, if applicable, regulation J9 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 with 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 J4(1), the relevant date is the date of the notification of that decision.

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

<sup>(4)</sup> 1993 c. 48.

(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 of them, the last of them.

### **Definitions**

**J11.** In this Part—

- (a) “complainant” means a person who is—
- (i) an active member, deferred member or pensioner member of the Scheme;
  - (ii) a widow, widower or surviving dependant of a deceased member of the Scheme;
  - (iii) a prospective member of the 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 J6 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<sup>(5)</sup> and in this Part of the regulations, a reference to “a member” shall, where the context permits, include a reference to a prospective member, a deferred member and a pensioner member as appropriate;
- (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 member of the Scheme,
  - (ii) will become so able if he continues in the same employment for a sufficiently long period,
  - (iii) will be admitted to the Scheme automatically unless he makes an election not to become a member, or
  - (iv) may be admitted to the Scheme subject to the consent of his employer, and in relation to a prospective member, the references to his employing authority, relevant employer, LGPS employer and appropriate administering authority shall be construed as references to the body that would be such under these regulations were he to become an active member of the Scheme; and
- (d) “respondent” means the employing authority or (if different) the appropriate administering authority who are the other party to the disagreement in respect of which a complaint is made under regulation J6.”

### **Part H and interest on late payment of certain benefits**

3. Paragraphs (2)(b) and (3)(b)(ii) of regulation H1 of the principal Regulations are amended by substituting for the reference “J5” the reference “J7, J9 or J10”.

## **Information and records**

### **4. Part M of the principal Regulations is amended—**

#### **(a) in regulation M5—**

- (i) by inserting in paragraph 1(b) after the reference “J2(1)” the words “and all applications under regulations J6 and J8”;
- (ii) by adding at the end of paragraph (1) after the words “every member” the words “or a prospective member”; and
- (iii) by adding as paragraph (3)—

“(3) In this Part, “prospective member” has the same meaning as in regulation J11.”; and

#### **(b) in regulation M6—**

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

“(bb) copies of all applications made by them under regulation J8;”;

- (ii) by adding at the end the following paragraph—

“(4) When an administering authority make an application under J8 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.”.

## **Schedule M2—modification in special cases**

### **5. Schedule M2 to the principal Regulations is amended by substituting for the wording of paragraphs 2(7) and 4(6) the following—**

“Regulation J10 (appeals from an administering authority) has effect as if a body receiving such a report were the administering authority maintaining the pension fund to which that body pays employer’s contributions for the purposes of regulation J10(1) and paragraph (2) of regulation J9 were omitted.”.

## **Transitional and Savings**

**6.—(1)** The substitution by regulation 2 of new regulations J5 to J11 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 J 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 J5 of the principal Regulations before 6th April 1997 may make a complaint under regulation J6 as added 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 final determination of the question.

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

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

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Signed by authority of the Secretary of State

13th February 1997

*Paul Beresford*  
Parliamentary Under Secretary of State,  
Department of the Environment



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These regulations amend Part J of the Local Government Pension Scheme Regulations 1995, “Determinations and Appeals”, with effect from 6th April 1997 to comply with section 50 of the Pensions Act 1995 which requires the Local Government Pension Scheme (“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 (“the complainant”) and the Scheme managers on the other (“the respondent”).

Regulation 2 of these regulations introduces new regulations J5 to J11 in place of the existing regulation J5 dealing with appeals to the Secretary of State. A matter involving a disagreement relating to the Scheme may be referred first by a complainant to a person appointed by the appropriate administering authority. If the complainant is still dissatisfied with the appointed person’s decision, he may apply to the Secretary of State for a decision. A respondent may also appeal 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 and 5 contain consequential amendments.

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