



THE LOCAL GOVERNMENT SUPERANNUATION (SCOTLAND) REGULATIONS

A GUIDE TO THE PROCEDURE FOR RESOLVING DISAGREEMENTS

1. INTRODUCTION

Under the provisions of the Local Government Superannuation (Scotland) Regulations 1987, as amended, many decisions must be made relating to an individual's pension rights. Occasions may arise where an individual is not satisfied about a decision (or lack of decision) in respect of his pension rights and this guide has been prepared to explain the procedure which has been introduced to settle these cases.

2. WHAT IS THE PROCEDURE?

An individual who is not satisfied about any decision (or lack of decision) in respect of his pension rights can apply to an appointed person to have his case reviewed. If the appointed person's decision is acceptable to both the individual and the body who made the original decision (or failed to decide) then it becomes binding on both parties. If either party is not satisfied with the appointed person's decision, they can ask the Scottish Ministers to review the case to decide if the appointed person's decision was correct. If the Scottish Ministers decide that the appointed person's decision was not correct, they must replace his decision with a decision of their own. If the individual is not satisfied with the Scottish Ministers' decision, he can refer the matter to the Pensions Ombudsman (See paragraph 8).

An application to an appointed person or to the Scottish Ministers can be made by a representative acting on behalf of an individual.

3. WHO/WHAT IS AN APPOINTED PERSON?

An appointed person is a suitably qualified person appointed by the Orkney Islands Council, the pension scheme administrator, to consider an application made by any individual who is not satisfied with a decision (or lack of decision) relating to his pension rights.

The role of an appointed person is to deal with applications in an unbiased way as an individual, not as an employee or agent of the employer or administering authority. He must act independently and base his decision on the facts of the case as they appear to him. He is not allowed to deal with any application if he was involved in making the original decision. When dealing with an application the appointed person must gather all the relevant facts, taking advice from professionals (such as doctors and actuaries if necessary) and seeking the views of both the individual (or his representative) and the employer or administering authority. He must then look at all the facts and relevant scheme rules and reach a decision. If he decides that the original decision was incorrect, or if no decision was made, he must issue a decision of his own.

An appointed person cannot overturn a decision made by an employer which relates to a discretionary power. All he can do is ensure that the discretion has been exercised reasonably.

The Orkney Islands Council has appointed three senior officers to act as appointed persons. These officers can act individually or jointly to reach a decision.

The Officers are:

- The Chief Executive
- Head of Legal Services
- Head of Personnel Services

4. TIME LIMITS

4.1 *Applications to an Appointed Person*

An application to an appointed person must be made within a six-month period from the date when the individual was informed of the decision about which he is not satisfied. If he is unsatisfied because no decision was made, the application to the appointed person must be made within 6 months of the time that the decision should have been made. The appointed person can extend the six-month period if there are special circumstances. Please use the application form at Appendix A of this guide to give details of your appeal.

4.2 *Decisions by an Appointed Person*

The appointed person must normally notify the individual (or his representative) of his decision within 2 months of receiving the application. There may, however, be circumstances which prevent the appointed person from reaching his decision within that time. If this is the case, the individual (or his representative) and the body concerned must be advised at the end of the two-month period that there will be a delay and must also be given an expected date when the appointed person will notify them of his decision.

4.3 *Referral to the Scottish Ministers*

An application to the Scottish Ministers to review the case must be made within 6 months from the date the appointed person notifies the individual (or his representative) and the body concerned of his decision. An application to the Scottish Ministers can also be made by an individual (or his representative) if he has not received either of the following from the appointed person:

- (a) notification of a decision (or notification that a decision will be delayed) within 3 months of his application; or
- (b) notification of a decision within 1 month of the expected date given to him when advised by the appointed person that there would be a delay.

4.4 *Decisions by the Scottish Ministers*

The Scottish Ministers must normally notify the individual (or his representative) and the body concerned of their decision within 2 months of receiving the application. There may, however, be circumstances which prevent the Scottish Ministers from making their decision within that time. If this is the case, the individual (or his representative) and the body concerned must be advised at the end of the two-month period that there will be a delay and they must also be given an expected date when the Scottish Ministers will notify them of their decision.

5. WHO CAN MAKE USE OF THIS PROCEDURE?

This procedure is available to:

- (a) a current scheme member.
- (b) a former scheme member who has an entitlement to preserved benefits.
- (c) a former scheme member who is receiving a pension.
- (d) a prospective member (i.e. a person who is or will become eligible for scheme membership).
- (e) a widow, widower, child or other dependant of a person who fell into one of the above categories at the time of that person's death.
- (f) a person who thinks that he should fall into one of the above categories.
- (g) a person who, at present, does not fall into one of the above categories, but did at some time within the last 6 months.

6. WHAT YOU SHOULD DO IF YOU ARE NOT SATISFIED WITH A DECISION (OR LACK OF DECISION) IN RESPECT OF YOUR PENSION RIGHTS

In the first instance you should contact the Head of Finance to see if the matter can be resolved without you having to formally apply to the appointed person.

If the matter cannot be resolved to your satisfaction, then you (or your representative) should apply to one of the appointed persons shown in paragraph 3. Alternatively, you can ask the Head of Finance to forward your application to one of the appointed persons.

Your application must be in writing and should explain as fully as possible why you feel your case has not been dealt with correctly. Copies of any documents issued to you which you feel are relevant should be enclosed with your application.

Additional information will also be required as follows:

If you are:

- (a) a current scheme member.
- (b) a former scheme member with preserved benefits or a former scheme member receiving a pension.
- (c) a prospective scheme member.
- (d) a person who feels he should fall within category (a), (b) or (c); or
- (e) a person who fell within category (a), (b) or (c) within the last 6 months.

you should provide your full name, address, date of birth, National Insurance number as well as the name of your current or former employer.

If you are:

- (f) a widow, widower, child or other dependant of a person who fell within category (a), (b) or (c) at the time of that person's death.
- (g) a person who feels he should fall within category (f).
- (h) a person who fell within category (f) or (g) within the last 6 months

then you should provide your full name, address, date of birth and relationship to the deceased. You should also provide the deceased's full name, address, date of birth, National Insurance number as well as the name of the deceased's former employer.

If the application is made by a representative acting on your behalf, then he must supply the information mentioned above together with his own name and address and the appropriate address for correspondence. He must also send evidence that you have authorised him to act on your behalf.

7. WHAT YOU CAN DO IF THE MATTER IS NOT RESOLVED TO YOUR SATISFACTION

If you are not satisfied with the appointed person's decision, or you have not received a decision within the time limits specified in paragraphs 4.2 and 4.3, then you or your representative can refer the matter to the Scottish Ministers at the Scottish Public Pensions Agency, 7 Tweedside Park, Tweedbank, Galashiels, TD1 3TE. Your referral to the Scottish Ministers must be in writing and must be received within a six-month period from the date of the appointed person's decision. If you did not receive the appointed person's decision within the two-month time limit specified in paragraph 4.2, you should write to the Scottish Ministers as soon as possible after the expiry of the two-month period.

You will need to supply the Scottish Ministers with the same information that you supplied to the appointed person and, if applicable, you will also need to explain why you are not satisfied with the appointed person's decision. A copy of the appointed person's letter showing his decision should also be forwarded if you are asking the Scottish Ministers to review the appointed person's decision. If you are referring the matter because you have not received a decision from the appointed person within the time limits, you must ask the Scottish Ministers to make a decision on your original grievance because the appointed person has failed to do so.

If a representative acting on your behalf refers the matter to the Scottish Ministers, then your representative must also give the Scottish Ministers the same information as you would be

expected to supply. Your representative must also supply his name, address, the appropriate address for correspondence and evidence that you have authorised him to act on your behalf.

8. WHAT YOU CAN DO IF YOU ARE NOT SATISFIED WITH THE SCOTTISH MINISTERS' DECISION

When informing you of their decision, the Scottish Ministers should advise you of the services of the Pensions Advisory Service (TPAS) and the Pensions Ombudsman.

TPAS

The Pensions Advisory Service offers a free service to all pension scheme members who may be having problems with their pensions. They have advisers who can help to explain and obtain more information about your pension. You can normally contact a TPAS adviser through your local Citizen's Advice Bureau or by contacting TPAS directly at: -

11 Belgrave Road
London
SW1V 1RB
Telephone - 0300 123 1047
Website - www.pensionsadvisoryservice.org.uk

If you would like the Pensions Ombudsman to consider your complaint, you should normally contact TPAS first. If TPAS cannot resolve your problem and they believe that there has been maladministration, or if they believe that a decision by the Scottish Ministers is wrong, they will recommend that you make a formal complaint to the Pensions Ombudsman.

You can ask TPAS for help at any time if you are having difficulties in resolving your complaint under the dispute's procedure.

PENSIONS OMBUDSMAN

The Pensions Ombudsman can investigate complaints of maladministration or disputes of fact or law about decisions that have been made regarding your pension rights. However, the Pensions Ombudsman will not investigate your complaint until it has first been referred to the appointed person and then to the Scottish Ministers.

The Pensions Ombudsman can also investigate complaints about the handling of a case either by the appointed person or the Scottish Ministers at any time – you do not need to wait until the dispute's procedure has been completed if you have a complaint of this nature.

You should also note that you can refer your case to the Pensions Ombudsman even if you were not the one who complained to the Scottish Ministers. For example, you may have made a complaint to the appointed person which was resolved to your satisfaction but was subsequently referred to the Scottish Ministers by your employer. If the Scottish Ministers overturn the appointed person's decision and find in favour of your employer, you can complain to the Pensions Ombudsman about the Scottish Ministers' decision.

You can contact the Pensions Ombudsman at: -

11 Belgrave Road
London
SW1V 1RB
Telephone - 020 7630 2200
Website - www.pensions-ombudsman.org.uk

Note: References throughout this leaflet to "he" or "him" should be taken as meaning "he or she", "his or her" and "him or her" respectively.

APPENDIX A - APPLICATION TO THE APPOINTED PERSON

You can use this form to apply to the Appointed Person if you have a disagreement or complaint about a decision that has been made about you under the Scheme rules or a complaint about the way your case has been dealt with.

Please write clearly in ink using block capitals.

1. Member's Details:

If you are the member (the person who is or was in the Pension Scheme) please give your details in the first box. You can then go straight to other side of the form and ignore the rest of this page.

If you are the member's dependent (for example spouse, civil partner, nominated co-habiting partner or eligible child) or if you are representing the person with the complaint, please give the member's details in the first box and then complete box 2 or box 3.

Full Name	
Address	
Date of Birth	
Employer	
National Insurance Number	

2. Dependent's Details:

If you are the member's dependent and the complaint is about a benefit for you, please give your details in this box. If the complaint is about a benefit for a dependent and you are the dependent's representative, please give the dependent's details in this box:

Full Name	
Address	
Date of Birth	
Employer	
Relationship to Member	

3. Representative's Details:

If you are the member's representative or the dependent's representative, please give your details in this box:

Full Name	
Address	
Whose address should letters go to?	

4. Your Complaint:

Please give full details of your complaint in this box. Please try to explain exactly why you are unhappy, giving any dates or periods of Pension Scheme membership that you think are relevant. If there is not enough space please use a separate sheet, writing your name and National Insurance number (or if you are not the member, the member's name and National Insurance number) at the top, and attach it to this form.

I would like the Appointed Person to investigate my complaint and make a decision about it.

I am:

- a member/prospective member/former member*
- a dependent of a member/prospective member/former member*
- the representative of a member/prospective member/former member /dependent*

* Delete as appropriate.

Signed _____

Date _____