

2011 No. 2954

PENSIONS, ENGLAND AND WALES

The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011

<i>Made</i> - - - -	<i>8th December 2011</i>
<i>Laid before Parliament</i>	<i>14th December 2011</i>
<i>Coming into force</i> - -	<i>16th January 2012</i>

These Regulations are made in exercise of the powers conferred by section 24 of the Superannuation Act 1972(a).

The Secretary of State makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 and shall come into force on 16th January 2012.

(2) These Regulations extend to England and Wales(b).

General interpretation

2.—(1) In these Regulations—

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008(c);

“the Benefits Regulations” means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007(d);

“LGPS employer” means—

(a) a Scheme employer, being a body mentioned in regulation 8, or listed in Schedule 2 to the Administration Regulations; or

(b) a police authority in relation to a police cadet appointed under section 28 of the Police Act 1996(e).

(a) 1972 c. 11; section 24 was amended by the Police Pensions Act 1976 (c. 35) and the Fire and Rescue Services Act 2004 (c. 21).

(b) The Secretary of State’s functions under section 24 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c. 46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(c) S.I. 2008/239 to which there are amendments not relevant to these Regulations.

(d) S.I. 2007/1166; relevant amending instruments are S.I. 2007/1488, S.I. 2008/1083, S.I. 2009/3150, S.I. 2010/528 and S.I. 2010/2090.

(e) 1996 c. 16; section 28 was amended by the Greater London Authority Act 1999 (c. 29).

(2) Subject to paragraph (3), “relevant employment”, in relation to any person, means employment with a LGPS employer or the predecessor of such an employer.

(3) “Relevant employment” shall not include—

- (a) employment with a passenger transport executive;
- (b) any period as a councillor member (which is treated as employment for the purposes of the Local Government Pension Scheme Regulations 1997^(a)); or
- (c) any period as the Mayor of London or a member of the London Assembly (which is treated as employment for the purposes of the Administration Regulations).

(4) “Relevant employer” in relation to any person means—

- (a) the employer by whom the person in question was employed immediately before the person first qualifies for any allowance or lump sum payable under these Regulations;
- (b) if the person dies without qualifying for any such allowance or lump sum, the employer who last employed the person in a relevant employment before the person’s death;
- (c) if the employer specified in sub-paragraph (a) or (b) has ceased to exist (“the former employer”)—
 - (i) the employer to whom the person would have been transferred had the person continued in relevant employment; or
 - (ii) the person to whom the liabilities of the former employer have been legally assigned.

(5) References in these Regulations to an injury or disease do not include any injury or disease which is one in respect of which the person is entitled—

- (a) to an injury award under a scheme made in accordance with section 34 (pensions etc.) of the Fire and Rescue Services Act 2004^(b); or
- (b) to injury benefits under regulations made in accordance with section 52 (regulations for police cadets) of the Police Act 1996^(c).

(6) For the purposes of these Regulations, if a person—

- (a) sustains an injury while travelling by vehicle to or from his or her place of work with his or her employer’s permission (whether express or implied) in connection with work related business; and
- (b) at the time of the injury the vehicle was being operated (otherwise than in the course of a public transport service) by or on behalf of, or under arrangements made by the person’s employer,

the person shall be treated as having sustained the injury in the course of carrying out his or her work.

Reduction in remuneration

3.—(1) If—

- (a) in the course of carrying out his or her work a person who is employed in a relevant employment—
 - (i) sustains an injury; or
 - (ii) contracts a disease,and suffers a reduction in his or her remuneration while he or she is employed in that employment; and
- (b) regulation 4 does not apply,

(a) S.I. 1997/1612.

(b) 2004 c. 21.

(c) Section 52 was amended by the Police Act 1997 (c. 50).

the person may, subject to paragraph (2), be entitled to an allowance while the reduction continues.

(2) The relevant employer shall from time to time determine whether the person continues to be entitled to an allowance under paragraph (1).

(3) For the purposes of paragraph (1), a person's remuneration is to be treated as reduced at any time when it is lower than it would have been but for the injury or disease.

(4) Subject to paragraph (5) and regulation 8, the allowance under paragraph (1) is to be paid by the relevant employer and is to be of such amount as the employer may from time to time determine, but must not in any year exceed the shortfall between—

- (a) the person's remuneration in the relevant employment; and
- (b) the remuneration the person would have been paid if he or she had not sustained the injury or, as the case may be, contracted the disease.

(5) The amount of the allowance determined under paragraph (4)—

- (a) shall take into account a deduction for the purpose of national insurance contributions; and
- (b) shall not be regarded as pensionable pay for the purposes of regulation 4 (meaning of pensionable pay) of the Benefits Regulations(a).

Loss of employment through permanent incapacity

4.—(1) If—

- (a) in the course of carrying out his or her work a person who is employed in a relevant employment—
 - (i) sustains an injury; or
 - (ii) contracts a disease; and
- (b) he or she ceases to be employed in that employment as a result of an incapacity which is likely to be permanent and was caused by the injury or disease,

the person may subject to paragraph (2), be entitled to an annual allowance not exceeding 85 per cent of his or her annual rate of remuneration in respect of the employment when he or she ceased to be employed.

(2) The relevant employer shall from time to time determine whether the person continues to be entitled to an allowance under paragraph (1).

(3) The allowance is to be paid by the relevant employer and, subject to paragraph (1) and regulation 8, is to be of such amount as that employer may from time to time determine.

(4) In ascertaining for the purposes of paragraph (1) a person's annual rate of remuneration when he or she ceased to be employed—

- (a) the annual rate of any fluctuating element included in his or her remuneration is to be estimated by reference to an average taken over a representative period;
- (b) the annual rate of any benefit in kind included in his or her remuneration is to be the estimated annual value of the benefit in kind as at the date on which he or she ceased to be employed;
- (c) if at that date—
 - (i) the person had no remuneration; or
 - (ii) the person's remuneration was reduced because of absence from duty,

the annual rate is that which would have applied if he or she had been in receipt of remuneration or had not been absent;

(a) Regulation 4 was amended by S.I. 2009/3150; S.I. 2010/528 and S.I. 2010/2090.

- (d) if at that date the person was entitled to an allowance under regulation 3 by reason of a reduction in his or her remuneration (whether as a result of the same or another injury or disease), the annual rate is that which would have applied if his or her remuneration had not been reduced;
- (e) if the person's remuneration is calculated by reference to a rate which is not annual, the annual rate is to be derived from the applicable rate at that date; and
- (f) if the person's remuneration is retrospectively altered as a result of a pay award, the annual rate is that based on the award.

(5) The relevant employer may suspend or discontinue the allowance under this regulation if the person secures gainful employment.

(6) In this regulation "gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

Certification of injury or disease

5.—(1) Before making a determination under regulation 3 or 4 (as the case may be), the relevant employer must obtain a certificate from an independent registered medical practitioner ("IRMP") qualified in occupational health medicine, as to whether in his or her opinion the person—

- (a) has for the purposes of regulation 3(1), sustained an injury or contracted a disease in the course of carrying out his or her work; or
- (b) for the purposes of regulation 3(2), continues to suffer from the injury or disease; or
- (c) has for the purposes of regulation 4(1)—
 - (i) sustained an injury or contracted a disease in the course of carrying out his or her work; and
 - (ii) ceases to be employed as a result of an incapacity which is likely to be permanent and was caused by the injury or disease; or
- (d) for the purposes of regulation 4(2), continues to suffer from the injury or disease.

(2) For the purposes of paragraph (1), "qualified in occupational health medicine" means an IRMP who is registered with the General Medical Council and—

- (a) holds a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state; and for the purposes of this definition, "competent authority" has the meaning given by section 55(1) of the Medical Act 1983(a); or
- (b) is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

Allowances for pensioners

6.—(1) Where a person ceases to be employed in a relevant employment, if—

- (a) immediately before so ceasing he or she was entitled to an allowance under regulation 3;
- (b) on so ceasing regulation 4 does not apply, but he or she becomes entitled under the Benefits Regulations and the Administration Regulations to receive payments in respect of an annual retirement pension; and
- (c) the annual rate of the retirement pension in any year falls short of what it would have been if the amount of the allowance paid under regulation 3 during the period which is the final pay period under regulation 8 (final pay: general) of the Benefits Regulations(b), had been part of his or her remuneration in the relevant employment,

(a) 1983 c. 54; the definition of "competent authority" in section 55(1) was inserted by S.I. 2007/3101.

(b) Regulation 8 was amended by S.I. 2007/1488 and S.I. 2008/1083.

the relevant employer may, subject to regulation 8, pay the person an allowance (but not of an amount in any year exceeding that shortfall).

(2) An allowance under this regulation continues for such period as the relevant employer may determine.

Death benefits

7.—(1) If—

(a) in the course of carrying out his or her work a person who is employed in a relevant employment—

- (i) sustains an injury; or
- (ii) contracts a disease; and

(b) the person dies as a result of the injury or disease,

then subject to paragraph (2), if the deceased leaves a surviving—

- (i) spouse;
- (ii) civil partner;
- (iii) nominated cohabiting partner; or
- (iv) dependant,

such persons may be entitled to an annual allowance or lump sum.

(2) The allowance or lump sum is to be paid by the relevant employer and subject to regulation 8, is to be of such amount as the employer may from time to time determine.

(3) An allowance to a dependant shall continue for such period as the relevant employer may determine.

(4) “Nominated cohabiting partner” means a person nominated by a member in accordance with the terms of this regulation—

(a) a member (A) may nominate another person (B) to receive benefits under this regulation by giving to the relevant employer a declaration signed by both A and B that the condition in sub-paragraph (b) has been satisfied for a continuous period of at least two years which includes the day on which the declaration is signed;

(b) the condition is that —

- (i) A is able to marry, or form a civil partnership with B,
- (ii) A and B are living together as if they were husband and wife or as if they were civil partners,
- (iii) neither A nor B is living with a third person as if they were husband and wife or as if they were civil partners, and
- (iv) either B is financially dependent on A or A and B are financially interdependent;

(c) but a nomination has no effect if the condition in paragraph (5)(b) has not been satisfied for a continuous period of at least two years which includes the day on which the declaration is signed;

(d) a nomination ceases to have effect if—

- (i) either A or B gives written notice of revocation to the relevant employer,
- (ii) A makes a subsequent nomination,
- (iii) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or as if they were civil partners, or
- (iv) B dies; and

(e) for the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.

(5) “Dependant” means—

- (a) a child of the deceased if the child—
 - (i) has not reached the age of 23, or
 - (ii) has reached that age and, in the opinion of the relevant employer, was at the date of the deceased’s death dependant on the deceased because of physical or mental impairment;
- (b) a person who is not a spouse, civil partner, or nominated cohabiting partner of the deceased at the date of the deceased’s death and is not a child of the deceased if, in the opinion of the relevant employer, the person was at the date of the deceased’s death—
 - (i) financially dependant on the deceased,
 - (ii) in a financial relationship with the deceased which was one of mutual dependence, or
 - (iii) dependant on the deceased because of physical or mental impairment.

Considerations in determining amount of allowances

8.—(1) In determining the amount of an allowance under regulation 3 or 4 or of an allowance or a lump sum under regulation 7, the relevant employer is to have regard to all the circumstances of the case, including the matters specified in paragraph (2) (except in so far as they are excluded by paragraph (3)).

(2) The matters mentioned in paragraph (1) are—

- (a) in relation to an allowance under regulation 3 or 4, the degree of injury sustained, or the severity of disease contracted as assessed by an IRMP for the purposes of the certificate under regulation 5;
- (b) any right to benefit under Part 5 (benefits for industrial injuries) of the Social Security Contributions and Benefits Act 1992(a);
- (c) any other statutory right to benefit or compensation;
- (d) any right to receive pension benefit (whether payable under an enactment or otherwise); and
- (e) any damages recovered and any sum received by virtue of a contract of insurance.

(3) In the case of an allowance or a lump sum which is payable by virtue of a person having sustained an injury, no regard shall be had-

- (a) to any benefit payable periodically which the person was entitled to be paid before the injury was sustained;
- (b) to any right which accrued before that time; or
- (c) to any damages or sum received by virtue of such a right.

First instance decisions

9.—(1) Any question concerning the rights of any person or his or her eligibility to be considered for any allowance or lump sum under these Regulations shall be decided in the first instance by the relevant LGPS employer, that is to say the LGPS employer who last employed the person in respect of whose employment the question arises.

(2) A decision by the relevant employer does not bind any other LGPS employer.

(3) The questions specified in paragraph (1) shall be decided as soon as is reasonably practicable after the occurrence of the last event by virtue of which an allowance or lump sum may be payable.

(a) 1992 c. 4.

(4) A relevant employer who has decided any question under this regulation shall, as soon as is reasonably practicable after doing so, send a written notification of their decision to every person affected by it.

Notification of first instance decisions

10.—(1) A notification of a decision that the person is not entitled to an allowance or lump sum must contain the grounds for the decision.

(2) A notification of a decision about the amount of an allowance or lump sum must contain a statement showing how it is calculated.

(3) Every notification must contain a conspicuous statement giving the address from which further information about the decision may be obtained.

(4) Every notification must also—

- (a) refer to the rights available under regulations 11 and 13;
- (b) specify the time limits within which the rights under regulation 11 may be exercised; and
- (c) specify the job title and the address of the person to whom applications under regulation 11 may be made.

(5) The person specified in paragraph (4)(c) must not be the person appointed by the relevant employer to make the first instance decision under regulation 9.

Applications to reconsider a decision

11.—(1) This regulation applies where a person in relation to whom a decision is made under regulation 9 disagrees with the decision of the relevant employer.

(2) The person (“claimant”) may apply to the person specified under regulation 10(4)(c) to give a decision on the disagreement.

(3) An application for a decision must—

- (a) set out the claimant’s full name, address and date of birth; national insurance number (if any) and the name and address of his or her relevant employer, or, where the claimant is a person listed in regulation 7(1)(b), that of the deceased’s relevant employer;
- (b) include a statement giving details of the nature of the disagreement and the reasons why the claimant is aggrieved;
- (c) be signed by or on behalf of the claimant; and
- (d) be accompanied by a copy of any written notification under regulation 10.

(4) An application by any other person must also set out—

- (a) his or her relationship to the claimant; and
- (b) the claimant’s full name, address, date of birth and national insurance number (if any) and the name of his or her relevant employer, or, where the claimant is a person listed in regulation 7(1)(b), that of the deceased’s relevant employer.

(5) An application must be made before the end of—

- (a) the period of six months beginning with the date notification of the decision is given under regulation 10; or
- (b) such longer period as the person giving the decision on the disagreement considers reasonable.

Notice of decision on reconsideration

12.—(1) A decision on a disagreement to which an application under regulation 11 relates must be given by notice in writing to—

- (a) the claimant; and

- (b) the relevant employer,

before the expiry of the period of two months beginning with the date the application was received.

(2) But, if no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) and (b) setting out—

- (a) the reasons for the delay; and
- (b) an expected date for giving the decision.

(3) A notice under paragraph (1) must include—

- (a) a statement of the decision;
- (b) a reference to any legislation on which the person making the decision relied;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the legislation conferring the discretion;
- (d) a statement that the Pensions Advisory Service is available to give assistance in connection with any difficulty over any entitlement to an allowance under these Regulations that remains unresolved;
- (e) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the payment of allowances by way of compensation to or in respect of persons in relation to whom regulations may be made under section 7 of the Superannuation Act 1972(a), and made or referred in accordance with the Pensions Schemes Act 1993(b); and
- (f) the addresses at which the Pensions Advisory service and the Pensions Ombudsman may be contacted.

Rights of representation

13.—(1) An application under regulation 11 may be made or continued on behalf of the claimant by a representative nominated by him or her.

(2) Where a person who has the right to make or has made such an application dies, the application may be made or continued on his or her behalf by his or her personal representative.

(3) Where such a person is a minor or is or becomes incapable of acting for himself or herself, the application may be made or continued on his or her behalf by a member of his or her family or some other person suitable to represent him or her.

(4) Where a representative is nominated before an application is made, the application must specify his or her full name and address and whether that address is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used the representative must nevertheless be sent a copy of—

- (a) notice under regulation 12(1); or
- (b) an interim reply under regulation 12(2).

Policy statements

14.—(1) An LGPS employer must formulate, publish and keep under review the policy that it applies in the exercise of its discretionary powers to make any award under these Regulations.

(2) If the employer decides to change its policy, it must publish a statement of the amended policy and may not give effect to any policy change until one month after the date of publication.

(3) In formulating and reviewing its policy the employer must—

(a) 1972 c. 11.
(b) 1993 c.48.

- (a) have regard to the extent to which the exercise of its discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service; and
- (b) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

Finance

15. The cost of any payment to be made under these Regulations is not to be met out of any pension fund.

Revocation of Regulations, transitional provisions and savings

16.—(1) Subject to the transitional provisions and savings in paragraph (2), the Local Government (Discretionary Payments) Regulations 1996^(a) (“the 1996 Regulations”) are revoked so far as not previously revoked.

(2) Notwithstanding the revocation of Part of 5 (injury allowances etc.) and regulation 45 (decisions and appeals) of the 1996 Regulations—

- (a) where the event by virtue of which an allowance or lump sum may be payable occurs before the date upon which these Regulations come into force—
 - (i) the relevant employer (for the purposes of the 1996 Regulations) shall decide in accordance with Part 5 and regulation 45, what allowance or lump sum (if any) is to be granted ; and
 - (ii) regulations 3 to 10 shall not apply;
- (b) regulation 45(6) shall continue to apply for the purposes of any appeal to the Secretary of State brought before the end of six months commencing on the date these Regulations come into force; and
- (c) regulations 11 to 13 shall not apply for the period specified in sub-paragraph (b).

Signed by authority of the Secretary of State for Communities and Local Government

Bob Neill

Parliamentary Under Secretary of State

Department for Communities and Local Government

8th December 2011

(a) S.I. 1996/1680.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations recast the framework previously contained in Part 5 (injury allowances etc.) and regulation 45 (decisions and appeals) of the Local Government (Discretionary Payments) Regulations 1996 (“the 1996 Regulations”), for the payment of discretionary awards to persons employed by a Local Government Pension Scheme employer (“LGPS employer”) who in the course of carrying out their work sustain an injury or contract a disease.

Regulation 2 sets out the definition of terms used in these Regulations. It is based on regulation 2 (general interpretation) and regulation 33 (interpretation of Part 5) the 1996 Regulations but with some amendment in particular the definition of an LGPS employer no longer includes an admission body (i.e. a body admitted to the LGPS by virtue of an admission agreement).

Regulations 3 and 4 recast with amendments the provisions contained in regulations 34 and 35 of the 1996 Regulations relating to the payment either of an allowance where a person suffers a reduction in remuneration as a result of the injury or disease, or an annual allowance where the person ceases employment because of permanent incapacity as a result of the injury or disease. The amendments clarify the circumstances when a person may be eligible to receive an award

Regulation 5 introduces a new requirement for an LGPS employer to obtain a certificate from an independent registered medical practitioner (“IRMP”) qualified in occupational health medicine to provide an opinion on whether a person has sustained an injury or contracted a disease in the course of carrying out their work.

Regulation 6 recasts with amendments the provisions contained in regulation 36 of the 1996 Regulations relating to the payment of an allowance for pensioners who prior to retirement were entitled to an allowance for loss of remuneration. The amendments update references to various Local Government Pension Scheme Regulations.

Regulation 7 recasts with amendments the provisions contained in regulation 37 of the 1996 Regulations where a person subsequently dies as a result of their injury or disease the award may be payable to a surviving spouse or civil partner. The amendments provide that an award may be payable to a surviving nominated cohabiting partner and the term “dependant” is now defined.

Regulation 8 recasts with amendments the provisions contained in regulation 38 of the 1996 Regulations relating to the matters which an LGPS employer is to have regard to in determining the amount of an award. The amendment provides that the employer is to have regard to the degree of injury or severity of disease as assessed by the IRMP.

Regulations 9 and 10 replace the provisions contained in regulation 45 of the 1996 Regulations. Regulation 10 sets out the procedure for notifying a person of a decision about an award and of their right to appeal under the new dispute resolution procedure introduced under regulation 11.

Regulation 11 replaces the right of appeal to the Secretary of State under regulation 45 of the 1996 Regulations with a new internal process for reconsidering a decision.

Regulation 12 sets out the appeal decision notification process and the matters to be contained in the decision notice.

Regulation 13 provides that an appeal application under regulation 11 may be continued on behalf of the applicant by a representative nominated by the applicant or a personal representative where the applicant has died.

Regulation 14 provides that an LGPS employer must publish its policy regarding the exercise of powers under these Regulations to make discretionary awards, and keep that policy under review.

Regulation 15 replicates regulation 46 of the 1996 Regulations and provides that payments under these regulations must not be met out of any pension fund.

Regulation 16 makes transitional provisions and revocations subject to savings. The effect is that the remaining parts of 1996 Regulations not previously revoked, are now revoked, but that Part 5 continues to have effect in relation to any event occurring before these Regulations come into force, and the regulation 45 appeal process will continue to apply in relation to any appeal brought within 6 months of these Regulations coming into force.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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