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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 33**

Local Government Pension Scheme (Administration)  
Regulations (Northern Ireland) 2009

PART 9  
TRANSFERS

**Interpretation of Part**

73. In this Part—

“Chapters 4 and 5” means Chapters 4 and 5 of Part 4 of the 1993 Act (transfer values and early leavers)

“club scheme” means a registered pension scheme which—

- (a) (except where it is established and maintained in the Channel Islands or the Isle of Man) is a registered scheme;
- (b) provides benefits calculated by reference to final pay;
- (c) is open to new participants, or is a closed scheme the trustees or managers of which also provide an open scheme which is a club scheme for new employees of the same employer and of the same grade or level of post as the participants in the closed scheme; and
- (d) complies with reciprocal arrangements for the payment and receipt of transfer values with the schemes made under Article 9 of the Order of 1972<sup>(1)</sup>.

**Application of Chapter 4, etc.**

74.—(1) For the purposes of—

- (a) sections 8C<sup>(2)</sup> (requirements as to transfer, commutation, etc. for contracting out), 15 (discharge of liability) and 16 (transfer of accrued rights) of the 1993 Act;
- (b) Chapters 4 and 5; and
- (c) any regulations made under any of those sections or Chapters 4 and 5,

of the 1993 Act, the managers of the Scheme in relation to a member are the Committee.

(2) A member with a period of membership of under 3 months shall have the same rights to a cash transfer as if the 3 month condition in section 97AA (1)(b)(i) of the 1993 Act<sup>(3)</sup> were satisfied and Chapter 5 applied to him.

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<sup>(1)</sup> S.I. 1972/1073 (N.I. 10); Art. 9 was amended by Art. 34 S.I. 2005/1968 (N.I. 18).

<sup>(2)</sup> 1993 c.49; section 8C was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)).

<sup>(3)</sup> 1993 c. 49; section 97AA was inserted by Art. 241 of S.I. 2005/255 (N.I. 1).

(3) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(4) (pre-1986 leavers), Chapters 4 and 5 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service.

(4) Regulation 5 of those Regulations (treatment of a number of employments as a single employment) only applies if the employments are treated as a single employment for the purposes of the Scheme.

(5) Regulation 10(2)(a) of those Regulations (interest on late payment of cash equivalents) does not apply where the member has required the cash equivalent to be paid to a club scheme.

(6) Regulation 18 (termination of pensionable service in certain circumstances to be disregarded) of those Regulations only applies if, in any case, no election has been made under regulation 12(1) (re-employed and rejoining deferred members) or 13 (concurrent employments) to have the service which terminated aggregated with later or concurrent service or no election has been made under regulation 41(4) (rights to return of contributions).

(7) For this regulation and regulation 75 (rights to payment out of the fund)—

- (a) the Committee, in relation to a member, is the body maintaining the pension fund to which he is contributing immediately before his pensionable service terminated; but
- (b) if that fund has been closed, the Committee is the body which would be liable to pay him his pension for that employment if he had been entitled to receive payment of such a pension when his pensionable service terminated.

(8) In this regulation, “pensionable service” has the same meaning as in section 66 of the 1993 Act.

### **Rights to payment out of the fund**

**75.**—(1) A member may apply for a transfer under Chapter 4 or 5 (as modified by regulation 74 (application of Chapter 4, etc.)) and where he does so the amount of any transfer payment (as defined in regulation 77(4)(a) (bulk transfers (transfer of undertakings), etc.) due in respect of the member under the relevant Chapter may only be paid by the Committee from the fund or admission agreement fund if it is a recognised transfer (within the meaning of section 169 of the Finance Act 2004(5)).

(2) Where such a transfer payment is to be or has been paid from the fund, no other payment or transfer of assets may be made from the fund or admission agreement fund as respects the accrued rights covered by the transfer payment.

(3) Paragraph (2) overrides anything to the contrary in—

- (a) the former Regulations;
- (b) the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002(6); or
- (c) any other provision under these Regulations, the Benefits Regulations or the Transitional Regulations.

### **Contracting-out requirements affecting transfers out**

**76.**—(1) There must be a deduction from the transfer payment to be made in respect of any person—

- (a) the amount of any contributions equivalent premium payable pursuant to section 51 of the 1993 Act; or

(4) S.R. 1996 No. 619.

(5) 2004 c. 12.

(6) S.R. 2002 No. 353; as amended by S.R. 2006 No. 6.

- (b) an amount sufficient to meet the liability in respect of his contracted-out rights.
- (2) But the amount mentioned in paragraph (1) may not be deducted where the transfer payment is made to a registered pension scheme which is contracted out.
- (3) Where the amount mentioned in paragraph (1)(a) is deducted, the Committee must use that amount to pay the premium.
- (4) Where the amount mentioned in paragraph (1)(b) is deducted, the Committee may use the amount in preserving the liability mentioned in that paragraph in the fund or admission agreement fund, unless the member wishes a transfer payment in respect of it to be paid to the trustees or managers of a non-contracted-out registered pension scheme.
- (5) Contracted-out rights, in relation to a member, are—
  - (a) his and his surviving spouse's, civil partner's or nominated co-habiting partner's rights to guaranteed minimum pensions; and
  - (b) his section 5(2B) rights (as defined in regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(7)).

**Bulk transfers (transfer of undertakings), etc.**

- 77.—(1) This regulation applies where—
- (a) two or more members' active membership ends on their joining a registered non-local government scheme ("the new scheme");
  - (b) it is agreed by—
    - (i) the Committee;
    - (ii) the members employing authorities (if different); and
    - (iii) the trustees or managers of the new scheme,
- that a payment should be made under this regulation; and
- (c) the members—
    - (i) agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5; and
    - (ii) waive any rights they might have under those Chapters by virtue of the cessation of their active membership.
- (2) The Committee must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which he would have obtained if the transfer value had been paid to the same scheme under Chapter 4 or 5, as it applies by virtue of regulation 74 (application of Chapter 4, etc.) (assuming in any case where the member would not be entitled to such a payment that he was).
- (3) The Committee must provide each member with sufficient information in writing to check that the requirement of paragraph (2) is satisfied before he agrees as mentioned in paragraph (1)(c).
- (4) The Committee must—
- (a) set aside (whether in cash or in assets or both) such part of the fund or admission agreement fund ("the transfer payment") as an actuary appointed by it and an actuary appointed by the trustees or managers of the new scheme for the purpose may agree as appropriate for the acquisition of such rights in that scheme as they may so agree; and
  - (b) pay or transfer it to the trustees or managers of the new scheme for the benefit of the relevant members.

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(7) S.R. 1996 No. 493; the definition of "section 5(2B) rights" was substituted by S.R. 1997 No. 160 Schedule 1, paragraph 5.

(5) The Committee must certify to the new scheme's trustees or managers the amount included in the transfer payment which represents each member's contributions and interest on them.

(6) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made from the fund or admission agreement fund by reason of membership covered by the transfer payment.

(7) Paragraph (6) overrides anything to the contrary in—

- (a) the former Regulations;
- (b) the Local Government Pension Scheme (Amendment No. 2 and Transitional Provisions) Regulations (Northern Ireland) 2002; or
- (c) these Regulations, or the Benefits Regulations.

### **Calculation of amount of transfer payment under regulation 77**

**78.**—(1) The amount of the transfer payment to be paid under regulation 77 (bulk transfers (transfer of undertakings), etc.) is the amount determined by an actuary appointed by the Committee to be equal to the value at the date the members join the new scheme—

- (a) of the actual and potential liabilities payable from the fund or admission agreement fund which have then accrued in respect of the members and the persons who are or may become entitled to benefits under the Scheme through them; or
- (b) is the balance of the employing authority's assets after ensuring that its deferred members and pensioner members liabilities which are not transferred, are fully funded.

(2) The actuary may make such adjustments as he thinks fit in calculating that amount and, in particular, as respects the period from that date to the date of actual payment of the transfer value.

(3) He must specify in his valuation the actuarial assumptions he has used in making it.

(4) The employing authority shall bear the costs of determining the appropriate part of the fund or admission agreement fund and apportioning that fund.

(5) But if there is more than one employing authority involved, each shall bear such part of the costs as the actuary determines to be appropriate.

### **Inward transfers of pension rights**

**79.**—(1) If a person who becomes an active member has relevant pension rights, he may request the Committee to accept a transfer value for some or all those rights from the relevant transferor.

(2) Relevant pension rights are accrued rights under a registered scheme but do not include rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit.

(3) Accrued rights include rights to preserved benefits and rights appropriately secured under section 19 of the 1993 Act.

(4) The relevant transferor is the trustees or managers of the scheme under which the transferring person's relevant pension rights arise.

(5) But the relevant transferor for the rights specified in paragraph (3) is the trustees or managers of the scheme, or the insurance company, to which a payment in respect of his accrued rights has been made.

(6) A request from a transferring person under paragraph (1) must be made by notice in writing.

(7) That notice must be given before the expiry of the period of 12 months beginning with the date he became an active member (or such longer period as the Committee may allow).

(8) Where a request under paragraph (1) is duly made the Committee may accept the transfer value and credit it to the fund or admission agreement fund.

### **Right to count credited period**

**80.**—(1) Where the transfer value has been accepted under regulation 79 (inward transfers of pension rights), the member may count the credited period as a period of membership for these Regulations and the Benefits Regulations<sup>(8)</sup>.

(2) If the transfer value—

- (a) is paid by the trustees or managers of a club scheme and the member has made the request under regulation 79 before the expiry of 12 months beginning with the date he became an active member;
- (b) represents all the rights relating to the member in that scheme; and
- (c) has been calculated—
  - (i) in a case where Chapter 4 or 5 applies, in accordance with that Chapter; and
  - (ii) otherwise, in a manner consistent with that prescribed under the relevant Chapter,

the credited period is the period which, if used to calculate a transfer value to be paid by the Scheme, would produce an amount equal to the transfer value received.

(3) If paragraph (2) does not apply, the credited period must be calculated in a manner consistent with Chapter 4 or 5.

(4) In calculating the credited period under paragraph (3) due allowance must be given for the expected increase in the member's pensionable pay between the date he became a member (or, if more than 12 months later, the date on which the transfer value is received) and his normal retirement age.

(5) The Committee must give the member a written notice—

- (a) stating the period of membership he may count under paragraph (1); and
- (b) containing a conspicuous statement giving the address from which further information may be obtained.

### **Community scheme transferees**

**81.**—(1) The persons mentioned in paragraph (2) are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

(2) Those persons are—

- (a) a person who became employed by a Community institution after having been employed in local government employment; or
- (b) a surviving spouse, civil partner, nominated cohabiting partner, dependant or an eligible child of such a person.

(3) In this regulation—

- (a) “Community institution” means a body treated as one of the Communities’ institutions for the purposes of the Communities’ scheme; and
- (b) “the Communities’ scheme” means the pension scheme provided for officials and other servants of the Communities in accordance with regulations adopted by the Council of the European Communities.

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<sup>(8)</sup> See also regulation 6(c) of the Benefits Regulations.