
STATUTORY RULES OF NORTHERN IRELAND

2009 No. 33

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

PART 2

MEMBERSHIP OF SCHEME

General eligibility for membership

- 3.—**(1) A person may only be an active member of the Scheme if—
- (a) this regulation, or any of regulations 4 (employees of community admission bodies) to 6 (admission agreements – further provisions) enables him to be one; or
 - (b) he is employed under a contract of employment of more than 3 months,
- and he is not prevented by regulation 8 (further restrictions on eligibility).
- (2) A person may be an active member if he is employed by an employing authority.

Employees of community admission bodies

4.—(1) Subject to the requirements of this regulation and regulation 6 (admission agreements – further provisions), the Committee may make an admission agreement with any community admission body.

- (2) The following are community admission bodies—
- (a) a body which provides a public service in the United Kingdom otherwise than for the purposes of gain and which either—
 - (i) has sufficient links with an employing authority for the body and the employing authority to be regarded as having a community of interest whether because the operations of the body are dependent on the operations of the employing authority or otherwise, or
 - (ii) is approved by the Department for the purpose of admission to the Scheme;
 - (b) a body to the funds of which any employing authority contributes;
 - (c) a body representative of—
 - (i) local authorities;
 - (ii) local authorities and officers of local authorities;
 - (iii) officers of local authorities where it is formed for the purpose of consultation on the common interests of local authorities and the discussion of matters relating to local government; or
 - (iv) employing authorities;
 - (d) a statutory undertaker;

- (e) a non-statutory undertaker;
 - (f) the managers of a voluntary school within the meaning of Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(1); and
 - (g) the governing body of an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997(2).
- (3) Approval under paragraph (2)(a)(ii) may be subject to such conditions as the Department thinks fit and it may withdraw approval at any time if such conditions are not met.
- (4) Where, at the date that an admission agreement is made with a body mentioned in paragraph (2)(b), the funding contributions paid to the body by one or more employing authorities equal in total 50% or less of the total amount it receives from all sources, it must be a term of the admission agreement that the employing authority which provides funding (or, if more than one, all of them) guarantees the liability of the body to pay all amounts due from it under these Regulations or the Benefits Regulations.
- (5) In this regulation—
- (a) “a non-statutory undertaker” means a body who, though not authorised by any statutory provision to do so, is primarily engaged in carrying on—
 - (i) any railway, light railway, road transport, water transport, canal, inland navigation, dock harbour or pier; or
 - (ii) any undertaking for the promotion of industrial development or the promotion of the development of tourist traffic; and
 - (b) “a statutory undertaker” means a body authorised by any statutory provision to carry on—
 - (i) any railway, light railway, road transport, water transport, canal, inland navigation, dock harbour or pier; or
 - (ii) any undertaking for the promotion of industrial development or the promotion of the development of tourist traffic.

Employees of transferee admission bodies

5.—(1) Subject to the requirements of this regulation and regulation 6 (admission agreements – further provisions), the Committee may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing or will provide—

- (a) a service or assets in connection with the exercise of a function of an employing authority as a result of the transfer of the service or assets by means of a contract or other arrangement; or
- (b) a public service and which is approved by the Department for the purposes of admission to the Scheme.

(3) In the case of an admission agreement with a transferee admission body under paragraph (2)(a) the employing authority, if it is not also the Committee, must be a party to the admission agreement.

(4) Approval under paragraph (2)(b) may be subject to such conditions as the Department thinks fit and it may withdraw approval at any time if such conditions are not met.

- (5) An admission agreement with a transferee admission body shall require that—
- (a) in the case of a body under—

(1) S.I. 1986/594 (N.I. 3) as amended by S.I. 1993/2810 (N.I. 12) and S.I. 1997/1772 (N.I. 15).

(2) S.I. 1997/1772 (N.I. 15).

- (i) paragraph (2)(a), the employing authority; or
 - (ii) paragraph (2)(b), the transferee admission body, to the satisfaction of the Committee, shall carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee admission body; and
- (b) where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity bond to meet the level of risk identified.
- (6) The indemnity or bond must be with—
 - (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(3) to accept deposits or to effect and carry out contracts of general insurance;
 - (b) an EEA firm of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or
 - (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.
- (7) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 2 (matters to be included in admission agreements with transferee admission bodies).
- (8) This paragraph applies where a transferee admission body undertakes to meet the requirements of this regulation and—
 - (a) in the case of a body under paragraph (2)(a), the employing authority undertakes to meet the requirements of this regulation; or
 - (b) in the case of a body under paragraph (2)(b), the Department approves the body for admission to the Scheme and the conditions, if any, to which the approval is subject, have been met.
- (9) Where paragraph (8) applies—
 - (a) the Committee must admit to the Scheme the eligible employees of the transferee admission body specified by the body; and
 - (b) where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations and the Benefits Regulations.
- (10) Only those employees of the transferee admission body who are employed in connection with the provision of a service or assets mentioned in paragraph (2) are eligible to be designated, under regulation 6(1), members of the Scheme.

Admission agreements – further provisions

- 6.—(1) A person employed by a community admission body or an eligible person employed by a transferee admission body may only be a member if he, or a class of employees to which he belongs, is designated in an admission agreement by the body as being eligible for membership of the Scheme.
- (2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.
- (3) When the Committee makes an admission agreement, it must promptly inform the Department of—
- (a) the date the agreement takes effect;

(3) 2000 c. 8.

(b) the admission body's name; and

(c) in the case of an agreement with a transferee admission body under regulation 5(2)(a) (employees of transferee admission bodies), the name of the relevant employing authority.

(4) The Committee and an admission body may make an admission agreement despite the fact they do not exercise their functions or provide services or assets in areas that overlap or adjoin each other.

(5) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Department for determination.

(6) These Regulations and the Benefits Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the admission body were an employing authority.

Separate employments, etc.

7.—(1) Where a person holds separate employments under one employing authority, these Regulations and the Benefits Regulations apply as if each of them were with a different employer.

(2) For the purposes of these Regulations and the Benefits Regulations, a clerk of a district council who performs functions under Article 9(2) (conduct of elections) of the Electoral Law (Northern Ireland) Order 1972(4) shall, in relation to those functions, be treated as if he were employed by that district council and his pay shall be treated as fluctuating emoluments by that district council.

Further restrictions on eligibility

8.—(1) If a person's employment entitles him to belong to another public service pension scheme, or would so entitle him were it not for his age, that employment does not entitle him to be a member, unless that other scheme was made under Article 9 of the Order of 1972.

(2) "Public service pension scheme" has the meaning given by section 150 (meaning of "pension scheme") of the Finance Act 2004(5).

(3) An employee of an admission body may not be a member if he is a member of another occupational pension scheme in relation to the employment in respect of which he would otherwise be eligible to be a member of the Scheme under regulation 6(1) (admission agreements – further provisions).

(4) A person can not become a member after the day before his 75th birthday.

(5) Retained or volunteer membership with a fire and rescue authority (within the meaning given to that term by Article 3 of the Fire and Rescue Services (Northern Ireland) Order 2006(6)) on terms under which the retained or voluntary member is or may be required to engage in fire-fighting does not entitle the retained or voluntary member to be a member of the Scheme.

(6) Any person who as a member of staff of the University of Ulster is eligible to participate in the Universities' Superannuation Scheme is not entitled to be a member of the Scheme.

Joining the Scheme

9.—(1) A person who is eligible to be an active member of the Scheme on the day his employment begins becomes an active member on that day unless he notifies his employer in writing before his employment begins that he does not wish to become a member on that date.

(4) S.I.1972/1264 (N.I. 13) as amended by S.I. 1972/1998 (N.I. 21).

(5) 2004 c. 12.

(6) S.I. 2006/1254 (N.I. 9).

(2) A person who applies to become a member after the date he would otherwise become a member under paragraph (1) becomes a member on the first day of the first payment period following the application.

(3) An application for membership may be withdrawn before membership begins.

(4) A former active member who is eligible for membership may reapply for membership of the Scheme and he becomes an active member on the first day of the first payment period following the application.

(5) But a person who has given more than one notification under regulation 10 (ending of membership) may only reapply again if—

- (a) his employer or future employer consents;
- (b) he is beginning a new employment with a new employing authority and he reapplies before he has been employed for 3 months; or
- (c) he is a person about whom information may be given under Article 164(1) of the Pensions Order(7), as it has effect in the case of the Scheme.

(6) In paragraphs (2) and (4), regulation 10(5) and regulation 19(7) (payment of additional regular contributions), a payment period is a period of service to which the employee's wages or salary payment relate.

Ending of membership

10.—(1) A person stops being a member in an employment if he stops being eligible for membership in that employment.

(2) A person who wishes to leave the Scheme must notify his employer in writing.

(3) A person with more than one employment may leave the Scheme if he wishes in respect of one, some or all of the employments.

(4) A member who gives a notice under paragraph (2) stops being a member in the specified employment from the date the notification specifies.

(5) But, if a date earlier than the date specified in the notice or no date is specified, he stops being a member at the end of the payment period during which the notice is given.

(6) Where notice is given by a person before he has been a member for 3 months, he must be treated as not having been a member in that period.

(7) A person who is a member and an employee of a transferee admission body shall be treated for the purpose of these Regulations and the Benefits Regulations as leaving a local government employment when he ceases to be employed in connection with the provision of the service or assets under regulation 5(2) (employees of transferee admission bodies) by virtue of which he became eligible to join the Scheme.

Periods of membership

11.—(1) A person may not count any period of membership if his contributions for that period have been returned to him.

(2) A person may not count any period of membership if his rights in respect of it have been transferred by payment of a transfer value (see Part 9).

(3) A person may not count as a period of membership for the purpose of calculating any benefit under regulations 16 (normal retirement) to 20 (early leavers: ill-health) or 29 (calculation on leaving early) to 31 (early payment of pension: ill-health) of the Benefits Regulations so much

(7) S.I. 1995/3213 (N.I. 22) as amended by S.I. 2001/3649.

of his membership as requires to be excluded to reduce the value under regulation 70(2)(b) by the amount recovered or retained under regulation 70 (recovery or retention where former member has misconduct obligation).

(4) Where a person pays contributions under regulation 16 (contributions during trade dispute absence) for any period, that period counts as a period within regulation 6 (periods of membership) of the Benefits Regulations even if his contract of employment did not subsist throughout that period.

(5) A period of membership under regulation 6(1)(a) of the Benefits Regulations includes any period for which a member is treated as having paid contributions under regulation 13 (concurrent employments) or 41(4) (rights to return of contributions) of these Regulations.

Re-employed and rejoining deferred members

12.—(1) Where a deferred member becomes an active member in an employment (“the new employment”) before becoming entitled to the immediate payment of retirement benefits, he may, by giving notice in accordance with paragraph (4), choose to have his membership in any former employment aggregated with his membership in the new employment.

(2) Where he has ceased to be an active member more than once, he may choose to aggregate under paragraph (1)—

- (a) his membership at each of the times he so ceased; or
- (b) only such periods of membership as are specified in the notice.

(3) But a member cannot choose to aggregate any period of former membership which he could have chosen to aggregate with another period of former membership but did not before the expiry of the period mentioned in paragraph (4)(b).

(4) Notice for the purposes of paragraph (1) must be given in writing to the Committee—

- (a) while the deferred member is an active member in the new employment; and
- (b) before the expiry of the period of 12 months beginning with the date that he became an active member again (or such longer period as the Committee may allow).

(5) References in this regulation to former membership include all membership which the member was entitled to count as membership immediately before he ceased his former active membership.

(6) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, he shall be treated for the purposes of this regulation as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

(7) But paragraph (6) does not apply to a member who is the subject of—

- (a) a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 2006(8) (“the TUPE Regulations”) apply; or
- (b) a transfer that is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations.

Concurrent employments

13.—(1) Where a person—

- (a) ceases to be an active member in one employment in respect of which he has at least 3 months’ total membership (“the first employment”); and

(8) S.I. 2006/246.

- (b) continues as an active member in another employment he held concurrently with the first employment,

he may elect to have his former membership in respect of the first employment aggregated with his membership in that other employment.

(2) If he so elects, the provisions of regulation 12 (re-employed and rejoining deferred members) shall apply as if references to—

- (a) his former membership or former active membership were references to his membership from his first employment;
- (b) the new employment were references to his concurrent employment; and
- (c) the employment in which he becomes an active member again were references to that concurrent employment.

(3) In the case of a person to whom this regulation applies, the period of membership which will be aggregated with his membership from the concurrent employment will be equal to his membership from his first employment, as reduced under regulation 7(3) and (4) (calculation of lengths of periods of membership) of the Benefits Regulations if the first employment was part-time, multiplied by the fraction—

$$\frac{\text{whole-time rate of pensionable pay in the first employment}}{\text{whole-time rate of pensionable pay in concurrent employment}}$$

where the rate of pensionable pay in each case is the annual rate of pensionable pay on the last day of the first employment.