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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 164**

**The Local Government Pension  
Scheme (Scotland) Regulations 2014**

**PART 2**

**Administration**

*Transfers*

**Rights to payment out of pension fund**

**94.**—(1) A member is entitled to request a transfer under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993 and where the member does so the amount of any transfer payment due in respect of the member under the relevant transfer may only be paid by the administering authority from its pension fund if the transfer payment is a recognised transfer (within the meaning of section 169 of the Finance Act 2004<sup>(1)</sup>).

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

(3) Paragraph (2) overrides anything to the contrary in these Regulations.

(4) The right under paragraph (1) arises only where the member leaves pensionable employment at least 12 months prior to normal pension age under the Scheme and has notified the employer within that period of the exercise of that right.

**Contracting-out requirements affecting transfers out**

**95.**—(1) There must be deducted from the transfer payment to be made in respect of any person to a contracted-in defined benefit registered pension scheme—

(a) the amount of any contributions equivalent premium payable pursuant to section 55 of the Pension Schemes Act 1993<sup>(2)</sup>; or

(b) an amount sufficient to meet the liability in respect of the person's contracted-out rights.

(2) Where the amount mentioned in paragraph (1)(a) is deducted, the appropriate administering authority must use that amount to pay the premium.

(3) Where the amount mentioned in paragraph (1)(b) is deducted, the appropriate administering authority may use the amount in preserving the liability mentioned in that sub-paragraph in the appropriate fund unless the member wishes a transfer payment in respect of it to be paid to the trustees or managers of a contracted-out defined benefit or contracted-in defined contribution registered pension scheme.

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(1) 2004 c.12.

(2) 1993 c.48.

- (4) Contracted-out rights, in relation to a member, are—
- (a) the member's, and any surviving spouse's, civil partner's or cohabiting partner's rights to guaranteed minimum pensions; and
  - (b) the member's section 9(2B) rights as defined in regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(3)</sup>.

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

96.—(1) This regulation applies where—

- (a) two or more members' active membership ends on their joining a different registered pension scheme ("the new scheme");
- (b) it is agreed by—
  - (i) the members' appropriate administering authority,
  - (ii) the members' Scheme employers (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 payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5 of Part 4 of the Pension Schemes Act 1993, and
  - (ii) waive any rights they might have under those Chapters by virtue of the cessation of their active membership.

(2) The appropriate administering authority 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 would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5 of Part 4 of the Pensions Schemes Act 1993, as they apply as modified by these Regulations (assuming in any case where a member would not be entitled to such a payment that the member was so entitled).

(3) The appropriate administering authority must provide each member with sufficient information in writing to check that the matters of which the authority must be satisfied under paragraph (2) are satisfied, before the member agrees as mentioned in paragraph (1)(c).

(4) The appropriate administering authority must—

- (a) set aside (whether in cash or in assets or both) such part of the appropriate fund ("the transfer payment") as an actuary appointed by the authority and an actuary appointed by the trustees or managers of the new schemes 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.

(5) The appropriate administering authority 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 pension fund by reason of membership covered by the transfer payment.

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(3) S.I. 1996/1172; the definition of section 9(2B) rights in regulation 1(2) was amended by S.I. 1997/786, S.I. 1999/3198 and S.I. 2011/1246.

(7) Paragraph (6) overrides anything to the contrary in these Regulations.

### **Calculation of amount of transfer payment**

**97.**—(1) The amount of the transfer payment to be paid under regulation 96 (bulk transfers) is the amount determined by an actuary appointed by the members' appropriate administering authority to be equal to the value at the date those members join the new scheme, of the actual and potential liabilities payable from its 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.

(2) The actuary may make such adjustments as are thought 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) The actuary must specify in the valuation the actuarial assumptions used in making it.

(4) The Scheme employer shall bear the costs of determining the appropriate part of the fund and apportioning the fund.

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

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

**98.**—(1) An active member with relevant pension rights may request the appropriate administering authority to accept a transfer value for some or all of those rights from the relevant transferor.

(2) Relevant pension rights are—

- (a) accrued rights under a registered pension scheme other than rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit; and
- (b) accrued rights under a European pensions institution.

(3) Accrued rights under a registered pension scheme include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993<sup>(4)</sup>.

(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 and managers of the scheme, or the insurance company, to which a payment in respect of the person's accrued rights has been made.

(6) A request from a transferring person under paragraph (1) must be made by notice in writing given to the appropriate administering authority and the Scheme employer before the expiry of the period of 12 months beginning with the date on which the person first became an active member in an employment (or such longer period as the Scheme employer and administering authority may allow).

(7) Where a request under paragraph (1) is duly made, the administering authority may accept the transfer value and credit it to its pension fund.

### **Effect of acceptance of transfer value**

**99.**—(1) Where a transfer value has been accepted under regulation 98 (inward transfer of pension rights), the administering authority must credit the active member's pension account with the appropriate amount of earned pension.

(2) The calculation of the appropriate amount of earned pension for the purposes of paragraph (1) is to be in accordance with actuarial guidance issued by the Scottish Ministers.

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(4) Section 19 was amended by [S.I. 2001/3649](#), [S.I. 2005/2050](#) and [S.I. 2007/3014](#).

### **Changes of administering authority**

**100.**—(1) Subject to paragraph (7), this regulation applies where—

- (a) an administering authority becomes an active member’s appropriate administering authority;
- (b) immediately before it does so, another administering authority was that member’s appropriate administering authority; and
- (c) in a case where a member’s past period of membership has been aggregated with the current period of membership.

(2) An administering authority which has ceased to be a member’s appropriate administering authority must make a transfer value payment to the member’s new appropriate administering authority in accordance with actuarial guidance issued by the Scottish Ministers.

(3) Where paragraph (2) applies as respects 10 or more members by virtue of a single event, the amount of the payment under that paragraph shall be determined by agreement between an actuary appointed by the administering authority by which the payment must be made and an actuary appointed by the administering authority to which it must be made.

(4) Where the actuaries cannot agree on the amount within 12 months of the date of transfer, or where there is more than one date of transfer, the date of the last transfer which relates to the single event—

- (a) the matter shall be referred to a third actuary, chosen by agreement between the actuaries, or in default of agreement, by the President of the Institute and Faculty of Actuaries; and
- (b) that actuary’s determination shall be final.

(5) The costs of determining the amount to be transferred shall be paid in equal shares by the fund held by the member’s former appropriate administering authority and the fund held by the member’s new appropriate administering authority.

(6) Any payment under paragraph (2) must be credited to the new appropriate administering authority’s fund.

(7) This regulation does not apply where a member enters an employment in local government service which is concurrent with another in which the member is also an active member.