
STATUTORY INSTRUMENTS

1994 No. 3026

PENSIONS

**The Local Government Superannuation
(Amendment) Regulations 1994**

Made - - - - 29th November 1994
Laid before Parliament 7th December 1994
Coming into force - - 28th December 1994

The Secretary of State, in exercise of the powers conferred on him by sections 7 and 12 of the Superannuation Act 1972(1), and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned, the local authorities with whom consultation appeared to him to be desirable and such representatives of other persons likely to be affected by the Regulations as appeared to him to be appropriate, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government Superannuation (Amendment) Regulations 1994 and shall come into force on 28th December 1994, but—

- (a) regulation 2 shall have effect from 6th April 1988;
- (b) regulations 3, 5, 6, 7 and 8 shall have effect from 1st April 1986; and
- (c) regulation 10 shall have effect from 1st April 1990.

(2) In these Regulations “the principal Regulations” means the Local Government Superannuation Regulations 1986(2).

Outward Transfers

- 2. Regulation J2 shall be amended by the deletion of paragraph (5).
- 3. Regulation J13 of the principal Regulations shall be amended—
 - (a) in paragraph (1) by the deletion of the words “which would be a contracted-out scheme in relation to the employment for the purposes of the Pensions Act”; and

(1) 1972 c. 11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
(2) S.I.1986/24; relevant amending instruments are S.I. 1989/1462, 1990/503 and 1992/172.

- (b) in paragraph (4) by the deletion of the words “, the person may, unless regulation J14 applies to him,” and the insertion of the following words at the beginning of that paragraph:

“Unless a person to whom this regulation applies has given notice under regulation J14(2)(c), he may.”.

4. Regulation J13A shall be deleted.
5. Regulation J14 shall be deleted and the following substituted—

“**J14.**—(1) In this regulation, unless the context otherwise requires—

“appropriate part of the fund” shall be the part determined in accordance with paragraph (7);

“eligible employer” shall mean a scheduled body or a body which has entered into or is eligible to enter into an admission agreement;

“pensionable employee” includes a person employed by an admitted body as referred to in regulation B3(2);

“pensionable service” shall have the same meaning as in section 70(2) and (3) of the 1993 Act;

“the 1993 Act” shall mean the Pension Schemes Act 1993⁽³⁾;

“relevant beneficiaries” shall mean the pensionable employees to whom this regulation applies and other persons who under these regulations are or may become entitled to benefit through such pensionable employees;

“the scheme managers” shall mean the scheme managers of the transferee scheme;

“the transfer date” shall mean in the case of—

- (a) a person within paragraph (2)(a)(i), the date of transfer of the undertaking;
- (b) a person within paragraph (2)(a)(ii), the date his employer ceases to be an eligible employer; and
- (c) a person within paragraph (2)(b), the date on which he becomes subject to an approved non-local government scheme;

“transferee scheme” shall mean the approved non-local government scheme to which a person transfers his pension rights under this regulation;

“undertaking” shall have the same meaning as in the Transfer of Undertakings (Protection of Employment) Regulations 1981⁽⁴⁾.

(2) This paragraph applies—

- (a) to a person who ceases to be a pensionable employee because—
 - (i) the undertaking in which he is employed is transferred to a body who is not an eligible employer; or
 - (ii) the body by whom he is employed ceases to be an eligible employer for whatever reason,
 and in respect of whom the body employing him after the transfer date can make other provision under an approved non-local government scheme; and
- (b) to a person to whom regulation J13 applies.

⁽³⁾ 1993 c. 48.

⁽⁴⁾ S.I. 1981/1794; regulation 2(1) was amended by section 33 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(3) A person within paragraph (2)(a) shall be treated for the purposes of these regulations as having ceased to hold his employment on the transfer date.

(4) Where—

- (a) a person to whom paragraph (2) applies has not reached state pensionable age on the transfer date, and
- (b) before the transfer date or, with the consent of his employing authority, the appropriate administering authority and the scheme managers, within 3 months after the transfer date, he has given written notice to the appropriate administering authority and, if different, to his employing authority that he wishes to transfer his pension rights under these regulations to the transferee scheme, and
- (c) the scheme managers, the appropriate administering authority and, if different, his employing authority have each given their consent before the transfer date or, where appropriate, within 3 months of the transfer date,

the appropriate administering authority shall set aside and pay to the scheme managers the appropriate part of the superannuation fund whether in cash or in assets or both (“the transfer payment”) for the benefit of the relevant beneficiaries, subject to the provisions of paragraph (9).

(5) The appropriate administering authority shall not give their consent under paragraph (4)(c) unless the person transferring his pension rights will acquire pension rights under the transferee scheme at least equivalent to those which he would have obtained if a transfer value had been paid to the scheme managers under regulation J2.

(6) The appropriate administering authority shall provide the person transferring his pension rights with sufficient information in writing to check that the condition in paragraph (5) is satisfied.

(7) Notwithstanding anything in the Acts of 1937 to 1953 and the regulations made thereunder, the former regulations, any local Act scheme or any provision of the 1974 regulations or these regulations, where a payment or transfer of assets is to be or has been made under this regulation, no other payment or transfer of assets shall be made out of the superannuation fund on account of service or employment to which the payment or transfer of assets under this regulation relates.

(a) (8) The appropriate part of the fund shall be the amount of the value at the transfer date of the actual and potential liabilities of the appropriate superannuation fund accrued at the transfer date in respect of the relevant beneficiaries as determined by the actuary to the appropriate superannuation fund on the basis of actuarial assumptions specified by the actuary, adjusted as the actuary shall think fit to take into account—

- (i) any period between the transfer date and the date of actual payment of the transfer payment; and
- (ii) any other matters as the actuary at his sole discretion shall think fit.

(b) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund or, if there is more than one employing authority involved, each shall bear such part of the costs as the actuary of the appropriate superannuation fund determines.

(9) Where a transfer payment in respect of a person is made under paragraph (4), then—

- (a) if the payment is to a transferee scheme which is contracted out and the transferee scheme undertakes to accept liability for the guaranteed minimum pension, no deduction shall be made from the transfer payment;

- (b) in any other case, there shall be deducted from the transfer payment the amount of any transfer premium which may be paid under section 55(3) of the 1993 Act or contributions equivalent premium which may be paid pursuant to section 55(2) of the 1993 Act and such amount shall be used either in paying such a transfer premium or contributions equivalent premium or, at the discretion of the appropriate administering authority, in preserving the liability for the guaranteed minimum in the appropriate superannuation fund; and
- (c) in every case, the appropriate administering authority shall certify to the scheme managers the amount included in the transfer payment which represents the person's contributions and interest on them and may require the scheme managers to undertake to treat only such amounts as employee's contributions in the transferee scheme."

6. The principal Regulations are amended by inserting after regulation J14 the following—

J14A. Where under regulation B3—

- (a) a body has made an admission agreement ("the first admission agreement") with an administering authority ("the first administering authority") and that first admission agreement ceases to have effect; and
- (b) thereupon an admission agreement ("the second admission agreement") between that body and a different administering authority ("the second administering authority") takes effect,

regulation J14 shall apply to the exclusion of Part Q as if—

- (i) a person employed by that body when the first admission agreement ceased to have effect and the second admission agreement took effect were a person within paragraph (2)(a) of regulation J14;
- (ii) the superannuation fund maintained by the second administering authority were the transferee scheme;
- (iii) the second administering authority were the scheme managers; and
- (iv) the date the second admission agreement takes effect were the transfer date.

J14B. Where—

- (a) an undertaking (within the meaning of regulation J14(1)) is transferred from an employing authority ("the first employer") to a body ("the second employer") which thereupon enters into an admission agreement with an administering authority ("the new administering authority") in respect of one or more persons ("the transferring employees") who were pensionable employees in relation to their employment with the first employer and who remain pensionable employees in relation to their employment with the second employer;
- (b) the new administering authority is different from the body which maintains the superannuation fund to which the first employer contributed in respect of the transferring employees immediately before the transfer;
- (c) in his employment with the second employer each transferring employee is entitled to reckon any reckonable service which he was entitled to reckon in his employment with the first employer,

regulation J14 shall apply to the exclusion of Part Q as if—

- (i) a transferring employee were a person within paragraph (2)(a) of regulation J14;

- (ii) the superannuation fund maintained by the new administering authority were the transferee scheme;
- (iii) the new administering authority were the scheme managers; and
- (iv) the date the admission agreement with the new administering authority takes effect were the transfer date.”

7. Schedule 16 to the principal Regulations shall be amended by the insertion of the word “or” between the references “J2” and “J3(1)” and the deletion of the words “or J14” in paragraph 2.

8. The principal Regulations shall be amended by the deletion of Schedule 18.

9.—(1) Subject to paragraph (2), the amendments made by regulations 2 to 8 shall not affect any transfers made under the principal Regulations before the date on which these Regulations come into force.

(2) Where—

- (a) if these Regulations had come into operation on 1st April 1986, a person would at any time before the date on which these Regulations come into force have been entitled to give notice under regulation J13 or J14 of the principal Regulations as amended by these Regulations;
- (b) he gives such notice within 3 months of the date on which these Regulations come into force; and
- (c) those bodies referred to as his employing authority, the appropriate administering authority and the scheme managers in regulation J14 of the principal Regulations as amended by these Regulations consent to such notice having effect,

the notice may have effect as if these Regulations had come into operation on the 1st April 1986 and the notice had been given on the first day on which he would in that case have been entitled to give notice or, where that day is the 1st April 1986, to have effect on that date.

Pensions increase

10.—(1) This regulation applies to—

- (a) a body specified in regulation B3(8) of the principal Regulations which has entered into an admission agreement with an administering authority;
- (b) a body employing persons deemed to be in employment with a scheduled body by virtue of regulation B2(4) to (4K) of the principal Regulations; and
- (c) a body which is a company under the control of a body described in column (1) of Part I of the Schedule 2.

(2) Subject to paragraph (3), in its application to a pension (within the meaning of the Pensions (Increase) Act 1971⁽⁵⁾) which has become payable to or in respect of a person in relation to service with a body to which this regulation applies, Schedule 3 to the Pensions (Increase) Act 1971 and regulation P14 of the principal Regulations shall have effect as if any reference to the last employing authority were a reference to that body.

(3) Nothing in this regulation affects the provisions of regulation 2 of the Local Government Superannuation (Merseyside Transport Limited) Regulations 1992⁽⁶⁾ and of the Local Government Superannuation (South Yorkshire Transport Limited) Regulations 1993⁽⁷⁾ or any contractual arrangement made between a body to which this regulation applies and any other scheduled body before the date on which these Regulations come into force.

(5) 1971 c. 56.

(6) S.I. 1992/3229.

(7) S.I. 1993/2783.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Signed by authority of the Secretary of State

29th November 1994

David Curry
Minister of State,
Department of the Environment

EXPLANATORY NOTE

(This note does not form part of these Regulations)

These Regulations make a number of amendments to the Local Government Superannuation Regulations 1986 (“the principal Regulations”). All the regulations, except regulations 1, 4 and 9, are made retrospective in effect by virtue of section 12 of the Superannuation Act 1972.

Regulation 2, which has effect as from the 6th April 1988, removes a provision in the principal Regulations dealing with the interchange of funds which had prevented, with two exceptions, the payment of transfer values between public sector schemes which participate in public sector transfer arrangements in respect of people who ceased to be employed before 31st March 1972.

Regulation 3 makes two amendments to regulation J13 of the principal Regulations which deals with provisions affecting certain persons who have been members of the Local Government Superannuation Scheme (“the Scheme”) but choose to become subject to another superannuation scheme. The first amendment removes the requirement for the other superannuation scheme to be a contracted-out scheme within the meaning of the Pensions Act 1993. The second amendment is to clarify the connection between regulations J13 and J14.

Regulation 4 deletes regulation J13A of the principal Regulations which is no longer required.

Regulation 5 substitutes a new regulation J14 to deal with transfer of pension rights from the Scheme to a different pension scheme in circumstances where persons are no longer eligible to remain in the Scheme either because the undertaking in which they are employed has been transferred to a body which is not a scheduled or admitted body or because the body by whom they are employed ceases to be eligible to remain a scheduled or admitted body.

The new regulation J14 applies to transfers of one or more persons at the same time. The calculation of the transfer value is a matter to be determined by the actuary to the appropriate Scheme superannuation fund. This replaces the formula in Schedule 16 to the principal Regulations and, in respect of transfers of more than 100 persons, the formula previously found in Schedule 18 to the principal Regulations. Schedule 18 is deleted by virtue of regulation 8 of these regulations.

Regulation 6 inserts two regulations as regulations J14A and J14B. The effect of these is to apply the provisions of J14 in two circumstances where a transfer between superannuation funds occurs. The first case is where an admitted body ceases an admission agreement with one administering authority and enters into an admission agreement with a different administering authority. The second is where an undertaking is transferred by a scheduled body and the body carrying on that undertaking enters into an admission agreement with a different administering authority from the administering authority which maintained the superannuation fund to which the scheduled body contributed in respect of the employees transferred with the undertaking.

Regulation 7 makes a minor, consequential amendment.

Regulations 3, 5, 6, 7 and 8 are effective from 1 April 1986, with saving provisions in regulation 9 for any transfers that have taken place between that date and the coming into force of these regulations and transitional provisions for the period between the 1st April 1986 and the coming into force of these regulations.

Regulation 10, which has effect from 1st April 1990, makes provision for meeting the cost of pension increases for employees and former employees of bodies other than local authorities which are in the Scheme. The pension increases arise from the provisions of the Pensions (Increase) Act 1971.

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