
STATUTORY INSTRUMENTS

1997 No. 1612

The Local Government Pension Scheme Regulations 1997

PART V

SPECIAL CASES

CHAPTER I

ELIGIBILITY

Eligibility for active membership: employees etc. of non-Scheme employers

127.—(1) A person may be an active member if he is an employee of—

- (a) the governors of any voluntary school maintained but not provided by a local education authority, or
- (b) the governing body of any polytechnic, technical institute or other similar institution which is for the time being aided by a local education authority under the Education Act 1996⁽¹⁾,

and the local education authority have, with the consent of his employer, by a statutory resolution specified him or a class of employees to which he belongs as being eligible to belong to the Scheme.

(2) A person who immediately before 1st April 1974 was a contributory employee in the employment of any such governors or governing body may be an active member while he continues in employment with them.

(3) A person may be an active member if immediately before that date he was in employment with the London Transport Executive and by virtue of section 18(4) of the Transport (London) Act 1969⁽²⁾ entitled to participate in the benefits of the superannuation fund maintained under Part I of the Act of 1937 by the Greater London Council or Newham London borough council, if he continued up to 29th June 1984 in employment with the London Transport Executive and continues in employment with London Regional Transport.

(4) But paragraph (3) is subject to any order made by the Secretary of State under section 74 of the Transport Act 1962⁽³⁾.

(5) A person may be an active member if immediately before 1st April 1974 he—

- (a) was a justices' clerk (inner London area) or other officer employed by the committee of magistrates for the inner London area, and
- (b) was by virtue of regulation 2(1) of the Superannuation (Inner London Magistrates' Courts) Regulations 1965⁽⁴⁾ entitled to superannuation rights corresponding with those to which he was entitled in respect of his service before 1st April 1965 as a justices' clerk in the county of London or an officer employed by the County of London Magistrates' Courts Committee.

(1) 1996 c. 56. See section 579(5) and (6).

(2) 1969 c. 35.

(3) 1962 c. 46.

(4) S.I. 1965/537.

(6) But paragraph (5) does not apply to a person if there has been a period of 12 months or more since 1st April 1974 during which he was not within paragraph (5)(a) nor an officer employed by the magistrates' court committee for the inner London area.

Supplementary provisions about employees within regulation 127

128.—(1) Members within regulation 127(1) are deemed to be in employment with the relevant local education authority.

(2) A member within regulation 127(2) who—

- (a) is an employee of the governors of a voluntary school which on 1st April 1974 became maintained by a local education authority for an area outside Greater London, and
- (b) is a contributory employee by virtue of his having been such an employee in that employment,

is deemed to be in employment with that authority.

(3) A member within regulation 127(2) who was specified as a contributory employee by a resolution of an education authority under section 3(2)(f) of the Act of 1937 is deemed to be in employment with that authority.

(4) A member within regulation 127(2) who was specified as a contributory employee by a resolution of the Greater London Council under section 53 of the London County Council (General Powers) Act 1929⁽⁵⁾ or section 7 of the London County Council (General Powers) Act 1938⁽⁶⁾—

- (a) if he was in the employment of any such governors as are mentioned in regulation 127(1) (a), is deemed to be in employment with the London Borough to which the school was transferred by virtue of the Education Reform Act 1988⁽⁷⁾ or, as the case may be, the body incorporated under Part III of the Education Act 1996⁽⁸⁾, Part II of the Education Act 1993 or Chapter IV of Part I of the Education Reform Act 1988;
- (b) if he was in the employment of any such governing body as is mentioned in regulation 127(1)(b), is deemed to be in employment with such of the bodies mentioned in section 121, 122, 122A or 129 of the Education Reform Act 1988 or section 15, 16, 28 or 47 of the Further and Higher Education Act 1992⁽⁹⁾ as may in the circumstances be most appropriate.

(5) These Regulations apply to a person within regulation 127(3), as if London Regional Transport were a Scheme employer.

(6) These Regulations apply to a person within regulation 127(5), as if the committee of magistrates for the inner London area were a Scheme employer.

(7) If a person is deemed to be employed by a Scheme employer under this regulation references in these Regulations to employment by or under such an employer and all similar expressions include him.

Miscellaneous transport employees

129.—(1) For these Regulations every employee of a subsidiary (other than a public transport company) of a passenger transport executive is deemed to be in employment with that executive.

(2) For these Regulations every employee of a public transport company (“the first company”) in relation to whom a resolution under regulation 4 of the Local Government Superannuation

(5) 1929 c. 1xxxvii.

(6) 1938 c. xxxviii.

(7) 1988 c. 40; section 122A was inserted by the Further and Higher Education Act 1992 (c. 13), section 74(1).

(8) 1996 c. 56. See section 579(5) and (6).

(9) 1992 c. 13.

(Miscellaneous Provisions) Regulations 1986⁽¹⁰⁾ has effect is deemed to be in employment with the passenger transport executive or district council which passed the resolution.

(3) If a person in relation to whom such a resolution has continued to have effect becomes an employee of another public transport company (“the second company”), then for these Regulations he is deemed to be in employment—

(a) if the second company’s controlling authority—

(i) is not the body which passed the resolution or a composite authority of which that body was a component council, but

(ii) is an authority which has, or a composite authority each of whose component councils has, passed such a resolution,

with the controlling authority of the second company (or, where that authority is a composite authority, with such one of its component councils as the authority may decide), and

(b) if the second company is a subsidiary of a passenger transport authority and has employees to whom paragraph (2) applies by virtue of such a resolution, with the passenger transport executive or district council which passed the resolution.

(4) If the undertaking of the first company is divided among two or more companies formed under section 61 of the Transport Act 1985⁽¹¹⁾ by a passenger transport authority, an employee of any one of those companies (“the transferee company”) in relation to whom such a resolution has continued to have effect is deemed for these Regulations to be in employment with the passenger transport executive which passed the resolution.

(5) Paragraphs (3) and (4) do not apply where the person in question becomes an employee covered by an admission agreement.

(6) If a person to whom paragraph (2), (3) or (4) applies becomes an employee of a subsidiary of the first company, the second company or the transferee company, paragraph (2), (3) or (4), as the case may be, continues to apply to him as if he had remained an employee of the parent company.

(7) But those paragraphs cease to apply if the first company, the second company or, as the case may be, the transferee company ceases to be a public transport company.

(8) If a person is deemed to be employed by a Scheme employer under this regulation, references in these Regulations to employment by or under such an employer and all similar expressions include him.

(9) In this regulation—

(a) “controlling authority”, “composite authority” and “component council” have the meanings given in section 72 of the Transport Act 1985⁽¹²⁾, and

(b) “subsidiary” has the meaning given in section 137(1) of that Act.

Miscellaneous airport employees

130.—(1) For these Regulations every employee of a public airport company (“the first airport company”) in relation to whom a resolution under regulation 2 of the Local Government Superannuation (Miscellaneous Provisions) Regulations 1987⁽¹³⁾ has effect is deemed to be in employment with the body which passed the resolution.

⁽¹⁰⁾ S.I. 1986/380.

⁽¹¹⁾ 1985 c. 67.

⁽¹²⁾ 1985 c. 67.

⁽¹³⁾ S.I. 1987/293.

(2) If a person in relation to whom such a resolution has continued to have effect becomes an employee of another public airport company (“the second airport company”) whose controlling authority—

- (a) is not the body which passed the resolution or a composite authority of which that body was a constituent council, but
- (b) is an authority which has, or a composite authority one at least of whose constituent councils has, also passed such a resolution,

then, for these Regulations he is deemed to be in employment with the controlling authority of the second airport company (or, where that authority is a composite authority, with such one of its constituent councils as the authority may decide).

(3) Paragraph (2) does not apply if he becomes an employee covered by an admission agreement.

(4) If a person to whom paragraph (1) or (2) applies becomes an employee of a subsidiary of the first airport company or, as the case may be, the second airport company, paragraph (1) or, as the case may be, paragraph (2) continues to apply to him as if he had remained an employee of the company in question.

(5) But those paragraphs cease to apply if the first airport company or, as the case may be, the second airport company ceases to be a public airport company.

(6) If a person is deemed to be employed by a Scheme employer under this regulation, references in these Regulations to employment by or under such an employer and all similar expressions include him.

(7) In this regulation—

- (a) “controlling authority”, “composite authority” and “constituent council” have the meanings given in section 16 of the Airports Act 1986⁽¹⁴⁾; and
- (b) “subsidiary” has the meaning given in section 82(1) of that Act.

Further cases of eligibility: non-employees

131.—(1) A person may be an active member if he is an eligible officer.

(2) These are eligible officers—

- (a) a registration officer;
- (b) a coroner (other than an excepted coroner);
- (c) a person who immediately before 1st April 1974 was a member of a passenger transport executive or a director of a subsidiary of a passenger transport executive, who was a contributory employee in that position and continues in it;
- (d) a justices’ clerk (outside the inner London area).

(3) These are excepted coroners—

- (a) the Queen’s coroner and attorney;
- (b) the coroner of the Queen’s household;
- (c) a coroner who held office immediately before 6th April 1978 and did not elect in accordance with article 3(b) of the Social Security (Modification of Coroners (Amendment) Act 1926) Order 1978⁽¹⁵⁾, that the provisions of the Coroners (Amendment) Act 1926⁽¹⁶⁾ relating to pensions should not apply to him.

⁽¹⁴⁾ 1986 c. 31.

⁽¹⁵⁾ S.I. 1978/374.

⁽¹⁶⁾ 1926 c. 59.

(4) If a registration officer is an active member, he must be treated as being in employment with the local authority who made the scheme under section 14 of the Registration Service Act 1953⁽¹⁷⁾ for the district in or for which he acts.

(5) If a coroner is an active member, he shall be treated—

- (a) if appointed by a metropolitan county council or the Greater London Council, as being in employment with the relevant council for the purposes of section 13 of the Local Government Act 1985⁽¹⁸⁾;
- (b) if appointed by the Common Council, as being in employment with that Council;
- (c) if appointed by the council of a non-metropolitan county, as being in employment with that council.

(6) If a person mentioned in paragraph (2)(c) is an active member he must be treated as being in the employment of the passenger transport executive.

(7) If a justices' clerk is an active member and is not employed under a contract of employment, he must be treated as being in the employment of the magistrates' courts committee by which he was appointed or is deemed to have been appointed.

(8) A Local Commissioner must be treated as being in employment with the Commission for Local Administration of which he is a member.

(9) A person who has or is deemed to have been appointed as a rent officer in pursuance of a scheme under section 63 of the Rent Act 1977⁽¹⁹⁾ must be treated as being in employment—

- (a) where subsection (9) of that section applies (where registration area is a metropolitan county), with the district council designated by the relevant scheme made under that section; and
- (b) otherwise, with the local authority for whose area the relevant scheme is made (or has effect as if made) under that section.

(10) A member of a passenger transport executive or a director of a subsidiary of such an executive must be treated as being in employment with the relevant executive.

(11) But as respects such a member the passenger transport authority for which the relevant executive exercises its functions must consent to the relevant resolution mentioned in regulation 4(4).

(12) Regulation 132(1) applies to the persons holding the positions specified in paragraph (10) as it applies to an employee specified in that regulation.

Separate employments etc.

132.—(1) Where a person holds separate employments under one Scheme employer, these Regulations apply as if each of them were with a different employer.

(2) This paragraph applies where a whole-time employee of a Scheme employer or a part-time employee with at least 30 contractual hours is also employed—

- (a) as a returning officer at local government elections, or
- (b) as an acting returning officer (including employment in the duties of a returning officer at an Assembly election which are required by regulations made under paragraph 2 of Schedule 1 to the European Assembly Elections Act 1978⁽²⁰⁾ to be discharged by an acting returning officer).

⁽¹⁷⁾ 1953 c. 37; section 14 was amended by the Local Government Act 1972 (c. 70), section 251, Schedule 29.

⁽¹⁸⁾ 1985 c. 51.

⁽¹⁹⁾ 1977 c. 42; section 63 was amended by the Local Government Act 1985 (c. 51), section 16, Schedule 8, the Housing Act 1988 (c. 50), sections 120, 121, 140, Schedules 14 and 18 and the Pension Schemes Act 1993 (c. 48), section 190, Schedule 8.

⁽²⁰⁾ 1978 c. 10.

(3) Where paragraph (2) applies and the employee was in the whole-time employment or, as the case may be, the part-time employment immediately before 1st April 1974 and had duties in it which included one or both of the additional duties, each additional duty must be treated as a separate variable-time employment with a different Scheme employer from the Scheme employer with whom he is in the whole-time employment.

(4) Where paragraph (2) does and paragraph (3) does not apply, his employment for that duty (or those duties) must be treated as a (single) separate variable-time employment with a different Scheme employer.

(5) A person who—

(a) is a member in any employment, and

(b) is also a medical inspector of immigrants appointed under the Immigration Act 1971⁽²¹⁾ who receives his pay in that appointment from a Scheme employer listed in Schedule 2,

is eligible to be an active member in that appointment and shall be deemed to be an officer in the employment of that Scheme employer.

(21) 1971 c. 77.