
STATUTORY INSTRUMENTS

1997 No. 1612

The Local Government Pension Scheme Regulations 1997

PART V

SPECIAL CASES

CHAPTER II

MODIFICATIONS FOR CERTAIN EMPLOYEES ETC.

Local government re-organisation

Transfers under the Local Government Act 1992 etc.

138.—(1) Where—

- (a) a person leaves an employment in relation to which he is an active member, because he is transferred to another employment in the circumstances set out in paragraph (2), and
- (b) apart from this paragraph, he would not be treated for regulation 31 (early leavers) as leaving a local government employment,

he must be so treated for that regulation.

(2) Those circumstances are—

- (a) that he leaves that employment as a result of a transfer to another employment which is—
 - (i) an employment with the same employing authority at lower pay, or
 - (ii) an employment with a different employing authority; and
- (b) that transfer is made by virtue or in consequence of—
 - (i) an order made under section 17 of the Local Government Act 1992⁽¹⁾,
 - (ii) the Local Government (Wales) Act 1994⁽²⁾, or
 - (iii) the transfer to the Environment Agency under section 3(1)(a)(ii) or (b)(ii) of the Environment Act 1995⁽³⁾ of the property, rights and liabilities of a waste regulation authority in England or Wales (as defined in section 56 of that Act).

Local government reorganisation

139.—(1) The Scheme applies, in relation to a transferred employee, as if his new employment and his former employment had been one continuous employment (but see paragraph (3)).

(2) Transferred employees who are active members immediately before their transfer continue to be active members in their new employment.

(1) 1992 c. 19.
(2) 1994 c. 19.
(3) 1995 c. 25.

(3) Where—

- (a) immediately before the transfer of a transferred employee it was the usual practice of the body employing him to exercise any discretionary power exercisable by them by virtue of any enactment relating to pensions so as to pay or increase the payment of allowances or pensions for employees of his description, and
- (b) that power or any corresponding one becomes exercisable in relation to him,

the new employing body shall exercise the power in a way which is not less beneficial than the general character of that practice.

(4) Paragraph (3) also applies where it was the usual practice of the Greater London Council or a metropolitan county council to exercise a discretionary power which has become exercisable by another body in consequence of regulation 3(1) of the Local Government Superannuation (Miscellaneous Provisions) Regulations 1986⁽⁴⁾ in a way that was beneficial to employees.

(5) A transferred employee is—

- (a) a person transferred on or after 1st April 1974—
 - (i) by or under a relevant statutory order, regulations, agreement or scheme; or
 - (ii) by the operation of the Public Libraries and Museums Act 1964⁽⁵⁾;
- (b) any person appointed by a local authority, or the National Water Council or a water authority (as defined in the Water Act 1973⁽⁶⁾) to hold any office or employment before or as from 1st April 1974 who, but for the appointment, would have been transferred on that day under section 255 of the Local Government Act 1972⁽⁷⁾; and
- (c) any person who on 1st April 1974 remained in the employment of the same body as immediately before that day but who, in consequence of the Local Government Act 1972, or anything done under that Act, or of the 1974 regulations, became on that day entitled to participate in a superannuation fund maintained under those regulations by a different body from the body which maintained the superannuation fund he was entitled to participate in immediately before that day.

(6) These are relevant statutory orders, regulations, agreements and schemes—

- (a) an order made under section 84 of the London Government Act 1963⁽⁸⁾ or an agreement made under section 24(7) of that Act;
- (b) a scheme made under Part I of the Police Act 1964⁽⁹⁾;
- (c) an order made under section 17 of the Transport Act 1968⁽¹⁰⁾;
- (d) an order made under section 46 of the Children and Young Persons Act 1969⁽¹¹⁾;
- (e) an order or regulations made under the Local Government Act 1972 which, in accordance with the provisions of section 255 of that Act, contains a provision as to the transfer of that person;
- (f) regulation 5 of and Schedule 1 to the Valuation and Community Charge Tribunals (Transfer of Jurisdiction) Regulations 1989⁽¹²⁾.

(4) S.I. 1986/380.

(5) 1964 c. 48.

(6) 1973 c. 37.

(7) 1972 c. 70.

(8) 1963 c. 33.

(9) 1964 c. 48.

(10) 1968 c. 73.

(11) 1969 c. 74; section 46 was amended by the Powers of Criminal Courts Act 1973 (c. 62), sections 56(1), 60(2), Schedule 5, paragraph 36, and the Probation Service Act 1993 (c. 47), section 32, Schedule 3, paragraph 3(3).

(12) S.I. 1989/440.

(7) For this regulation where paragraph (5)(b) applies the taking up of the office or employment to which the appointment is made is a transfer.

Former employees of Manchester Corporation

140.—(1) This regulation applies where a transferred employee (as defined in regulation 139(5)) was a contributor to the Manchester pension fund immediately before his transfer and has continued in the employment of the body to whom he was transferred.

(2) Where this regulation applies—

- (a) references in these Regulations to old statutory provisions must be taken as references to the Manchester pension provisions or to the particular corresponding provision of the Manchester pension provisions, as the case may be;
- (b) references to old funds must be taken as references to the Manchester pension fund;
- (c) references to contributory employees must be taken as references to contributors to that fund.

(3) The old statutory provisions are—

- (a) the Acts of 1937 to 1953, or the regulations made under them (including those provisions applying as amended or extended by any local Act or scheme or together with any such provisions);
- (b) the former regulations or a provision in the former regulations.

(4) The Manchester pension fund is the pension fund maintained immediately before 1st April 1974 by the Manchester City Council for the officers and servants of the Manchester Corporation.

(5) The Manchester pension provisions are the provisions of the enactments, and of the schemes and other instruments in force under them immediately before 1st April 1974, relating to the Manchester pension fund (including the provisions of the Acts of 1937 to 1953 and of any relevant instruments under them so far as applicable to that fund).

Transferees under s.18(4)(a) of the National Health Service Reorganisation Act 1973

141.—(1) This paragraph applies to any person who was transferred to the employment of a Scheme employer (“the new employment”) by or under an order made under section 18(4)(a) of the National Health Service Reorganisation Act 1973(13) and immediately before that transfer was in an employment (“the old employment”) in which he was an officer (as defined in the Health Service regulations).

(2) If immediately before his transfer he was a person in respect of whom the Secretary of State—

- (a) paid contributions under regulation 45 of the Health Service regulations (persons subject to non-statutory superannuation schemes and arrangements), or
- (b) carried out any such scheme or arrangements as are referred to in that regulation,

then, that person shall only be subject to the provisions of these Regulations mentioned in paragraph (4).

(3) The body to which he was transferred shall—

- (a) if immediately before 1st April 1974 the Secretary of State was paying under regulation 45 of the Health Service regulations in respect of that person the contributions authorised or required by the relevant scheme to be paid by the employer, pay those contributions, and
- (b) deduct from the person’s pay the amount of any contribution required by the scheme or under the arrangements to be paid by the employee.

(4) In relation to a person who gave notice under regulation J17(3)(e) of the 1974 regulations that he did not wish to avail himself of the benefits provided under those regulations and to whom regulation H6(5) of the 1986 regulations applied immediately before the commencement date of the 1995 regulations, these Regulations—

(a) have effect as if they conferred on him rights corresponding with those which he would have enjoyed if he had remained subject to the provisions of the Health Service regulations, and

(b) continue so to apply so long as he is employed without a disqualifying break of service by a Scheme employer on duties reasonably comparable to those on which he was engaged immediately before he was transferred.

(5) Where paragraph (4) applies the modifications mentioned in paragraphs (6) and (7) apply.

(6) Regulations 109 and 110 (abatement of retirement pensions during new employment) apply instead of regulation 39 of the Health Service regulations and—

(a) as if “retirement pension” included a pension payable by virtue of paragraph (4), and

(b) in any case where the final pay of a former employment must be ascertained, as if entitlement to such a pension were not an entitlement under the Scheme.

(7) Regulations 111 (forfeiture) and regulation 112 (interim payments directions) have effect instead of regulation 55 of the Health Service regulations.

(8) The Health Service regulations are the National Health Service (Superannuation) Regulations 1961 to 1973(14) as in force immediately before 1st April 1974.