
STATUTORY INSTRUMENTS

1998 No. 366

**The Local Government Pension
Scheme (Scotland) Regulations 1998**

**PART IV
ADMINISTRATION
CHAPTER VI
TRANSFERS**

Transfers out

Application of Chapter IV of Part IV of the Pension Schemes Act 1993

116.—(1) For sections 12C (requirements as to transfer, commutation etc. for contracting-out), 19 (discharge of liability) and 20 (transfer of accrued rights) and Chapter IV or Part IV (transfer values) of the Pension Schemes Act 1993⁽¹⁾ and any regulations made under any of those sections or that Chapter, the managers of the Scheme in relation to a member are the fund authority.

(2) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996⁽²⁾ (pre-1986 leavers), Chapter IV of Part IV of the Pension Schemes Act 1993 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service.

(3) The references in regulation 4 of those Regulations to regulation 3 of those Regulations include a reference to paragraph 4(1) and (2) of Schedule 16 to the 1987 Regulations and any corresponding earlier provisions.

(4) Regulation 5 of those Regulations (treatment of a number of employments as a single employment) only applies if the employments are treated as a single employment for the purposes of the Scheme.

(5) Sub-paragraph (a) of regulation 10(2) of those Regulations (interest on late payment of cash equivalents) does not apply where the member has required the cash equivalent to be paid to a club scheme.

(6) Regulation 18 of those Regulations (termination of pensionable service in certain circumstances to be disregarded) only applies if—

- (a) in the case of a termination before the commencement date, no election was made under regulation E2(9)(c) of the 1987 Regulations (or any corresponding earlier provision) in respect of the service which terminated; and
- (b) in any case, no election has been made under regulation 31(1) to have the service which terminated aggregated with later service.

(1) 1993 c. 48.

(2) S.I.1996/1847, amended by S.I. 1996/3126 and 1997/786 and 1613.

(7) For this regulation and regulation 117, the fund authority, in relation to a member, is the body maintaining the pension fund to which he was contributing immediately before his pensionable service terminated.

(8) However, if that fund has been closed, the fund authority is the body which would be liable to pay him his pension for that employment if he had been entitled to receive payment of such a pension when his pensionable service terminated.

Rights to payment out of fund authority's pension fund

117.—(1) The amount of any transfer payment due in respect of a member under Chapter IV of Part IV of the Pension Schemes Act 1993 is payable by the fund authority from their pension fund.

(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 the former Regulations, any local Act scheme, the 1974 Regulations, the 1987 Regulations or any other provision of these Regulations or the Transitional Regulations.

Contracting-out requirements affecting transfers out

118.—(1) There must be deducted from the transfer payment to be made in respect of any person—

- (a) the amount of any contributions equivalent premium payable pursuant to section 55 of the Pension Schemes Act 1993⁽³⁾; or
- (b) an amount sufficient to meet the liability in respect of his contracted-out rights.

(2) However, the amount mentioned in paragraph (1)(b) may not be deducted where—

- (a) the transfer payment is made to an occupational pension scheme which is contracted-out or an appropriate personal pension scheme; and
- (b) that scheme's trustees or managers undertake to accept liability for his contracted-out rights.

(3) Where the amount mentioned in paragraph (1)(a) is deducted, if the appropriate administering authority think fit, that amount may be used in preserving the liability mentioned in paragraph (2)(b) in the appropriate fund.

(4) Otherwise, it must be used in paying the premium.

(5) Contracted-out rights, in relation to a member, are—

- (a) his and his surviving spouse's rights to guaranteed minimum pensions; and
- (b) his section 9(2B) rights (as defined in regulation 1(2) of the Occupational Pension Schemes Contracting-out) Regulations 1996⁽⁴⁾).

Bulk transfer arrangements

Bulk transfers (transfers of undertakings) etc.

119.—(1) This paragraph applies where—

- (a) two or more members' active membership ends on their joining an approved non-local government scheme ("the new scheme");

⁽³⁾ 1993 c. 48.

⁽⁴⁾ S.I. 1996/1172; the definition of "section 9(2B) rights" was substituted by S.I. 1997/786, Schedule 1, paragraph 4(2).

- (b) it is agreed by—
 - (i) the members' appropriate administering authority,
 - (ii) the members' employing authorities (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 agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter IV of Part IV of the Pension Schemes Act 1993 and waive any rights they might have under that Chapter by virtue of the cessation of their active membership.

(2) The appropriate administering authority must not give their agreement under paragraph (1)(b) unless they are satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which he would have obtained if a transfer value had been paid to the same scheme under Chapter IV of Part IV of the Pension Schemes Act 1993, as it applies by virtue of regulation 116, (assuming in any case where the member would not be entitled to such a payment that he was).

(3) The appropriate administering authority must provide each member with sufficient information in writing to check that fact before he agrees as mentioned in paragraph (1)(c).

(4) Where paragraph (1) applies, 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 them and an actuary appointed by the scheme managers of the new scheme 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.

(7) Paragraph (6) overrides anything to the contrary in the former Regulations, any local Act scheme or any provision of the 1974 Regulations, the 1987 Regulations or these Regulations.

Calculation of amount of transfer payment under regulation 119

120.—(1) The amount of the transfer payment to be paid under regulation 119 is the amount determined by an actuary appointed by the members' appropriate administering authority to be equal to the value at the date they join the new scheme of the actual and potential liabilities payable from their 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 he thinks 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) He must specify in his valuation the actuarial assumptions he has used in making it.

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

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

Transfers in

Inward transfers of pension rights

121.—(1) If a person who becomes an active member has relevant pension rights, he may request his fund authority to accept a transfer value for some or all those rights from the relevant transferor.

(2) Relevant pension rights are accrued rights under—

- (a) an occupational pension scheme (other than the Scheme);
- (b) a personal pension scheme;
- (c) a retirement annuity contract approved by the Commissioners of Inland Revenue under section 620 or 621 of the Taxes Act;
- (d) a self-employed pension arrangement; or
- (e) an additional voluntary contributions scheme (other than a FSAVC scheme or a scheme constituted by virtue of Chapter IV of Part III).

(3) Accrued rights include rights to preserved benefits and rights appropriately secured under section 19 of the Pension Schemes Act 1993⁽⁵⁾.

(4) For this regulation and the following regulations of this Chapter the fund authority, in relation to a transferring person, are the body maintaining the pension fund of the scheme to which he is contributing.

(5) The relevant transferor is the trustees or managers of the scheme, contract or arrangement under which the transferring person's relevant pension rights arise.

(6) However, the relevant transferor for the rights specified in paragraph (3) is the trustees or managers of the scheme, contract or arrangement, or the insurance company, to which a payment in respect of his accrued rights has been made.

(7) A request from a transferring person under paragraph (1) must be made by notice in writing.

(8) That notice must be given before the expiry of the period of 12 months beginning with the date on which he became an active member (or such longer period as his employer may allow).

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

Right to count credited period

122.—(1) Where a transfer value has been accepted under regulation 121, the member may count the credited period as a period of membership for these Regulations (but see Schedule 3).

(2) If the transfer value—

- (a) is paid by the trustees or managers of a club scheme;
- (b) represents all the rights relating to the member in that scheme;
- (c) has been calculated—

(i) in a case where Chapter IV of Part IV of the Pension Schemes Act 1993 applies, in accordance with that Chapter, and

(ii) otherwise, in a manner consistent with that prescribed under that Chapter,

the credited period is the period which, if used to calculate a transfer value to be paid by the Scheme, would produce an amount equal to the transfer value received.

(5) 1993 c. 48.

(3) If the transfer value is not paid by the trustees or managers of a club scheme, the credited period must be calculated in a manner consistent with that Chapter.

(4) In calculating the credited period under paragraph (3) due allowance must be given for the expected increase in the member's pensionable pay between the date on which he became a member (or, if more than twelve months later, the date on which the transfer value is received) and his NRD.

(5) If the member is a man, the credited period must be treated as a period after 5th April 1978.

(6) If the member is a woman, the credited period must be treated as a period after 5th April 1988.

(7) The fund authority must give the member a written notice stating the period of membership he may count under paragraph (1).

(8) The notice must contain a statement of the kind required by regulation 97(4).

Rights as to service not matched by credited period

123.—(1) Where the member's transferred-in service exceeds the credited period, he may count the excess as a period which counts towards his total membership for the purposes of the provisions mentioned in paragraph (2).

(2) Those provisions are—

(a) regulation 18(1) (general qualification for benefits);

(b) paragraphs (a) and (b) of the definition of "normal retirement date" in regulation 24(4);

(c) regulation 40(4) and (5) (amount of active member's surviving spouse's long-term pension);

(d) regulation 86(1) (return of contributions).

(3) A period which may be counted under paragraph (1) counts as its actual length.

(4) The fund authority must give the member a written notice stating the period of membership he may count under paragraph (1).

(5) The notice must contain a statement of the kind required by regulation 97(4).

(6) The transferred-in service of a transferring member is the service in respect of which he has accrued rights to benefits under his previous occupational pension scheme or appropriate policy (whether or not the transfer value covers all those rights).

(7) The period of that service is the period certified by the trustees or managers of that scheme or issuers of that policy.

Credited periods for transferring members with mis-sold pension rights

124.—(1) Regulation 122(3) does not apply where—

(a) the transferring person is a person mentioned in regulation 6(9)(c); and

(b) the transfer value satisfied the conditions specified in paragraph (2).

(2) Those conditions are that—

(a) it is paid by the trustees or managers of the personal pension scheme mentioned in section 172(1)(a)(ii) of the Pensions Act 1995(6);

(b) it represents all the rights relating to the member in that scheme;

(c) it is paid on an application made to the appropriate administering authority before the expiry of the period of 12 months beginning with the date on which the transferring person becomes an active member (or such longer period as they may allow); and

- (d) in the opinion of the appropriate administering authority it is not less than the restitution amount.
- (3) Where paragraph (1) applies, the credited period is the period of membership the transferring person could have counted if he had been an active member throughout the personal pension period.
- (4) The restitution amount is the aggregate of—
- (a) the capitalised value (as at the date on which the request for the calculation of the restitution amount is made) of the rights which would have accrued to the transferring person under the Scheme if he had remained an active member of the Scheme throughout the personal pension period (including rights under the Pensions (Increase) Act 1971(7) and the Pensions (Increase) Act 1974(8));
 - (b) the transfer value (if any) paid out of the Scheme to the personal pension scheme; and
 - (c) interest on any such transfer value at such rate as is approved for the time being by the Government Actuary, calculated on a daily basis over the period from the date on which that transfer value was paid out of the Scheme to the date as at which the transfer value is taken to be paid to the Scheme.
- (5) The appropriate administering authority must determine the value mentioned in paragraph (4) (a) in such manner as is for the time being indicated in guidance issued by the Government Actuary.
- (6) The personal pension period is the period referred to in regulation 6(9)(c).

Community scheme transferees

Community scheme transferees

125.—(1) Community scheme transferees and their surviving spouses, dependants and children are entitled to such rights under the Scheme as are specified in guidance issued by the Government Actuary.

(2) A Community Scheme transferee is a person who became employed by a Community institution after having been employed in local government employment.

Payments between funds and authorities

Changes of fund

126.—(1) This regulation applies where—

- (a) a pension fund becomes an active member’s appropriate fund;
- (b) immediately before it does so, another fund was his appropriate fund;
- (c) in a case where regulation 31(1) applies to him, he has made an election under that regulation.

(2) Where the member’s appropriate administering authority has also changed, the authority which has ceased to be the member’s appropriate administering authority must make such payment to his later appropriate administering authority as is indicated in guidance issued by the Government Actuary for this regulation (but see paragraph (3)).

(3) Where—

- (a) paragraph (2) applies as respects two or more members by virtue of a single event; and

(7) 1971 c. 56.

(8) 1974 c. 9.

(b) the authority by which the payment under that paragraph must be made agree with the authority to which it must be made that it is appropriate for the amount of the payment to be determined by actuaries appointed by those authorities for the purpose, that amount must be so determined.

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

(5) Where the member's appropriate administering authority has not changed, they must arrange for a payment such as is indicated in guidance issued by the Government Actuary for this regulation to be made from the member's former appropriate fund to his new appropriate fund.

(6) Paragraph (1) does not apply where a member enters an employment which is concurrent with another in which he is also an active member.

Liability for combined benefits

127.—(1) Where—

- (a) a benefit under regulation 28 or 47 of these Regulations or regulation E6(1)(c), (2)(e) or (3)(b), E16 or E18 of the 1987 Regulations is payable out of a pension fund ("the new fund"); and
- (b) by means of that benefit being payable another benefit ceases to be payable out of another fund,

such payments must be made to the authority maintaining the new fund by the authority maintaining the other fund as are indicated in guidance issued by the Secretary of State for this regulation.

(2) Such payments must be credited to the new fund.