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STATUTORY INSTRUMENTS

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**1995 No. 1019**

**The Local Government Pension Scheme Regulations 1995**

**PART K**

**INTERCHANGE ETC**

*Transfers of certain members who are eligible to join approved non-local government schemes*

**Certain members who become subject to other pension schemes in the same employment**

**K23.**—(1) This regulation applies to a person if—

- (a) he is a member by virtue of being an employee to whom an admission agreement applies or in an employment under a passenger transport executive;
- (b) the body employing him in that employment (“the relevant employment”) can make other provision for his superannuation under an approved non-local government scheme;
- (c) he gives written notice to that body (and to the appropriate administering authority, if different) that he wishes this regulation to apply to him and they consent to its doing so.

(2) When a person to whom this regulation applies becomes subject in the relevant employment to an approved non-local government scheme (“the new scheme”), he shall be treated for the purposes of these regulations (except regulations C21 (return of contributions) and K2 to K12) as having ceased to hold the relevant employment.

(3) Unless a person to whom this regulation applies has given notice under regulation K24(3)(b), he may, on the actual termination of the relevant employment (but not before), request the payment of a transfer value under regulation K2.

(4) If a transfer value is requested as mentioned in paragraph (3)—

- (a) regulations K2 to K12 apply as if the person had continued to be employed in his local government employment until the date of the actual termination of the relevant employment, but
- (b) regulations K5, K7, K8 and K21 apply as if his local government employment had ended on the day before he became subject to the new scheme.

**Requests for transfer payments: regulation K23 employees and employees of ineligible employers**

**K24.**—(1) This paragraph applies—

- (a) to a person who ceases to be a member because—
  - (i) the undertaking in which he is employed is transferred to a body who is not a LGPS employer nor a body which has entered or is eligible to enter into an admission agreement; or
  - (ii) the body by whom he is employed ceases to be a LGPS employer or a body which has entered or is eligible to enter into an admission agreement,

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 K23 applies; and in this regulation “the transfer date” means—

(i) in the case of a person within paragraph (a)(i), the date of transfer of the undertaking,

(ii) in the case of a person within paragraph (a)(ii), the date his employer ceases to be such an employer as there mentioned, and

(iii) in the case of a person within paragraph (b), the date on which he becomes subject to an approved non-local government scheme.

(2) A person within paragraph (1)(a) shall be treated for the purposes of these regulations as having ceased to hold his employment on the transfer date.

(3) Where—

(a) a person to whom paragraph (1) applies has not attained state pensionable age on the transfer date; and

(b) before that date or, with the consent of his employing authority, the appropriate administering authority and the scheme managers of the transferee scheme, before the expiry of the period of three months beginning with that date—

(i) he gives written notice to the appropriate administering authority (and to his employing authority, if different) that he wishes to transfer his pension rights under these regulations to the transferee scheme, and

(ii) the scheme managers of the transferee scheme, the appropriate administering authority (and his employing authority, if different) have each consented,

then, subject to paragraph (6), the appropriate administering authority shall set aside the appropriate part of the appropriate pension fund (“the transfer payment”), whether in cash or in assets or both, and pay or transfer it to the scheme managers of the transferee scheme for the benefit of the relevant beneficiaries.

(4) For the purposes of paragraph (3), the appropriate part of the appropriate pension fund is the amount determined by the actuary of the appropriate pension fund (on the basis of actuarial assumptions specified by him) to be equal to the value at the transfer date of the actual and potential liabilities of the fund which have then accrued in respect of the relevant beneficiaries, after making such adjustments as he thinks fit as respects—

(a) any period between the transfer date and the date of actual payment of the transfer value; and

(b) such other matters as he thinks fit;

and in paragraph (3) and this paragraph “relevant beneficiaries” means the member or members in respect of whom the transfer payment is made and those persons who under these regulations are or may become entitled to benefit through him or them.

(5) 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 fund determines.

(6) Where a transfer payment in respect of a person is made under paragraph (3)—

(a) if the transferee scheme is contracted-out and the scheme managers undertake to accept liability for that person’s guaranteed minimum pension, no deduction shall be made for that pension from the transfer payment;

(b) otherwise, there shall be deducted from it—

- (i) the amount of any transfer premium which may be paid under section 55(3) of the Pension Schemes Act 1993<sup>(1)</sup>, or
  - (ii) the amount of any contributions equivalent premium payable pursuant to section 55(2) of that Act,
- and such amount shall be used either in paying such a premium or, if the appropriate administering authority think fit, in preserving the liability for the guaranteed minimum in the appropriate pension fund; and
- (c) the appropriate administering authority—
    - (i) shall certify to the scheme managers of the transferee scheme the amount included in the transfer payment which represents the person’s contributions and interest on them, and
    - (ii) may require them to undertake to treat only those amounts as employee’s contributions in the transferee scheme.
- (7) The appropriate administering authority—
- (a) shall provide the person transferring his pension rights with sufficient information in writing to check that the pension rights he 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 scheme managers of the transferee scheme under regulation K2; and
  - (b) shall not consent under paragraph (3)(b)(ii) unless they are satisfied of that fact.
- (8) Where a transfer payment is to be or has been made under this regulation, no other payment or transfer of assets shall be made out of the pension fund on account of service or employment to which the transfer payment under this regulation relates.
- (9) Paragraph (8) applies notwithstanding anything in the Acts of 1937 to 1953 and the regulations made under those Acts, the former regulations, any local Act scheme or any provision of the 1974 regulations, the 1986 regulations or these regulations.
- (10) In this regulation “undertaking” has the same meaning as in the Transfer of Undertakings (Protection of Employment) Regulations 1981<sup>(2)</sup>.

#### **Application of regulation K24 in case of certain transfers involving admission agreements**

##### **K25.—(1) Where—**

- (a) an admission agreement (“the first agreement”) made by a body with an appropriate administering authority ceases to have effect; and
- (b) on the cessation of the first agreement another admission agreement (“the second agreement”) between that body and a different appropriate administering authority (“the second authority”) takes effect,

then regulation K24 applies (and regulations K20 to K22 do not apply) as if—

- (i) a person employed by that body when the second agreement took effect were a person within paragraph (1)(a) of that regulation,
- (ii) the pension fund maintained by the second authority were the transferee scheme,
- (iii) the second authority were the scheme managers, and
- (iv) the date the second agreement takes effect were the transfer date.

##### **(2) Where—**

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(1) 1993 c. 48.

(2) S.I. 1981/1794; regulation 2(1) was partially repealed by the Trade Union Reform and Employment Rights Act 1993 (c. 19), sections 33(1), (2), 51, Schedule 10.

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

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- (a) an undertaking (as defined in regulation K24(10)) is transferred from an employing authority (“the first employer”) to a body which enters into an admission agreement with an appropriate administering authority (“the new authority”) in respect of one or more persons who were members in relation to their employment with the first employer and remain members in relation to their employment with the new authority; and
- (b) the new authority is different from the appropriate administering authority maintaining the fund which was their appropriate pension fund immediately before the transfer, and
- (c) each of those members is entitled to count in relation to his employment with the new authority any membership he was entitled to count in his employment with the first employer,

then regulation K24 applies (and regulations K20 to K22 do not apply) as if—

- (i) such a member were a person within paragraph (1)(a) of that regulation,
- (ii) the pension fund maintained by the new authority were the transferee scheme,
- (iii) the new authority were the scheme managers, and
- (iv) the date the agreement takes effect were the transfer date.