
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. lxxxvii.

(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.

CHAPTER II

MODIFICATIONS FOR CERTAIN EMPLOYEES ETC.

Members who may retire at 70 etc.

Members employed by magistrates' courts committees

133.—(1) These Regulations apply to a justices' clerk (outside the inner London area) who is employed by a magistrates' courts committee with the modifications specified in paragraphs (3) to (11).

(2) These Regulations apply to any other person who is employed by a magistrates' courts committee with the modifications specified in paragraphs (5) to (11).

(3) For regulation 6(3) (latest retirement age) substitute—

“(3) A person may not become an active member after—

(a) his 70th birthday or,

(b) any earlier day after his 65th birthday when his total membership equals his permitted maximum.”.

(4) In regulation 28(3) (enhanced membership period in cases of ill-health), regulation 52(2)(c) (power of employing authority to increase total membership) and paragraph 8(2)(b) of Schedule 4 (maximum addition under regulations 53 and 55) for “65” substitute “70”.

(5) Where a member who is employed by two or more magistrates' courts committees does not receive separate pay for one or more of those employments (“the undifferentiated employment”) his pay for the undifferentiated employment is—

(a) if no body pays him pay for more than one employment, that part of his total pay which is paid by the body responsible for meeting the employing committee's expenses, and

(b) otherwise, so much of his total pay for the employments remunerated by one body as may be agreed by the body and him, or, in default of agreement, determined by the Secretary of State.

(21) 1971 c. 77.

(6) If a person is paid by different bodies as respects two or more clerkships under a magistrates' courts committee, they count for these Regulations as separate employments under separate Scheme employers.

(7) Paragraph (6) applies whether the person holds the clerkships himself or is employed to assist another person in them.

(8) Paragraph (6) does not apply for the purposes of regulation 74 (appropriate funds) or the provisions mentioned in paragraph (1)(a), (b) or (c) of that regulation.

(9) The body paying the person's pay is to be treated—

- (a) as employing him for the purposes of regulation 79 (employer's contributions), and
- (b) as his employing authority for the purposes of regulation 80 (employer's further payments) and regulation 89 (deduction and recovery of member's contributions).

(10) A magistrates' courts committee are to report to the body paying the person's pay any decision made by them under—

- (a) regulation 31 (early leavers: deferred retirement benefits and elections for early payment),
- (b) regulation 52 (power of employing authority to increase total membership),
- (c) regulation 53 (power of employing authority to increase total membership of new members),
- (d) regulation 88(2) (direction for return of contributions despite offences etc. in connection with employment),
- (e) regulation 111 (forfeiture of pension rights after conviction of employment-related offences), or
- (f) regulation 112 (interim payments directions).

(11) Regulation 105 (appeals by administering authorities) has effect as if—

- (a) a body receiving such a report were the administering authority maintaining the pension fund to which that body pays employer's contributions for the purposes of regulation 105(1), and
- (b) paragraph (3) of regulation 103 were omitted.

Certain employees of the committee of magistrates for the inner London area

134.—(1) These Regulations apply with the modifications in paragraphs (3) to (7) to a person who—

- (a) is eligible for membership by reason of regulation 127(5), and
- (b) is a justices' clerk (inner London area).

(2) These Regulations apply to any other person who is so eligible with the modifications in paragraphs (5) to (7).

(3) For regulation 6(3) (latest retirement age) substitute—

“(3) A person may not become an active member after—

- (a) his 70th birthday, or
- (b) any earlier day after his 65th birthday when his total membership equals his permitted maximum.”.

(4) In regulation 28(3) (enhanced membership period in cases of ill-health), regulation 52(2)(c) (power of employing authority to increase total membership on redundancy etc.) and paragraph 8(2) (b) of Schedule 4 (maximum addition under regulations 53 and 55) for “65” substitute “70”.

(5) The Receiver for the Metropolitan Police District is to be treated—

- (a) as employing the person for the purposes of regulation 79 (employer's contributions),
 - (b) as his employing authority for the purposes of regulation 80 (employer's further payments) and regulation 89 (deduction and recovery of member's contributions).
- (6) The committee of magistrates are to report to the Secretary of State any decision made by them under—
- (a) regulation 31 (early leavers: deferred retirement benefits and elections for early payment),
 - (b) regulation 52 (power of employing authority to increase total membership),
 - (c) regulation 53 (power of employing authority to increase total membership of new members),
 - (d) regulation 88(2) (direction for return of contributions despite offences etc. in connection with employment),
 - (e) regulation 111 (forfeiture of pension rights after conviction of employment-related offences), or
 - (f) regulation 112 (interim payments directions).
- (7) Such a decision has no effect until approved by the Secretary of State.

Coroners

135.—(1) These Regulations apply with the following modifications to a coroner who is a member by reason of regulation 131(2)(b).

(2) For regulation 6(3) (latest retirement age) substitute—

“(3) A person may not become an active member after—

- (a) his 70th birthday, or
- (b) any earlier day after his 65th birthday when his total membership equals his permitted maximum.”.

(3) In regulation 28(3) (enhanced membership period in cases of ill-health), regulation 52(2)(c) (power of employing authority to increase total membership on redundancy etc.) and paragraph 8(2)(b) of Schedule 4 (maximum addition under regulations 53 and 55) for “65” substitute “70”.

Employees of probation committees

Employees of probation committees

136.—(1) These Regulations apply to a person employed by a probation committee with the following modifications.

(2) For an employee of the probation committee for the inner London area, the Receiver for the Metropolitan Police District is to be treated—

- (a) as employing him for the purposes of regulation 79 (employer's contributions),
- (b) as his employing authority for the purposes of regulation 80 (employer's further payments) and regulation 89 (deduction and recovery of member's contributions).

(3) The probation committee for the inner London area are to report to the Secretary of State any decision made by them under—

- (a) regulation 31 (early leavers: deferred retirement benefits and elections for early payment),
- (b) regulation 52 (power of employing authority to increase total membership),
- (c) regulation 53 (power of employing authority to increase total membership of new members),

- (d) regulation 88(2) (direction for return of contributions despite offences etc. in connection with employment),
 - (e) regulation 111 (forfeiture of pension rights after conviction of employment-related offences), or
 - (f) regulation 112 (interim payments directions).
- (4) Such a decision has no effect until approved by the Secretary of State.
- (5) The probation committee for an area other than the inner London area are to report any such decision made by them to the body or bodies responsible for meeting the committee's expenses.
- (6) Regulation 105 (appeals by administering authorities) has effect as if—
- (a) a body receiving such a report were the administering authority maintaining the pension fund to which that body pays employer's contributions for the purposes of regulation 105(1), and
 - (b) paragraph (3) of regulation 103 were omitted.
- (7) In the application of regulation 11 (length of period of membership) to part-time service as a probation officer, instead of the fraction mentioned in paragraph (4) of that regulation, the appropriate fraction for each year of part-time service is the fraction—
- (a) of which the numerator is the pay received by him in the year, and
 - (b) the denominator is the mean of the annual salary scale applicable to probation officers in respect of that year.
- (8) For any year of part-time service before 1st April 1965, paragraph (7) applies as if the mean of the annual salary scale applicable to probation officers in respect of that year were—
- (a) in a case where the date on which that year commenced was on or after 1st July 1937 and before 1st July 1944, for male officers £330 and for female officers £290;
 - (b) in a case where that date was on or after 1st July 1944 and before 1st December 1946, for male officers £375 and for female officers £330;
 - (c) in a case where that date was on or after 1st December 1946 and before 1st April 1954, for male officers £485 and for female officers £420;
 - (d) in a case where that date was on or after 1st April 1954, for male officers £620 and for female officers £555.
- (9) Separate calculations must be made for each year of part-time service (and the calculation must be adjusted appropriately for periods of part-time service of less than a year).
- (10) In the application of regulation 28(5) (enhanced membership periods in cases of ill-health) the appropriate fraction is the fraction specified in paragraph (7).

City of London and other contributory employees

Certain City of London employees and former contributors

137. Schedule 6 (certain City of London employees and other contributory employees) shall have effect.

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⁽²²⁾,
 - (ii) the Local Government (Wales) Act 1994⁽²³⁾, or
 - (iii) the transfer to the Environment Agency under section 3(1)(a)(ii) or (b)(ii) of the Environment Act 1995⁽²⁴⁾ 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.

(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⁽²⁵⁾ 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⁽²⁶⁾;
- (b) any person appointed by a local authority, or the National Water Council or a water authority (as defined in the Water Act 1973⁽²⁷⁾) to hold any office or employment before

⁽²²⁾ 1992 c. 19.

⁽²³⁾ 1994 c. 19.

⁽²⁴⁾ 1995 c. 25.

⁽²⁵⁾ S.I. 1986/380.

⁽²⁶⁾ 1964 c. 48.

⁽²⁷⁾ 1973 c. 37.

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(28); 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(29) or an agreement made under section 24(7) of that Act;
- (b) a scheme made under Part I of the Police Act 1964(30);
- (c) an order made under section 17 of the Transport Act 1968(31);
- (d) an order made under section 46 of the Children and Young Persons Act 1969(32);
- (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(33).

(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.

(28) 1972 c. 70.

(29) 1963 c. 33.

(30) 1964 c. 48.

(31) 1968 c. 73.

(32) 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).

(33) S.I. 1989/440.

(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⁽³⁴⁾ 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⁽³⁵⁾ as in force immediately before 1st April 1974.

⁽³⁴⁾ 1973 c. 32.

⁽³⁵⁾ S.I. 1961/1441, 1966/1523, 1972/1339, 1537, 1973/242, 731, 1649.

Reduction of pensions of certain former teachers

Deduction for teachers' pension payments

- 142.—(1) This regulation applies where a person—
- (a) becomes entitled to be paid a retirement pension under the Scheme which is calculated by reference to section 17 teacher's membership, and
 - (b) has a potential retirement payment as a teacher.
- (2) The amount receivable by him in any year in respect of that retirement pension must be reduced by the amount of that payment.
- (3) A person has a potential retirement payment as a teacher in any year if—
- (a) any amount is receivable by him in that year by virtue of the Teachers' Acts, or
 - (b) any sums are payable to him in that year under the Teachers' regulations,
- and the aggregate of that amount and sums is the amount of that payment.
- (4) If a capital payment has been paid or is payable at any time under the Teachers' Acts or the Teachers' regulations, such proportion of that payment as is indicated in guidance issued by the Government Actuary must be treated as a sum receivable by him in any year by virtue of the Teachers' Acts or the Teachers' regulations (but see paragraph (7)).
- (5) If a sum representing a return of contributions in respect of a period of service which has been taken into account in calculating the amount of the retirement pension has been paid or is payable at any time under the Teachers' Acts or the Teachers' regulations, then, in computing the reduction under paragraph (2), such proportions—
- (a) of the amount he has become entitled to be repaid at the date on which he became entitled to the pension, and
 - (b) of the amount representing the balance of his contributions under the Teachers' Acts or the Teachers' regulations which he may become entitled to be repaid after that date,
- as are indicated in guidance issued by the Government Actuary must be treated as a sum receivable by him by virtue of the Teachers' Acts or payable to him by virtue of the Teachers' regulations in any year (but see paragraph (7)).
- (6) But if, after paragraph (5) has become applicable to a person, a repayment of the amount representing the balance of his contributions under the Teachers' Acts or the Teachers' regulations is made to him, then, in computing the reduction under paragraph (2), paragraph (5) shall continue to apply as before as respects the repaid amount and no further account shall be taken of it.
- (7) If—
- (a) after paragraph (5) has become applicable to a person a superannuation allowance under the Teachers' regulations is granted to him, and
 - (b) the aggregate amount of the deductions previously made from his retirement pension by virtue of that paragraph is less than any lump sum granted to him under the Teachers' Acts or the Teachers' regulations,
- then—
- (i) that paragraph ceases to have any further effect in relation to him, and
 - (ii) for paragraph (4) the amount so granted shall be deemed to be the difference between that amount and that aggregate amount.
- (8) The amount of a person's potential retirement payment is calculated without taking into account—
- (a) deductions under the avoidance of duplicate pensions provisions, or

(b) any surrender of annual retirement pension he has made in accordance with regulation E11 of the Teachers' Superannuation (Consolidation) Regulations 1988⁽³⁶⁾, Part VI of the Teachers' Superannuation Regulations 1967⁽³⁷⁾ or Part III of the Teachers' Superannuation Regulations 1976⁽³⁸⁾.

(9) Section 17 teacher's membership is membership deriving from service the pensioner was entitled to count under section 17 of the Local Government Superannuation Act 1937⁽³⁹⁾ (teachers).

(10) The Teachers' Acts means section 9 of the Superannuation Act 1972⁽⁴⁰⁾ and the Teachers (Superannuation) Acts 1918 to 1945.

(11) The Teachers' regulations means the Teachers' Superannuation (Consolidation) Regulations 1988, the Teachers' Superannuation Regulations 1967 to 1974, and the Teachers' Superannuation Regulations 1976.

(12) The avoidance of duplicate pensions provisions are—

- (a) section 7 of the Teachers (Superannuation) Act 1925⁽⁴¹⁾,
- (b) regulation 52 of the Teachers' Superannuation Regulations 1967,
- (c) regulation 77 of the Teachers' Superannuation Regulations 1976, and
- (d) regulation E9 of the Teachers' Superannuation (Consolidation) Regulations 1988.

Conversion of Discretionary Payments Regulations periods into membership

Conversion of periods credited under Discretionary Payments Regulations etc. into membership

143.—(1) Where, apart from paragraph (9) of regulation 52, an employing authority could pass a resolution under that regulation to increase a person's total membership, they may resolve that his total membership be increased by the whole or part of the period credited to him as mentioned in that paragraph.

(2) Where—

- (a) any person has been credited by an employer ("the transferor employer") under any scheme, the terms of which correspond to Part III of the Local Government (Discretionary Payments) Regulations 1996⁽⁴²⁾, with a period of service in respect of a former employment,
- (b) the transferor employer's liability in respect of payments falling due to that person as respects that credited period has been transferred to an employing authority,
- (c) apart from paragraph (9) of regulation 52, if—
 - (i) the person's employment with the transferor employer had been employment with the employing authority, and
 - (ii) any actions taken by the transferor employer under the scheme mentioned in paragraph (a) had been taken by that authority,

that authority could pass a resolution under regulation 52 to increase his total membership, they may resolve that his total membership be increased by the whole or part of the period credited to him.

⁽³⁶⁾ S.I. 1988/1652.

⁽³⁷⁾ S.I. 1967/489, revoked by S.I. 1970/862.

⁽³⁸⁾ S.I. 1976/1987, revoked by S.I. 1988/1652 Schedule 14.

⁽³⁹⁾ 1937 c. 68.

⁽⁴⁰⁾ 1972 c. 11; section 9 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4, 8, 11.

⁽⁴¹⁾ 1925 c. 59.

⁽⁴²⁾ S.I. 1996/1680.

(3) The additional period must not exceed the period which would be the maximum additional period under regulation 52, if—

- (a) a resolution under that regulation could be passed in relation to him, and
- (b) the period of 10 years were substituted for the period of $6 \frac{243}{365}$ years in paragraph (2) (d) of that regulation.

(4) The additional period may only be counted as a period of membership if—

- (a) the employing authority and the administering authority agree that the employing authority will pay increased contributions under regulation 79 to meet the cost of the increase in membership, or
- (b) the employing authority make the payment which is required by regulation 80(2) within the period specified in that regulation,

but it may be so counted as from the date from which the resolution has effect.

(5) If the employing authority fail duly to pay those increased contributions or make that payment, the resolution shall cease to have effect.

(6) Where the resolution has effect, the period credited as mentioned in regulation 52(9) is reduced or extinguished accordingly (but without prejudice to any payments which have fallen due or have been made before that date).

(7) No resolution may be passed under this regulation, the result of which would be to place any individual in a worse position than he would otherwise be.

(8) If the person was credited as mentioned in regulation 52(9) on or after the commencement date, this regulation only applies if—

- (a) the employing authority is an authority who have reasonable grounds to believe that they will cease to exist as a result of a provision made by or under an enactment; or
- (b) the employing authority have ceased to exist as a result of any such provision;

and where paragraph (b) applies “employing authority” includes the person to whom the former employing authority’s functions as respects the former employee in question have been transferred in connection with their abolition.

Environment Agency Closed Fund

The Environment Agency Closed Fund

144.—(1) Part IV applies to the Environment Agency Closed Fund with the following modifications.

(2) Omit regulations 75, 76 and 78 to 81.

(3) In regulation 77—

- (a) omit paragraph (1)(c) and the word “and” immediately preceding it;
- (b) for paragraphs (3) to (7) substitute—

“(3) After obtaining a valuation under paragraph (1) the Environment Agency must obtain from the same actuary a certificate specifying the amount by which in his opinion the value of the assets of the fund exceeds or, as the case may be, falls short of, the amount required to meet its existing and prospective liabilities.”;

(c) omit paragraph (10)(b) and (c).

(4) The Environment Agency Closed Fund is the Closed Fund vested in the Environment Agency by regulation 2(1) of the Local Government Pension Scheme (Environment Agency) Regulations 1996(43).

Rights under section 12 of the Superannuation Act 1972

Rights under section 12 of the Superannuation Act 1972

145.—(1) If, apart from this regulation, any provision of these regulations, which re-enacts with any modification any provision of the Scheme which ceases to have effect by virtue of the Transitional Regulations in relation to any person to whom a relevant benefit is or may become payable, would place him in a worse position in relation to that benefit than that he would have been in if that modification had not been made and he makes an election under this paragraph, these regulations shall have effect, in relation to him and to that benefit, as if these regulations had re-enacted that provision of the Scheme without modification (but see paragraph (4)).

(2) An election under paragraph (1) must be made by notice in writing given to the appropriate administering authority within the period of six months beginning with the commencement date.

(3) In this regulation—

“relevant benefit” means a benefit payable to, or in respect of, a person who before the commencement date—

- (a) ceased to hold an employment in which he was an active member (whether or not he has subsequently become an active member again); or
- (b) died while in such employment; and

“benefit” includes a return of contributions and any pension payable to a widow, widower or any dependant by virtue of a surrender.

(4) If an election under paragraph (1) is made in relation to a benefit in respect of a person who is an active member, or subsequently becomes an active member again—

(a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued by virtue—

- (i) of periods of membership before the cessation referred to in paragraph (3)(a) (or, if there has been more than one such cessation, the last of them before the commencement date); or
- (ii) of contributions paid in respect of such periods of membership; and

(b) in determining entitlement to, or the amount of, the benefit to that extent, he shall be treated as if he had never become an active member again at any time after the cessation referred to in paragraph (2)(a) (but without prejudice to the application of this paragraph);

and these regulations shall have effect accordingly.