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STATUTORY INSTRUMENTS

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**2008 No. 239**

**The Local Government Pension Scheme  
(Administration) Regulations 2008**

**PART 2**

**MEMBERSHIP OF SCHEME**

**General eligibility for membership**

4.—(1) A person may only be an active member of the Scheme if—

- (a) this regulation, or any of regulations 5 to 9 and 10(3); or
- (b) regulation 2(3) of the Benefits Regulations<sup>(1)</sup>

enables him to be one and he is not prevented by regulation 12.

(2) A person may be an active member if he is employed by a body which is listed in Schedule 2.

(3) But a person who is employed by a body listed in Part 2 of that Schedule may only be an active member if he, or a class of employees to which he belongs, is designated by the body as being eligible for membership of the Scheme.

**Employees of non-Scheme employers: community admission bodies**

5.—(1) Subject to the requirements of this regulation and regulation 7, an administering authority may make an admission agreement with any community admission body.

(2) The following are community admission bodies—

- (a) a body, other than the governors or managers of a voluntary school (within the meaning of the School Standards and Framework Act 1998<sup>(2)</sup>), which provides a public service in the United Kingdom otherwise than for the purposes of gain and which either—
  - (i) has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise), or
  - (ii) is approved by the Secretary of State for the purposes of admission to the Scheme;
- (b) a body, other than the governors or managers of a voluntary school, to the funds of which a Scheme employer contributes;
- (c) a body representative of—
  - (i) local authorities,
  - (ii) local authorities and officers of local authorities,

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(1) S.I. 2007/1166.

(2) 1998 c.31.

- (iii) officers of local authorities where it is formed for the purpose of consultation on the common interests of local authorities and the discussion of matters relating to local government, or
- (iv) Scheme employers;
- (d) the Housing Corporation;
- (e) the Commission for the New Towns;
- (f) a company for the time being subject to the influence of a local authority (within the meaning of section 69 of the Local Government and Housing Act 1989 (companies subject to local authority influence))(3); and
- (g) a company for the time being subject to the influence of a body listed in Part 1 of Schedule 2 (other than a local authority).

(3) An approval under paragraph (2)(a)(ii) may be subject to such conditions as the Secretary of State thinks fit and she may withdraw an approval at any time if such conditions are not met.

(4) Where, at the date that an admission agreement is made with a body mentioned in paragraph (2)(b), the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, it must be a term of the admission agreement that the Scheme employer paying contributions (or, if more than one pays contributions, all of them) guarantees the liability of the body to pay all amounts due from it under these Regulations or the Benefits Regulations.

(5) In paragraph (2)(c) “local authorities” and (f) “local authority” includes the Greater London Authority.

(6) For the purpose of determining whether a company is subject to the influence of a body as mentioned in paragraph (2)(g), section 69 of the Local Government and Housing Act 1989 shall have effect as if references in that section to a local authority were references to the body.

### **Employees of non-Scheme employers: transferee admission bodies**

**6.—(1)** Subject to the requirements of this regulation and regulation 7, an administering authority may make an admission agreement with any transferee admission body.

(2) A transferee admission body is a body, other than a community admission body, that is providing or will provide—

- (a) a service or assets in connection with the exercise of a function of a Scheme employer as a result of—
  - (i) the transfer of the service or assets by means of a contract or other arrangement,
  - (ii) a direction made under section 15 of the Local Government Act 1999(4), or
  - (iii) directions made under section 497A of the Education Act 1996(5),
 (“a (2)(a) transferee admission body”); or
- (b) a public service and is approved by the Secretary of State for the purposes of admission to the Scheme (“a (2)(b) transferee admission body”).

(3) In the case of an admission agreement with a (2)(a) transferee admission body, the Scheme employer, if it is not also the administering authority, must be a party to the admission agreement.

(4) An approval under paragraph (2)(b) may be subject to such conditions as the Secretary of State thinks fit and she may withdraw an approval at any time if such conditions are not met.

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(3) 1989 c.42.

(4) 1999 c.27.

(5) 1996 c.56. Section 497A was inserted by section 8 of the School Standards and Framework Act 1998 (c.31).

(5) An admission agreement with a transferee admission body shall require the Scheme employer, in the case of a (2)(a) transferee admission body, or the transferee admission body, in any other case, to carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee admission body.

(6) An assessment carried out by a (2)(b) transferee admission body shall be carried out to the satisfaction of the administering authority.

(7) The admission agreement shall further provide that, where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.

(8) The indemnity or bond must be with—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(6) to accept deposits or to effect and carry out contracts of general insurance;
- (b) an EEA firm of the kind mentioned in paragraph (5)(b) and (d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits or to effect and carry out contracts of general insurance; or
- (c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.

(9) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 3.

(10) This paragraph applies where a transferee admission body undertakes to meet the relevant requirements of this regulation and—

- (a) in the case of a (2)(a) transferee admission body, the Scheme employer undertakes to meet the relevant requirements of this regulation; or
- (b) in the case of a (2) (b) transferee admission body—
  - (i) the Secretary of State approves the body for admission to the Scheme, and
  - (ii) the conditions, if any, to which the approval is subject have been met.

(11) Where paragraph (10) applies—

- (a) an administering authority must admit to the Scheme the eligible employees of the transferee admission body designated by that body; and
- (b) where the administering authority does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

(12) Only those employees of the transferee admission body who are employed in connection with the provision of a service or assets mentioned in paragraph (2) are eligible to be designated, under regulation 7(1), members of the Scheme.

#### **Admission agreements – further provisions**

7.—(1) A person employed by a community admission body or an eligible person employed by a transferee admission body may only be a member if he, or a class of employees to which he belongs, is designated in the admission agreement by the body as being eligible for membership of the Scheme.

(2) An admission agreement must terminate if the admission body ceases to be such a body and may make such other provision about its termination as the parties consider appropriate.

(3) When an administering authority makes an admission agreement it must promptly inform the Secretary of State of—

- (a) the date the agreement takes effect;
- (b) the admission body's name; and
- (c) in the case of an agreement with a (2)(a) transferee admission body, the name of the relevant Scheme employer.

(4) An administering authority and an admission body may make an admission agreement despite the fact that they do not exercise their functions or provide services or assets in areas that overlap or adjoin each other.

(5) Any question which may arise between the parties to an admission agreement relating to the construction of the agreement or the rights and obligations under that agreement shall be referred in writing to the Secretary of State for determination.

(6) These Regulations and the Benefits Regulations apply to employment with an admission body in which the employee is an active member in the same way as if the admission body were a Scheme employer.

### **Eligibility for membership of employees of other bodies not listed in Schedule 2**

8.—(1) A person may be an active member if he is an employee of the governing body of—

- (a) a voluntary school (within the meaning of the School Standards and Framework Act 1998);
- (b) a foundation school or foundation special school (within the meaning of that Act) maintained by a local education authority; or
- (c) any technical institute or other similar institution which is for the time being assisted by a local education authority under the Education Act 1996(7),

and the local education authority has, with the consent of his employer, designated him, or a class of employees to which he belongs, as being eligible for membership of the Scheme.

(2) Such a person shall be deemed to be in employment with the relevant local education authority and all references in these Regulations to employment by or under a Scheme employer and all similar expressions shall include references to that person.

### **Eligibility in certain cases of persons who are not employees**

9.—(1) A person may be an active member if he is—

- (a) a registration officer;
- (b) a coroner (other than a coroner to whom paragraph (2) applies);
- (c) the Mayor of London;
- (d) a member of the London Assembly; or
- (e) the chairman of the London Transport Users' Committee.

(2) This paragraph applies to—

- (a) the Queen's coroner and attorney;
- (b) the coroner of the Queen's household; and
- (c) a coroner who—
  - (i) held office immediately before 6th April 1978, and

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(7) 1996 c.56. See section 579(6).

(ii) did not choose, in accordance with article 3(b) of the Social Security (Modification of Coroners (Amendment) Act 1926) Order 1978<sup>(8)</sup>, that the provisions of the Coroners (Amendment) Act 1926<sup>(9)</sup> relating to pensions should not apply to him.

(3) 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<sup>(10)</sup> for the district in or for which he acts.

(4) If a coroner is an active member, he must be treated—

- (a) if appointed by a local authority, as being in employment with that local authority; or
- (b) if appointed by the Common Council of the City of London, as being in employment with that Council.

(5) If the Mayor of London or a member of the London Assembly is an active member, he must be treated as being in the employment of the Greater London Authority.

(6) If the chairman of the London Transport Users' Committee is an active member, he must be treated as being in employment with that Committee.

(7) A person who is a Local Commissioner for the purposes of Part 3 of the Local Government Act 1974<sup>(11)</sup> must be treated as being in employment with the Commission for Local Administration in England.

(8) In this regulation—

“registration officer” means—

- (a) a superintendent registrar or registrar of births and deaths;
- (b) a registrar of births and deaths exercising any of the functions of a registrar of marriages;
- (c) a person provided by and at the expense of a local authority to act as a deputy superintendent registrar or deputy registrar of births and deaths.

### **Supplementary provisions for certain members**

**10.**—(1) A person who is a rent officer who—

- (a) was appointed in pursuance of a scheme made under section 63 of the Rent Act 1977<sup>(12)</sup>; or
- (b) was appointed by the Secretary of State under the Administration of the Rent Officer Service (England) Order 1999<sup>(13)</sup>

and is a member on the commencement date must be treated as being in employment with the London Pensions Fund Authority.

(2) 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 that executive.

(3) But, as respects such a member, the passenger transport authority for which the executive exercises its functions must consent to the designation mentioned in regulation 4(3).

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<sup>(8)</sup> S.I.1978/374.

<sup>(9)</sup> 1926 c.59.

<sup>(10)</sup> 1953 c.37; section 14 was amended by Schedule 29 to the Local Government Act 1972 (c.70).

<sup>(11)</sup> 1974 c.7.

<sup>(12)</sup> 1977 c.42.

<sup>(13)</sup> S.I. 1999/2403.

### Separate employments etc

**11.**—(1) Where a person holds separate employments under one employing authority, these Regulations and the Benefits Regulations apply as if each of the employments were under a different employer.

(2) This paragraph applies where a whole-time or a part-time employee of an employing authority is also employed to carry out one or more of the additional duties.

(3) The additional duties are duties as—

(a) a returning officer at—

(i) local government elections, or

(ii) elections for the National Assembly for Wales, or

(b) an acting returning officer (including as a regional or local returning officer at a European Parliamentary election).

(4) This paragraph applies where, immediately before 1st April 1974, an employee mentioned in paragraph (2) was in the whole-time or part-time employment and had duties which included one or more of the additional duties

(5) Where paragraphs (2) and (4) apply, each additional duty must be treated as a separate variable-time employment with a different employing authority from the employing authority with whom he is in the whole-time or, as the case may be, part-time employment.

(6) Where—

(a) paragraph (2) applies, and

(b) paragraph (4) does not apply,

his employment to carry out an additional duty (or duties) must be treated as a single separate variable-time employment with a different Scheme employer.

(7) 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<sup>(14)</sup> who receives his pay in that appointment from a Scheme employer listed in Part 1 of Schedule 2,

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

### Further restrictions on eligibility

**12.**—(1) Subject to paragraph (6), if a person's employment entitles him to belong to another public service pension scheme, or would so entitle him were it not for his age, that employment does not entitle him to be a member, unless that other scheme was made under section 7 of the Superannuation Act 1972.

(2) "Public service pension scheme" has the meaning given by section 150 of the Finance Act 2004<sup>(15)</sup>.

(3) An employee of an admission body may not be a member if he is a member of another occupational pension scheme in relation to the employment in respect of which he would otherwise be eligible to be designated for membership of the Scheme under regulation 7(1).

(4) A person may not become a member after the day before his 75th birthday.

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<sup>(14)</sup> 1971 c.77.

<sup>(15)</sup> 2004 c.12.

(5) Retained or volunteer membership with a fire and rescue authority (within the meaning given by section 1 of the Fire and Rescue Services Act 2004<sup>(16)</sup>) on terms under which the retained or voluntary member is or may be required to engage in fire-fighting does not entitle the member to be a member of the Scheme.

(6) A person may be a member of the Scheme despite being entitled to be a member of the National Health Service Pension Scheme for England and Wales (“the NHS Scheme”) if—

- (a) his entitlement to be a member of the NHS Scheme is by reason of his employment by—
  - (i) a Care Trust; or
  - (ii) an NHS Scheme employing authority as a result of a prescribed arrangement under section 75 of the National Health Service Act 2006<sup>(17)</sup>;
- (b) he is specified in, or within a class of employees specified in, an admission agreement made between an administering authority and a Care Trust or NHS Scheme employing authority; and
- (c) he was an active member of the Scheme immediately before his employment by the Care Trust or by the NHS Scheme employing authority.

### **Joining the Scheme**

**13.**—(1) A person other than an employee of an admission body who is eligible to be an active member of the Scheme on the day his employment begins becomes an active member on that day unless he notifies his employer in writing before his employment begins that he does not wish to become a member on that date.

(2) A person who applies to become a member after the date he would otherwise become a member under paragraph (1) becomes a member on the first day of the first payment period following the application.

(3) Subject to paragraph (5), a person other than an employee of an admission body who only becomes eligible to be a member of the Scheme on a date after his employment begins becomes an active member on that date unless he notifies his employer in writing before that date that he does not wish to become a member on that date.

(4) A person who applies to become a member after the date he would otherwise become a member under paragraph (3) becomes a member on the first day of the first payment period following the application.

(5) A person referred to in paragraph (3) who is employed by a body listed in Part 1 of Schedule 2 may be an active member from the date that his employment began if he applies to be so and pays contributions in respect of that earlier period at the appropriate contribution rate as provided in regulation 3 of the Benefits Regulations.

(6) An eligible employee of an admission body who wishes to become an active member in that employment must apply in writing to his employer and

- (a) if he applies before that employment begins, he becomes a member when the employment begins; or
- (b) if he applies after his employment begins, he becomes a member on the first day of the first payment period following the application.

(7) A former active member who is eligible for membership may reapply for membership of the Scheme and he becomes an active member on the first day of the first payment period following the application.

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<sup>(16)</sup> 2004 c.21.

<sup>(17)</sup> 2006 c.41.

(8) In paragraphs (2), (4), (6) and (7), regulation 14(5) (ending of membership) and regulation 23(7) (payment of additional regular contributions), a payment period is a period of service to which the employee's wages or salary payment relate.

### **Ending of membership**

**14.—**(1) A person stops being a member in an employment if he stops being eligible for membership in that employment.

(2) A person who wishes to leave the Scheme must notify his employer in writing.

(3) A person with more than one employment may leave the Scheme if he wishes in respect of one, some or all of the employments.

(4) A member who gives notice under paragraph (2) stops being a member in the specified employment from the date the notice specifies.

(5) But, if a date earlier than the date the notice is given or no date is specified, he stops being a member at the end of the payment period during which the notice is given.

(6) Where a person gives notice before he has been a member for three months, he must be treated as not having been a member in that period.

(7) A person who is a member and is an employee of a transferee admission body shall be treated for the purposes of these Regulations and the Benefits Regulations as leaving a local government employment when he ceases to be employed in connection with the provision of the service or assets referred to in regulation 6(2) by virtue of which he became eligible to join the scheme.

### **Periods of membership**

**15.—**(1) A person may not count any period of membership if his contributions for that period have been returned to him.

(2) A person may not count any period of membership if his rights in respect of it have been transferred by payment of a transfer value (see Part 9).

(3) A person may not count as a period of membership for the purpose of calculating any benefit under regulations 16 to 20 or 29 to 31 of the Benefits Regulations so much of his membership as requires to be excluded to reduce the value referred to in regulation 74 (2) (b) of these Regulations by the amount recovered or retained under regulation 74 (recovery or retention where former member has misconduct obligation).

(4) Where a person pays contributions under regulation 20 (trade disputes) for any period, that period counts as a period within regulation 6 of the Benefits Regulations even if his contract of employment did not subsist throughout that period.

(5) A period of membership under regulation 6(1)(a) of the Benefits Regulations includes any period for which a member is treated as having paid contributions under regulations 17 (concurrent employments) or 46(4) (rights to return of contributions).

### **Re-employed and rejoining deferred members**

**16.—**(1) Where a deferred member becomes an active member in an employment ("the new employment") before becoming entitled to the immediate payment of retirement benefits, he may, by giving notice in accordance with paragraph (4), choose to have his membership in any former employment aggregated with his membership in the new employment.

(2) Where he has ceased to be an active member more than once, he may choose to aggregate under paragraph (1)—

(a) his membership at each of the times he so ceased; or



(b) only such periods of membership as are specified in the notice.

(3) But a member cannot choose to aggregate any period of former membership which he could have chosen to aggregate with another period of former membership but did not before the expiry of the period mentioned in paragraph (4)(b).

(4) Notice for the purposes of paragraph (1) must be given in writing—

- (a) while the deferred member is an active member in the new employment;
- (b) before the expiry of—
  - (i) the period of 12 months beginning with the date on which he became an active member in that employment, or
  - (ii) such longer period as his employer may allow;
- (c) to his appropriate administering authority in that employment; and
- (d) if the appropriate fund for membership in the new employment is different from that for any former employment to which the notice relates, to the appropriate administering authority in that former employment.

(5) References in this regulation to former membership include all membership which the member was entitled to count as membership immediately before he ceased his former active membership.

(6) Where a person ceases to be an active member in one employment and immediately becomes an active member in another employment, he shall be treated for the purposes of this regulation as if he were a deferred member as respects the first employment, despite never having ceased to be an active member of the Scheme.

### **Concurrent employments**

**17.—**(1) Where a person—

- (a) ceases to be an active member in one employment in respect of which he has at least three months' total membership ("the first employment"); and
- (b) continues as an active member in another employment he held concurrently with the first employment,

he may elect to have his former membership in respect of the first employment aggregated with his membership in that other employment.

(2) If he so elects, the provisions of [regulation 16](#) shall apply as if references to—

- (a) his former membership or former active membership were references to his membership from his first employment;
- (b) the new employment were references to his concurrent employment; and
- (c) the employment in which he becomes an active member again were references to that concurrent employment.

(3) In the case of a person to whom this regulation applies, the period of membership which will be aggregated with his membership from the concurrent employment will be equal to his membership from his first employment, as reduced under regulation 7(3) and (4) of the Benefits Regulations if the first employment was part-time, multiplied by the fraction—

$$\frac{\text{whole-time rate of pay in the first employment}}{\text{whole-time rate of pay in concurrent employment}}$$

where the rate of pay in each case is the annual rate of pay on the last day of the first employment.

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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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