
STATUTORY RULES OF NORTHERN IRELAND

2002 No. 352

**Local Government Pension Scheme
Regulations (Northern Ireland) 2002**

PART IV

ADMINISTRATION

CHAPTER I

PENSION FUND AND EMPLOYERS' PAYMENTS

Pension fund

The fund

75. The Committee is responsible for maintaining the fund.

Accounts and audit

76.—(1) The Committee shall keep accounts of all financial transactions of the fund.

(2) The Secretary of the Committee shall prepare the financial statements for the financial year ended 31st March 2003 and subsequent financial years in accordance with paragraph (3) and shall forward three copies of the financial statements duly signed and dated by him to the Department not later than 30th June after the expiration of the financial year to which the financial statements relate.

(3) The financial statements shall comprise –

- (a) a Foreword;
- (b) a Statement of the Committee's Responsibilities;
- (c) an Accounting Officer's Statement;
- (d) a Fund Account;
- (e) a Net Assets Statement; and

shall contain the information specified in Part IV of Schedule 6.

(4) The financial statements shall give a true and fair view of the Fund Account for the financial year, and the Net Assets Statement as at the end of the financial year.

(5) The financial statements kept by the Committee shall be audited annually by a local government auditor who shall report on the financial statements audited and shall send his report, together with two audited copies of the financial statements duly signed and dated by him, to the Department within 14 days after completion of the audit.

(6) The Department on receipt of the local government auditor's report and the audited copies of the financial statements shall send a copy of such report and financial statements to the Secretary of the Committee who shall –

- (a) lay such copy of the report and financial statements before the next meeting of the Committee; and
 - (b) forward a copy of such report and financial statements to each employing authority.
- (7) The local government auditor may require –
- (a) the production before him of all documents and financial records of the Committee which he thinks necessary for the purpose of the audit ;
 - (b) any person holding or accountable for any such documents or financial records to appear before him at the audit or any adjournment thereof ; and
 - (c) any such person to make and sign a declaration as to the correctness of the documents or financial records.
- (8) The Committee shall annually at such time as the Department may direct make to it a report of its proceedings during the preceding year, and the Department shall lay a copy of such report before the Assembly.

Actuarial valuations and certificates

77.—(1) The Committee must obtain –

- (a) an actuarial valuation of the assets and liabilities of the fund as at 31st March 2004 and in every third year afterwards;
- (b) a report by an actuary; and
- (c) a rates and adjustments certificate.

(2) Each of those documents must be obtained before the first anniversary of the date (“the valuation date”) as at which the valuation is made or such later date as the Department may agree.

(3) A rates and adjustments certificate is a certificate specifying –

- (a) the common rate of employer’s contribution; and
- (b) any individual adjustments,

for each year of the period of three years beginning with 1st April in the year following that in which the valuation date falls.

(4) The common rate of employer’s contribution is the amount which in the actuary’s opinion should be paid to the fund by all bodies whose employees contribute to it so as to secure its solvency, expressed as a percentage of the pay of their employees who are active members.

(5) The actuary must have regard –

- (a) to the existing and prospective liabilities of the fund arising from circumstances common to all those bodies; and
- (b) to the desirability of maintaining as nearly constant a rate as possible.

(6) An individual adjustment is any percentage or amount by which in the actuary’s opinion contributions at the common rate should in the case of a particular body be increased or reduced by reason of any circumstances peculiar to that body.

(7) A rates and adjustments certificate must contain a statement as to the assumptions on which the certificate is given as respects –

- (a) the number of members who will become entitled to payment of pensions under provisions of the Scheme; and
- (b) the amount of the liabilities arising in respect of such members,

during the period covered by the certificate.

(8) A report under paragraph (1)(b) must contain a statement as to the demographic assumptions used in making the valuation, showing how they relate to the events which have actually occurred in relation to members of the Scheme since the last valuation.

(9) The Committee must provide the actuary preparing a valuation or a rates and adjustment certificate with the consolidated final accounts of the fund and such other information as he requests.

(10) The Committee must send copies of any valuation, report or certificate under this regulation or revision under regulation 78 –

- (a) to the Department;
- (b) to each body with employees who contribute to the fund in question; and
- (c) to any other body which is or may become liable to make payments to that fund.

(11) The Committee must also send to the Department –

- (a) a copy of the consolidated final accounts with which the actuary was provided under paragraph (9); and
- (b) a summary of the assets of the fund at the valuation date (unless such a summary is contained in the report).

Special circumstances where revised actuarial valuations and certificates must be obtained

78.—(1) Where an admission agreement ceases to have effect, the Committee must obtain –

- (a) an actuarial valuation as at the date on which that agreement ceases to have effect, of the liabilities of the fund in respect of current and former employees of the admission body which is a party to that admission agreement (the outgoing admission body); and
- (b) a revision of the certificate provided under regulation 77(3), showing the revised contributions due from the outgoing admission body.

(2) Where it is not possible for any reason to obtain the revised contributions from the outgoing admission body or from an insurer or any person providing a guarantee or indemnity on behalf of that admission body, the Committee may obtain a further revision of any rates and adjustment certificate for the fund, showing –

- (a) in the case where the outgoing body is a transferee admission body, the revised contributions due from the body which is the transferor Scheme employer in relation to that outgoing admission body; and
- (b) in any other case, the revised contributions due from each employing authority which contributes to the fund.

(3) The Committee may obtain from an actuary a certificate specifying, in the case of an admission body, the percentage or amount by which, in the actuary's opinion, –

- (a) the contribution at the common rate should be adjusted; or
- (b) any prior individual adjustment should be increased or reduced,

with a view to providing that the value of the assets of the fund in respect of current and former employees of that admission body is neither materially more nor materially less than the anticipated liabilities of the fund in respect of those employees at the date that the admission agreement is to end.

(4) This paragraph applies where –

- (a) the Committee agrees with an employing authority under regulation 54(6)(a) that the employing authority will pay increased contributions under regulation 79; or
- (b) it appears to the Committee that the amount of the liabilities arising or likely to arise in respect of members in employment with an employing authority exceeds the amount

specified in, or likely as a result of, the assumptions stated for that authority in a rates and adjustments certificate by virtue of regulation 77(7).

(5) Where paragraph (4) applies, the Committee must obtain a revision of the rates and adjustments certificate affected, showing the resulting changes as respects that employing authority.

(6) In this regulation “transferee admission body” and “transferor scheme employer” have the same respective meanings as in regulation 4(16).

Employers' liability to make payments

Employer's contributions

79.—(1) An employing authority must contribute to the fund in each year covered by a rates and adjustments certificate under regulation 77 or 78 the amount appropriate for that authority as calculated in accordance with the certificate and paragraph (4).

(2) During each of those years an employing authority must make payments to the fund on account of the amount required for the whole year.

(3) Those payments on account must –

- (a) be paid at the end of the intervals determined under regulation 81(1); and
- (b) equal the appropriate proportion of the whole amount due under paragraph (1) for the year in question.

(4) An employer's contribution for any year is the common percentage for that year of the pay on which contributions have during that year been paid to the fund under Part II by employees who are active members (other than contributions under regulation 17(3)), increased or reduced by any individual adjustment specified for that employer for that year in the rates and adjustments certificate.

(5) The common percentage is the common rate of employer's contribution specified in that certificate, expressed as a percentage.

(6) Where an employee –

- (a) is treated, under regulation 16(4), as if she had paid contributions; or
- (b) has paid contributions during a period of maternity absence,

the pay on which the common percentage is calculated is the pay the employee would have received if she has not been absent.

Employer's further payments

80.—(1) Where an employing authority passes a resolution under regulation 54 it must pay the appropriate sum to the fund before the expiry of the relevant period (as defined in paragraph (7) of that regulation) unless before the end of that period it has agreed as mentioned in paragraph (6) (a) of that regulation.

(2) Where an employing authority passes a resolution under regulation 130 in a case where paragraph (4)(a) of that regulation does not apply, it must pay the appropriate sum to the fund before the expiry of the period of one month beginning with the date on which the resolution is passed.

(3) The appropriate sum for a member is such sum as is shown as appropriate in guidance issued by the Government Actuary.

(4) Any extra charge on the fund resulting from –

- (a) a resolution under regulation 14, 54, 55 or 130; or
- (b) a member becoming entitled to an ill-health pension calculated under regulation 30 by reference to an enhanced membership period; or

(c) a member becoming entitled to a pension calculated under regulation 28 (redundancy, etc) or regulation 33 (other early leavers, etc),
must be repaid to the fund by the employing authority concerned (but, in the case of resolutions under regulations 54 and 130, only so far as not paid under paragraph (1) or, as the case may be, paragraph (2)).

(5) Any additional payments that are due under paragraph (4) shall be made, if the Committee agrees by –

- (a) a single payment of an amount determined by the Committee on the advice of an actuary appointed by it; or
- (b) instalments, each of an amount determined by the Committee on the advice of an actuary appointed by it, covering a period not exceeding 5 years, or such longer period as the Committee may allow, the first and subsequent instalments becoming payable as agreed between the Committee and the employing authority.

Payments by employing authorities to the Committee

81.—(1) Every employing authority must pay to the Committee, on or before such dates falling at intervals of not more than 12 months as the Committee may determine (but in the case of the amounts mentioned in sub-paragraph (a) not later than the time required under Article 49(8) of the Pensions (Northern Ireland) Order 1995(1)) –

- (a) all amounts from time to time deducted from the pay of its employees under these Regulations;
- (b) any amount received by it under regulation 17, (by deduction or otherwise) during the interval; and
- (c) any extra charge payable under regulation 80 of which it has been notified by the Committee during the interval.

(2) Every payment under paragraph (1)(a) shall be accompanied by a statement showing –

- (a) the name and pay of each of the employing authority's employees who is an active member;
- (b) which employees are paying voluntary contributions;
- (c) the amounts which represent deductions from the pay of each of the employees and the periods covered by the deductions, distinguishing amounts representing deductions for voluntary contributions.

(3) The Committee may direct the information mentioned in paragraph (2) to be given to it instead in such form and at such intervals (not exceeding 12 months) as it specifies in the direction.

(4) Paragraphs (1) and (2) do not apply to the employing authority which is the Committee.

(5) Voluntary contributions are contributions other than those under Part II.

Interest

Interest

82.—(1) The Committee may require an employing authority from which payment of any amount due under regulation 79, 80 or 81 is overdue by more than ten days to pay interest on that amount.

(2) Interest under paragraph (1) or under regulation 88(1) and (3), 90(5) or 95, must be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

Constitution and powers of the Committee

Administration and management

83.—(1) For the purposes of these Regulations the Committee shall be constituted in accordance with Part I of Schedule 6.

(2) The Committee shall have the powers specified in Part II of Schedule 6.

(3) The expenses and allowances payable by the Committee shall be in accordance with Part III of Schedule 6.

CHAPTER II

MEMBERS' CONTRIBUTIONS

Discontinuance of additional contributions

84.—(1) A member paying additional contributions under regulation 57 may elect to stop payment and must do so if he ceases to be an active member.

(2) Such an election must be made by notice in writing to the Committee and the employing authority.

(3) If a member stops paying such contributions before his normal retirement date on leaving his employment because of such permanent incapacity as mentioned in regulation 29(1) or on his death, he is to be treated as having completed payment of those contributions.

(4) If a member stops paying such contributions before his normal retirement date on leaving his employment by reason of redundancy at least 12 months after he elected to pay them, he may elect to make a lump sum payment to the fund.

(5) Such an election must be made by notice in writing to the Committee given not later than the expiry of the period of three months beginning on the day after he leaves his employment (or such longer period as it may allow).

(6) The amount of that payment must be calculated by an actuary appointed by the Committee as representing the capital value of the unpaid contributions.

(7) If the member duly makes that payment before the expiry of the period of one month beginning with the date on which he is notified of its amount, he must be treated as having completed paying his additional contributions under regulation 57.

(8) If a member stops paying such contributions before his normal retirement date and neither paragraph (3) nor (4) applies, such proportion of the original additional period covered by the election may be counted as part of his total membership as the length of the period during which he paid such contributions bears to the length of the full period during which they were to have been paid.

(9) If a member –

(a) stops paying such contributions before his normal retirement date on leaving his employment;

(b) has not become entitled to the payment of any benefit under the Scheme for that employment and has not made an election under regulation 31;

(c) is not treated under this regulation as having completed paying his contributions; and

(d) within 12 months after leaving that employment again enters local government employment, without having received any payment under regulation 88 or 89, he may pay his employing authority in his new employment an amount equal to the additional contributions that would have been payable if he had not stopped contributing.

(10) If he pays that amount within three months after re-entering local government employment the election under regulation 57 continues in effect and the break in payments must be disregarded.

(11) This regulation does not apply if the member who stops paying contributions receives a return of contributions which includes additional contributions under regulation 57.

(12) In paragraph (4) “redundancy” includes retirement in the interests of efficiency or because the member held a joint appointment which has been ended because the other holder has left it.

Separate treatment of AVCs and SCAVCs from other contributions

85.—(1) Regulations 88 and 89 (return of contributions) do not apply to AVCs or SCAVCs payable under (or interest on late payments which relate to AVCs or SCAVCs under) Chapter IV of Part III or under any pension policy or agreement made for the payment of AVCs before the commencement date.

(2) The regulations mentioned in paragraph (3) do not apply in relation to benefits under such a policy or agreement.

(3) Those regulations are –

- (a) regulation 98 (first instance decisions);
- (b) regulation 114 (forfeiture);
- (c) regulation 115 (interim payments directions); and
- (d) regulation 116 (recovery and retention in cases of misconduct).

Over-provision: calculation and return of surplus AVC and SCAVC funds

86.—(1) The Committee must comply with the requirements of regulation 5 of the AVC Regulations.

(2) If the Scheme is the leading scheme in relation to a member, the Committee must also comply with the requirements of regulation 6 of those Regulations, so far as they concern main schemes.

(3) Where surplus funds fall to be repaid under that regulation because of over-provision relating to death benefits, the Committee must repay the member (or, if he has died, his personal representatives) out of the accumulated value of the payments made by the Committee with respect to the pension policy under regulation 65 or 72(1).

(4) Where any other benefit is abated, the repayment must be made out of the accumulated value of the additional contributions mentioned in regulation 66(2).

(5) In this regulation –

- “AVC Regulations” are the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(2);
- “leading scheme” and “main schemes” have the respective meanings given in regulation 2 of those Regulations; and
- “surplus funds” has the meaning given in regulation 6 of those Regulations.

Cost of calculations for transfer of AVCs or SCAVCs into the Scheme where no transfer is requested

87. Where –

- (a) at a member's request the Committee gives him information concerning the amount payable if he elects under regulation 68(4) (including that regulation as applied by regulation 74(1)) for the accumulated value of his invested additional contributions to be used to provide additional pension for him under the Scheme, but
- (b) he does not make such an election before the expiry of the period of three months beginning with the date it gives him the information,

it may deduct the cost of calculating the additional pension from the accumulated value of the additional contributions mentioned in regulation 66(2).

Rights to return of contributions

88.—(1) If a member with less than 2 years' membership –

- (a) ceases to be employed by a Scheme employer or to be an active member without becoming entitled to a retirement pension; or
- (b) ceases to be an active member by reason of a notification under regulation 7(2),

he is entitled to be repaid his contributions from the fund with interest calculated to the date he ceased to be employed.

(2) But a person is not entitled to interest on his contributions under paragraph (1) if he ceased to be a member by reason of a notification under regulation 7(2) or on leaving his employment by reason of his resignation, or by reason of his dismissal because of inefficiency, an offence of a fraudulent character or because of grave misconduct in either case in connection with that employment.

(3) If repayment of the contributions (with interest due under paragraph (1), if applicable) has not been made before the expiry of the period of one year beginning with the date when active membership ceases, the person is entitled to interest on the repayment which should have been made, calculated as provided in regulation 82(2), the due date being the date when active membership ceased.

(4) A person who is entitled to a repayment of contributions under paragraph (1) may waive his entitlement for any period and, if he becomes an active member again before the expiry of that period, he shall cease to be so entitled (but without prejudice to any entitlement arising later under that paragraph in respect of those contributions).

(5) A person who continues as an active member in another employment he held concurrently with the employment in which he has ceased to be an active member may elect for an amount equal to the repayment to be treated as contributions to the Scheme as respects his membership in that concurrent employment, entitling him to a period of membership equal to the period of membership in the employment which has ceased, as reduced under regulation 10 (4) if the employment which has ceased was part-time, multiplied by the fraction –

$$\frac{\text{whole-time rate of employment which has ceased}}{\text{whole-time rate of employment which is continuing}}$$

where

the rate of pay in each case is the annual rate of pay on the last day of employment in the employment which has ceased.

(6) A person who elects under paragraph (5) ceases to be entitled to that repayment (but without prejudice to any entitlement arising later in respect of the concurrent employment).

(7) The Committee must deduct from any repayment under this regulation any tax to which it may become chargeable under section 598 of the Taxes Act (charge to tax on repayment of employee's contributions).

(8) The contributions which must be repaid under paragraph (1) are any contributions or payments paid by the member to any pension fund under Part II or Chapter III of Part III or by way of additional contributory payments or added period payments, or paid under any of the relevant old provisions (unless already returned and not repaid), which are attributable to a period of membership which might have counted under these Regulations in relation to the employment in which he has ceased to be a member, but not to any earlier period of membership in respect of which a benefit or transfer value has been paid.

(9) The relevant old provisions are regulations C3, C5, C6, C7, C13 and C14 of the 2000 Regulations and regulations C1, C2, C3, C6, C7, and C9 of the 1992 Regulations.

(10) Added period payments are payments made for the purposes of the former regulations.

(11) "Additional contributory payment" has the meaning given in Schedule A1 to the 2000 Regulations.

Exclusion of rights to return of contributions

89.—(1) A person is not entitled to a repayment under regulation 88(1) if –

- (a) he becomes a member again within one month and one day (otherwise than in employment he held concurrently with the employment in which he was previously a member);
- (b) he left his employment because of –
 - (i) an offence of a fraudulent character, or
 - (ii) grave misconduct,in either case in connection with that employment, or
- (c) regulation 120(2) applies.

(2) But where paragraph (1)(b)(ii) applies, the employing authority may direct the payment out of the fund to him or, where paragraph (1)(b)(i) applies, to him or to his spouse or any dependant of his, of a sum equal to all or part of his contributions.

(3) A person is not entitled to a repayment under regulation 88(1) if –

- (a) he is for the time being entitled to be paid, or has been paid, a benefit under regulation 29(3) (ill-health grant) or an ill-health retirement grant under regulation D8 of the 2000 Regulations;
- (b) a transfer value has been credited to the fund for him.

(4) A person who is entitled to a repayment under regulation 88(1)(a) ceases to be entitled to it if he returns to local government employment before receiving it.

Deduction and recovery of member's contributions

90.—(1) An employing authority may deduct from a person's pay any contributions payable by him under these Regulations.

(2) Sums payable under regulation 16(5) or (8)(c) (reserve forces) may be deducted by the member's former employer from any payment made to him under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) (Northern Ireland) Order 1953(3), to the extent that they are payable in respect of the same period.

(3) The Committee may recover any such sum remaining due and not deducted under paragraph (1) or (2) –

- (a) as a simple contract debt in any court of competent jurisdiction; or
- (b) by deducting it from any payment by way of benefits to or in respect of the person in question under these Regulations.

(4) But the sums mentioned in paragraph (2) are only recoverable under paragraph (3) if unpaid for 12 months after the person ceases to perform relevant reserve forces service.

(5) If –

- (a) an employing authority deducts any amount in error from a person’s pay or any other sum due to him in respect of contributions, other than contributions due to be repaid to him by virtue of his having left without any rights under the Scheme, (which are dealt with under regulation 88); and
- (b) the amount has not been repaid to him before the expiry of the period of one month beginning with the date of deduction,

the appropriate body must pay him interest on that amount calculated as provided in regulation 82(2), the due date being the date of deduction.

(6) Where the employee’s contributions have been paid into the fund, the repayment and interest shall be made out of the fund.

(7) “The appropriate body” for the purpose of paragraph (5) is –

- (a) the Committee where the employee’s contributions have been paid into the fund; and
- (b) the person’s employing authority where the employee’s contributions have not yet been paid into the fund.

CHAPTER III

PAYMENT OF BENEFITS ETC.

Pension increases and cash equivalents under the Pension Schemes (Northern Ireland) Act 1993

91. Any increase in a pension required by reason of Chapter III of Part IV of the Pension Schemes (Northern Ireland) Act 1993⁽⁴⁾ (protection of increases in guaranteed minimum pensions: anti-franking) must be paid from the fund.

Pension increases under the Pensions (Increase) Acts

92. Where a pension to which the Pensions (Increase) Act (Northern Ireland) 1971⁽⁵⁾ applies is payable out of the fund, any increase under that Act or the Pensions (Increase) (Northern Ireland) Order 1974⁽⁶⁾, must be paid from the fund.

Contributions equivalent premiums

93.—(1) Where a Scheme employer pays a contributions equivalent premium under section 51 of the Pension Schemes (Northern Ireland) Act 1993 in respect of any member, it is entitled to recover, or where the employer is the Committee, retain from the fund a sum not exceeding the premium.

(2) But if the Scheme employer may recover or retain any sum under section 57 of that Act in respect of the premium, then only the balance may be recovered or retained under paragraph (1).

⁽⁴⁾ 1993 c. 49

⁽⁵⁾ 1971 c. 35 (N.I.)

⁽⁶⁾ S.I. 1974/1267 (N.I. 2)

(3) Where a contributions equivalent premium is refunded under regulation 54(1)(c) of the Occupational Pension Schemes (Contracting out) Regulations (Northern Ireland) 1996(7), the Committee shall credit to the fund a sum equal to the amount of the premium.

Commencement of pensions

94.—(1) The first period for which any retirement pension which is payable immediately on a member leaving any employment is payable begins with the day after the date with which his employment ends.

(2) The first period for which any retirement pension under regulation 33 is payable begins –

- (a) in a case where he elects under paragraph (1) of that regulation, with the day on which he elects;
- (b) in a case where he elects under paragraph (7) of that regulation for an earlier date than his normal retirement date, with that date; and
- (c) otherwise, with his normal retirement date.

(3) Any short-term pension payable on the death of a member is payable in respect of a period beginning with the day after the date on which he dies.

(4) The first period for which any long-term pension is payable on the death of a member in a case where no short-term pension is payable begins with the day after the date on which he dies.

Interest on late payment of certain benefits

95.—(1) Where all or part of a pension or lump sum payment due under these Regulations or the 2000 Regulations is not paid within the relevant period after the due date, the Committee must pay interest on the unpaid amount to the person to whom it is payable calculated from the due date as provided in regulation 82(2).

(2) The relevant period –

- (a) in the case of a pension is one year;
- (b) in the case of a payment made under regulation 41(1) or 142, is the period ending one month after the date on which the Committee receives notification of the member's death; and
- (c) otherwise is one month.

(3) In the case of a pension the due date is the date on which it becomes payable.

(4) In the case of a retirement grant, the due date is the date on which it is payable.

(5) In the case of a death grant, the due date is the date on which the member dies.

(6) In the case of an ill health grant, the due date is the day after the member ceased to hold his employment.

(7) In the case of a payment of a lump sum under regulation 51, 52, 142 or 143 the due date is the day after the member would otherwise become entitled to payment of a pension.

(8) In this regulation, references to “member” include a surviving spouse, eligible child or children or a pension credit member and the reference in paragraph (4) to the “retirement grant” includes the lump sum grant referred to in regulation 133(2)(a).

Payments due in respect of deceased persons

96.—(1) If when a person dies the total amount due to his personal representatives under the Scheme (including anything due to him at his death) (“the amount due”) does not exceed the small payments amount, the Committee may pay the whole or part of the amount due from the fund –

- (a) to his personal representatives; or
- (b) to the person, or to or among any one or more of any persons, appearing to the Committee to be beneficially entitled to the estate,

without the production of probate or letters of administration of his estate.

(2) The small payments amount is the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) (Northern Ireland) Act 1967⁽⁸⁾ and applying in relation to his death.

(3) Such a payment discharges the Committee from accounting for the amount paid.

Non-assignability

97.—(1) Every benefit to which a person is entitled under the Scheme is payable to or in trust for him.

(2) No such benefit is assignable or chargeable with his or any other person’s debts or other liabilities.

(3) On the bankruptcy of a person entitled to a benefit under the Scheme no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except in accordance with an income payments order under Article 283 of the Insolvency (Northern Ireland) Order 1989⁽⁹⁾.

CHAPTER IV

DETERMINATIONS, INFORMATION AND RECORDS

Initial determinations of questions

First instance decisions

98.—(1) Any question concerning the rights or liabilities under these regulations of any person other than a Scheme employer shall be decided in the first instance by the relevant body.

(2) Where the body by which any such question falls to be decided is ascertainable by reference to this regulation or regulation 99, for the purposes of this Chapter that body shall be the relevant body.

(3) Where the Committee is considering whether a person who has ceased to hold a local government employment is entitled to a benefit under regulation 29 or 33(6), it shall refer for decision to an independent registered medical practitioner appointed by the Committee who is qualified in occupational health medicine, the following questions –

- (a) whether at the time that employment ceased, in the case of entitlement under regulation 29 or 33, or at the date in question, in the case of regulation 33, the person was, on the balance of probabilities, permanently incapable of discharging efficiently the duties of the local government employment he had ceased to hold and, if so,
- (b) whether the permanent incapacity was by reason of ill-health or infirmity of mind or body.

(4) The decision of the independent registered medical practitioner on the questions referred to him under paragraph (3) shall be expressed in the form of a certificate.

⁽⁸⁾ 1967 c. 5 (N.I.)

⁽⁹⁾ S.I. 1989/2405 (N.I. 19)

(5) The independent registered medical practitioner must be in a position to certify, and must include in his certification a statement that –

- (a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and
- (b) he is not acting, and has not at any time acted, as the representative of the member, the Scheme employer or any other party in relation to the same case.

(6) In paragraph (3) –

- (a) “permanently incapable” means incapable until, at the earliest, the member’s 65th birthday, and
- (b) “qualified in occupational health medicine” means holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State (which has the meaning given by the European Specialist Medical Qualifications Order 1995⁽¹⁰⁾ or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

Decisions as to status of employees and decisions as to benefits

99.—(1) The employing authority shall decide in relation to each of its employees who is a member –

- (a) whether he is an officer or a manual worker;
- (b) whether he is whole-time, a variable-time or a part-time employee, or whether his employment is of a casual nature;
- (c) which of his emoluments are remuneration on which contributions are payable; and
- (d) if he is a part-time employee the proportion which his contractual minimum hours of employment in each week bear to those of a comparable whole-time employment.

(2) In relation to any employment in which a person is a member, the Committee is to decide –

- (a) what previous service or employment (if any) he is entitled to count as a period of membership;
- (b) whether any, and if so what, periods of service as a part-time employee are included in such a period;
- (c) what proportion of whole-time service his service during any such period represents;
- (d) whether a payment in lieu of contributions has been made or equivalent pension benefits have been assured under Part III of the Insurance Act in respect of any period of non-participating employment;
- (e) what rate of contribution the employee is liable to pay to the fund;
- (f) whether he is entitled to count as a period of membership –
 - (i) any, and if so how many, added years, or
 - (ii) any, and if so what, additional period; and
- (g) whether for the purposes of Schedule 4 he is a Class A member, a Class B member or a Class C member (within the meaning of that Schedule).

(3) The questions specified in paragraph (1) shall be decided as soon as is reasonably practicable after –

- (a) the person becomes a member; or
- (b) any change occurs in the number of the member’s regular or usual hours of employment; or

⁽¹⁰⁾ S.I. 1995/3208, amended by S.I. 1997/2928

(c) any other material change occurs in or in relation to the employment.

(4) The questions specified in paragraph (2) shall be decided as soon as is reasonably practicable after the person becomes a member of the Scheme in respect of the relevant employment.

(5) Any question as to whether a person is entitled to a benefit under these Regulations is to be decided by the Committee.

(6) Where a person is or may become entitled to a benefit payable out of the fund, the Committee shall decide the amount of the benefit.

(7) The decision under paragraph (5) shall be made as soon as is reasonably practicable after the cessation of the employment or, as the case may be, the death of the employee and that under paragraph (6) as soon as is reasonably practicable after the occurrence of the event by virtue of which the entitlement arises or may arise.

(8) In this regulation “benefit” includes a return of contributions and a benefit specified in regulation F6(11) or (14) of the 1992 Regulations and Part N of the 2000 Regulations.

Notification of decisions

100.—(1) A body which has decided any question under regulation 99 shall, as soon as is reasonably practicable after doing so, send a written notification of its decision to every person whose rights or liabilities are affected.

(2) The notification shall include –

- (a) in the case of a decision that the person is not entitled to a benefit, the grounds for the decision;
- (b) in the case of a decision as to the amount of a benefit, a statement showing how the amount is calculated;
- (c) in the case of a notification under sub-paragraph (a) or (b) a conspicuous statement directing the person’s attention –
 - (i) to the address from which he may obtain further information about the decision, including details of any calculation of service or benefits,
 - (ii) to his right under regulation 102 to make an application to an appointed person, the address at which he may be contacted and his job title, and
 - (iii) to his right under regulation 104 to apply to the Committee for a reconsideration of the matter within the time limit referred to in that regulation; and
- (d) in the case of a decision by an employing authority made under regulation 99, a conspicuous statement directing the person’s attention –
 - (i) to the address from which he may obtain further information about the decision, and
 - (ii) to his right of appeal to the county court under regulation 107.

Resolution of disputes

Appointment of persons to resolve disputes

101.—(1) The Committee must appoint a panel of persons it considers to be suitably qualified for the purpose of resolving disagreements in respect of which an application is made under regulation 102.

(2) For this Chapter the persons appointed under paragraph (1) are “appointed persons”.

(3) An application under regulation 102 may be decided by one or more appointed persons (and references to “the appropriate appointed person”, in relation to any application, are to the appointed person or persons to whom the application in question is referred).

(4) An application must not be referred to a person who has previously been involved in the subject matter of the disagreement.

(5) An appointed person shall hold and vacate office under the terms of his appointment.

(6) But he may resign by notice in writing to the Committee.

(7) The Committee shall determine –

(a) the procedure to be followed by the persons appointed by it when exercising their functions as appointed persons; and

(b) the manner in which those functions are to be exercised.

Right to apply for an appointed person to review a decision

102.—(1) Where there is a disagreement about a matter in relation to the Scheme between a member or an alternative applicant and the Committee, the member or, as the case may be, the alternative applicant may –

(a) apply directly to the appropriate appointed person to decide the disagreement; or

(b) apply to the Committee for it to refer the disagreement to an appointed person for decision.

(2) These persons are alternative applicants –

(a) a widow, widower or surviving dependant of a deceased member or any other person to whom benefits in respect of him may be paid;

(b) a prospective member;

(c) a pension credit member;

(d) a person entitled to a pension credit;

(e) a person who ceased to be a member or to fall within sub-paragraph (a), (b), (c) or (d) during the period of six months ending with the date of the application; and

(f) in the case of a disagreement relating to the question as to whether a person claiming to be a member or to fall within sub-paragraph (a), (b), (c), (d) or (e) does so, the claimant.

(3) The application for a decision must set out particulars of the disagreement, including a statement as to its nature with sufficient details to show why the applicant is aggrieved.

(4) An application by –

(a) a member or prospective member;

(b) a person who ceased to be such a person during the period of six months ending with the date of the application; or

(c) a person claiming to be a person within paragraph (a) or (b),

must set out his full name, address, date of birth, his national insurance number (if any) and the name of his employing authority.

(5) An application by –

(a) a person entitled to a pension credit or a pension credit member;

(b) a person who ceased to be such a person or member during the period of six months ending with the date of the application; or

(c) a person claiming to be a person or member within sub-paragraph (a) or (b),

must set out his full name, address and date of birth.

- (6) An application by any other person must set out –
- (a) his full name, address and date of birth;
 - (b) his relationship to the member; and
 - (c) the member’s full name, address, date of birth and national insurance number and the name of his employing authority.
- (7) The application must be signed by or on behalf of the applicant.
- (8) The application must be accompanied by a copy of any written notification issued under regulation 100.
- (9) The application must be made before the end of the period of six months beginning with the relevant date or such further period as the appropriate appointed person considers reasonable .
- (10) Where the disagreement relates to a decision under regulation 99, the relevant date is the date notification of it is given under regulation 100.
- (11) Otherwise, the relevant date is the date of the act or omission which is the cause of the disagreement or, if there is more than one, the last of them.

Notice of decisions by the appointed person under regulation 102

103.—(1) A decision on the matters raised by an application under regulation 102 must be issued by the appropriate appointed person –

- (a) to the applicant; and
- (b) to the Committee,

by notice in writing before the expiry of the period of two months beginning with the date the application was received.

(2) But, if no such notice is issued before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1) setting out the reasons for the delay and an expected date for issuing the decision.

(3) A notice under paragraph (1) must include –

- (a) a statement of the decision;
- (b) reference to any legislation or provisions of the Scheme relied upon;
- (c) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;
- (d) a reference to the rights of the applicant to refer the disagreement for reconsideration by the Committee under regulation 104, specifying the time within which he may do so; and
- (e) a statement that OPAS (the Pensions Advisory Service)⁽¹¹⁾ is available to assist members and beneficiaries of the Scheme in connection with any difficulty with the Scheme which remains unresolved and the address at which OPAS may be contacted.

Reference of disagreement to the Committee

104.—(1) Where an application about a disagreement has been made under regulation 102, an application may be made to the Committee to reconsider the disagreement by the person who applied under regulation 102.

⁽¹¹⁾ OPAS Limited is a company limited by guarantee under the Companies Act 1985 (c. 6): registered number 2459671. The Occupational Pensions Advisory Service’s address for correspondence is 11 Belgrave Road, London, SW1V 1RB

(2) The application must set out particulars of the grounds on which it is made, including a statement that the applicant under this regulation wishes the disagreement to be reconsidered by the Committee.

(3) An application made by the person who applied under regulation 102 must set out the matters required by paragraph (4), (5) or (6), as the case may be, of that regulation to be included in his application.

(4) The application must be accompanied by a copy of any written notification issued under regulation 100.

(5) Where notice of a decision on the application under regulation 102 has been issued, the application under this regulation must state why the applicant is dissatisfied with that decision and be accompanied by a copy of that notice.

(6) The application must be signed by or on behalf of the person making it.

(7) An application for reconsideration may only be made before the expiry of the period of six months beginning with the relevant date.

(8) Where notice of a decision on the matters raised by the application under regulation 102 has been issued, the relevant date is the date of that notice.

(9) Where –

(a) an interim reply has been sent under regulation 103(2); but

(b) no notice of decision has been issued before the expiry of the period of one month beginning with the date specified in the reply as the expected date for issuing the decision,

the relevant date is the date with which that period expires.

(10) Where no notice of decision has been issued or interim reply has been sent before the expiry of the period of three months beginning with the date the application under regulation 102 was made, the relevant date is the date with which that period expires.

Notice of decisions by the Committee under regulation 104

105.—(1) The Committee must issue its decision on the matters raised by an application under regulation 104 to the parties to the disagreement by notice in writing before the expiry of the period of two months beginning with the date the application was received (but see paragraph (2)).

(2) If no such notice is issued before the expiry of that period, an interim reply must be sent immediately to those parties, setting out the reasons for the delay and an expected date for issuing the decision.

(3) A notice under paragraph (1) must include –

(a) a statement of the decision;

(b) in a case where there has been a decision made under regulation 103, an explanation as to whether and, if so, to what extent that decision is confirmed or replaced;

(c) a reference to any legislation or provisions of the Scheme relied upon;

(d) in a case where the disagreement relates to the exercise of a discretion, a reference to the provisions of the Scheme conferring the discretion;

(e) a statement that OPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of the Scheme in connection with any difficulties with the Scheme which remain unresolved and of the address at which OPAS (the Pensions Advisory Service) may be contacted; and

(f) a statement that the Pensions Ombudsman may investigate and determine any complaint or dispute of fact or law in relation to the Scheme made or referred in accordance with

the Pension Schemes (Northern Ireland) Act 1993 and of the address at which he may be contacted.

Rights of representation

106.—(1) An application under regulation 102 or 104 may be made or continued on behalf of the applicant by a representative nominated by him.

(2) Where a person who has the right to make or has made such an application dies, the application may be made or continued on his behalf by his personal representative.

(3) Where such a person is a minor or is or becomes otherwise incapable of acting for himself, the application may be made or continued on his behalf by a member of his family or some other person suitable to represent him.

(4) Where a representative is nominated before an application is made, the application must specify his full name and address and whether that is to be used for service on the applicant of any documents in connection with the application.

(5) Where a representative's address is not to be so used, the appropriate appointed person or the Committee, as the case may be, must send to the applicant a copy of a decision under regulation 103(1) or 105(1) or an interim reply under regulation 103(2) or 105(2).

Referral of decisions under regulation 99(1) to the county court

107. Where an employing authority has either decided or failed to decide such question as is mentioned in regulation 99(1), that question shall be determined by the county court having jurisdiction in the county court division in which such member as is mentioned in regulation 99(1) is employed or was last employed or, where that member is or was last employed in two or more county court divisions, in one of those divisions.

Information and records

Statements of policy concerning exercise of discretionary functions

108.—(1) The Committee and each employing authority must formulate and keep under review their policy concerning the exercise of their functions under regulation 33 (early leavers) and under Part III.

(2) Before formulating that policy the employing authorities must consult the Committee and the Committee must consult employing authorities.

(3) Before the expiry of the period of four months beginning with the commencement date –

- (a) each employing authority shall send to the Committee, and
- (b) the Committee shall send to each employing authority,

a written statement as to the policy which is being applied by that employing authority, or, as the case may be, the Committee in the exercise of its functions on or after that date, and each such employing authority and the Committee shall publish that statement.

(4) Where, as a result of a review under paragraph (1), an employing authority or the Committee determines to amend its policy, it must send a copy of the statement of the amended policy to the Committee or, as the case may be, the employing authority before the expiry of the period of one month beginning with the date on which it so determines.

(5) In formulating its policy under paragraph (1), the Committee and an employing authority must have regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service.

Information to be supplied by employees

109.—(1) Before the expiry of the period of three months beginning with the date a person becomes a member, the employing authority must ask him in writing for the documents specified in paragraph (2).

(2) Those documents are –

- (a) a statement in writing listing all the person’s previous periods of employment; and
- (b) copies of all notifications previously given to him under these Regulations or the former regulations.

(3) The employing authority must also ask for those documents before the expiry of the period of three months beginning with the occurrence of any change as respects his employment which is material for the Scheme.

(4) A request under paragraph (1) or (3) must include a conspicuous statement that it is important that the member gives full and accurate information, especially for ascertaining his rights under the Scheme.

(5) The employing authority need not request any documents if satisfied that it or the Committee (if different) already has all material information.

Exchange of information by authorities

110.—(1) An employing authority which is not the Committee must inform the Committee of all decisions made by the employing authority under this Chapter concerning members and give the Committee such other information as it requires for discharging its functions under the Scheme.

(2) If –

- (a) the Committee makes any decision under this Chapter about a person for whom it is not the employing authority; and
- (b) information about the decision is required by his employing authority for discharging that employer’s functions under the Scheme,

the Committee must give that employing authority that information.

Provision of information, charging and prescribed persons

111.—(1) For the purposes of Article 164(1) of the Pensions Order (prescribed circumstances in which information may be provided) (“the prescribed circumstances”) the prescribed circumstances are that the individual to whom the information relates, or, where he has died, his personal representatives, has requested or consented in writing to the provision of the information.

(2) For the purposes of Article 164(1) of the Pensions Order (persons to whom information may be provided and the imposition of reasonable fees in respect of expenses incurred in providing that information) the prescribed persons are those persons described in paragraph 1 of Schedule 5.

(3) For the purposes of Article 164(2) of the Pensions Order (persons on whom fees may be imposed in respect of administrative expenses incurred in connection with admission, readmission or payment) the prescribed persons are the persons referred to in paragraph 2 of Schedule 5.

(4) For the purposes of Article 164(4) of the Pensions Order (person prescribed in the case of an occupational pension scheme under Article 9 of the Order of 1972) the Committee is a prescribed person.

(5) Where –

- (a) information is requested by a prescribed person in the prescribed circumstances in relation to an individual to whom regulation 126 applies for the purpose of establishing what payment would need to be made to the Scheme in respect of the individual to restore the

position to what it would have been if the individual had been an active member of the Scheme throughout the period in question (“the restitution payment”); or

- (b) an individual to whom regulation 126 applies, applies to become a member of the Scheme or applies to have a restitution payment accepted having become a member of the Scheme after the period in question,

the Committee shall calculate the restitution payment in accordance with the provisions of regulation 126.

CHAPTER V

SPECIAL ADJUSTMENTS

Abatement during new employment

Statements of policy concerning abatement of retirement pensions in new employment

112.—(1) The Committee must formulate and keep under review its policy concerning abatement (that is, the extent, if any, to which the amount of retirement pension payable to a member from the fund maintained by it under the Scheme should be reduced (or whether it should be extinguished) where the member has entered a new employment with a Scheme employer).

(2) Before formulating that policy the Committee must consult with employing authorities.

(3) Before the expiry of the period of four months beginning with the commencement date, the Committee shall publish a statement as to the policy which is being applied by it where a member who is so entitled enters such a new employment on or after that date.

(4) Where, as a result of reviewing its policy concerning abatement, the Committee determines to amend it, it must publish a statement of the amended policy before the expiry of the period of one month beginning with the date it determines to do so.

(5) In formulating its policy concerning abatement, the Committee must have regard to –

- (a) the level of potential financial gain at which it wishes abatement to apply;
- (b) the administrative costs which are likely to be incurred as a result of abatement in the different circumstances in which it may occur; and
- (c) the extent to which a policy not to apply abatement could lead to a serious loss of confidence in the public service.

(6) In paragraph (5)(a) the reference to financial gain is a reference to the financial gain which it appears to the Committee may be obtained by a member as a result of his entitlement both to a pension and to pay under the new employment.

Application of abatement policy in individual cases

113.—(1) Where a member who is entitled to the payment of a retirement pension proposes to enter a new employment with a Scheme employer, he must inform the employer about that entitlement.

(2) If such a member enters such a new employment he must immediately notify the Committee in writing.

(3) The Committee –

- (a) must apply the policy published by it under regulation 112 to the member; and
- (b) it may reduce the annual rate of that pension or, as the case may be, may cease to pay it, during the period while he holds the new employment, in accordance with that policy.

(4) But no reduction under paragraph (3) of the pension of a person who was a member immediately before the commencement date may exceed the reduction which would have applied under the 2000 Regulations if those Regulations had applied when the member entered his new employment.

Misconduct

Forfeiture of pension rights after conviction of employment-related offences

114.—(1) If a member is convicted of a relevant offence, a Minister of the Crown may issue a forfeiture certificate.

(2) Where a forfeiture certificate is issued the member's former employing authority may direct that any of the rights in respect of him under these Regulations or the 2000 Regulations as respects his previous membership are forfeited.

(3) A relevant offence is an offence, committed in connection with an employment in which the person convicted is a member, and because of which he has left that employment.

(4) A forfeiture certificate is a certificate that the offence –

- (a) was gravely injurious to the State; or
- (b) is liable to lead to serious loss of confidence in the public service.

(5) If the former employing authority incurred loss as a direct consequence of the relevant offence, it may only give a direction under paragraph (2) if it is unable to recover its loss under regulation 116 or 118 or otherwise, except after an unreasonable time or at disproportionate cost.

(6) A direction under paragraph (2) may only be given if an application to a Minister of the Crown for a forfeiture certificate has been made by the former employing authority before the expiry of the period of three months beginning with the date of the conviction.

(7) Where a former employing authority applies for a forfeiture certificate, it must at the same time send the convicted person and the Committee a copy of the application.

Interim payments directions

115.—(1) If –

- (a) a person leaves an employment in which he was a member, because of an offence in connection with that employment; and
 - (b) a forfeiture certificate has been issued under regulation 114(1) in respect of that offence,
- his former employing authority may give an interim payments direction to the Committee.

(2) But his former employing authority may not give such a direction if it has given any direction under regulation 114(2) (“a forfeiture direction”).

(3) An interim payments direction is a direction to make interim payments to any person who appears to the former employing authority to be a person who would be entitled to receive payment of a benefit under the Scheme if no forfeiture direction were given.

(4) The person to whom payments must be made and the amounts must be specified in the direction.

(5) The amounts must not exceed the amounts which the person specified would be entitled to be paid if no forfeiture direction were given.

(6) An interim payments direction is not a decision under regulation 98 as to any person's entitlement to a benefit.

(7) Payments in accordance with an interim payments direction shall be deemed to be payments in respect of a benefit to which the recipient was entitled (regardless of any contrary forfeiture direction or decision under regulation 98).

Recovery or retention where former member has misconduct obligation

116.—(1) This regulation applies where a person –

- (a) has left an employment, in which he was or had at some time been a member, in consequence of a criminal, negligent or fraudulent act or omission on his part in connection with that employment;
- (b) has incurred some monetary obligation, arising out of that act or omission, to the body which was his employing authority in that employment; and
- (c) is entitled to benefits under Part II.

(2) The former employing authority may recover or retain out of the fund –

- (a) the amount of the monetary obligation; or
- (b) the value at the time of the recovery or retention of all rights in respect of the former employee under the Scheme with respect to his previous membership (as determined by an actuary),

whichever is less.

(3) The rights specified in paragraph (2)(b) do not include rights enjoyed by virtue of the receipt of a transfer value or credited by virtue of regulation 68(4) (including that regulation as it applies by virtue of regulation 74).

(4) The former employing authority must give the former employee–

- (a) not less than three months' notice of the amount to be recovered or retained under paragraph (2); and
- (b) a certificate showing the amount recovered or retained, how it is calculated, and the effect on his benefits or prospective benefits.

(5) If there is any dispute over the amount of the monetary obligation specified in paragraph (1)(b), the former employing authority may not recover or retain any amount under paragraph (2) until the obligation is enforceable under an order of a competent court or the award of an arbitrator.

Protection of GMP rights

117.—(1) The power –

- (a) to give directions under regulation 114(2); or
- (b) to recover or retain amounts under regulation 116(2),

may not be exercised so as to deprive a person of his guaranteed minimum pension or any widow's or widower's guaranteed minimum pension.

(2) But such a power may be so exercised if the person left his employment –

- (a) because of the offence of treason; or
- (b) because of one or more offences under the Official Secrets Acts 1911 to 1989⁽¹²⁾ for which the former member has been sentenced on the same occasion –
 - (i) to a term of imprisonment of at least 10 years, or
 - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years.

(12) 1911 c. 28, 1920 c. 25, 1939 c. 121, 1989 c. 6

Transfer of sums from the fund to compensate for former member's misconduct

118.—(1) This regulation applies where –

- (a) a person has left an employment in which he was a member because of –
 - (i) an offence of a fraudulent character, or
 - (ii) grave misconduct,in either case in connection with that employment;
- (b) his former employing authority in that employment has suffered direct financial loss by reason of the offence or misconduct; and
- (c) either –
 - (i) the former employee became entitled to benefits under Part II or the 2000 Regulations and a direction has been given under regulation 114(2), or
 - (ii) he did not become so entitled and on leaving the employment became entitled to a return of contributions under regulation 88 (whether or not he has waived his right).

(2) If the former employing authority is the Committee, it may retain an appropriate amount in the fund.

(3) Otherwise, the Committee must pay the former employing authority an appropriate amount out of the fund, if requested to do so.

(4) But if a contributions equivalent premium or a payment in lieu of contributions is due or has been made in respect of the former employee, the Committee may reduce an amount retained under paragraph (2) or a payment under paragraph (3) by the amount of any contributions equivalent premium and by half the amount of any payment in lieu of contributions.

(5) An appropriate amount is an amount not exceeding –

- (a) the amount of the direct financial loss; or
- (b) the amount of any contributions which could have been returned to the former employee, or paid to his spouse or a dependant, under regulation 89(2) or regulation C21(4) of the 2000 Regulations, less the amount of any which have been so returned or paid,

whichever is the less.

(6) If after making a payment under paragraph (3) the Committee is required to make any transfer payment under Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993⁽¹³⁾ or under regulation 122 for a former employee, the former employing authority must repay it, if requested to do so.

CHAPTER VI

TRANSFERS

Transfers out

Application of Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993

119.—(1) For sections 8C⁽¹⁴⁾ (requirements as to transfer, commutation etc. for contracting-out), 15 (discharge of liability) and 16 (transfer of accrued rights) and Chapter IV of Part IV (transfer values) of the Pension Schemes (Northern Ireland) Act 1993 and any regulations made under any of those sections or that Chapter, the managers of the Scheme in relation to a member are the Committee.

⁽¹³⁾ 1993 c. 49

⁽¹⁴⁾ 1993 c. 49 Section 8c was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(2) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(15) (pre-1986 leavers), Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993 shall apply to all members of the Scheme regardless of the date their membership ended.

(3) The references in regulation 4 of those Regulations to regulation 3 of those Regulations include a reference to regulation K7(2) of the 2000 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 D12(1)(c) of the 2000 Regulations (or any corresponding earlier provision) in respect of the membership which ended; and
- (b) in any case, no election has been made under regulation 34(1) to have the membership which ended aggregated with later service.

Rights to payment out of the fund

120.—(1) The amount of any transfer payment due in respect of a member under Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993 is payable by the Committee from the fund.

(2) Where such a transfer payment is to be or has been paid from the 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 other provision of these Regulations or the Transitional Regulations.

Contracting-out requirements affecting transfers out

121.—(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 51 of the Pension Schemes (Northern Ireland) Act 1993; or
- (b) an amount sufficient to meet the liability in respect of his contracted-out rights.

(2) But 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 Committee thinks fit, that amount may be used in preserving the liability mentioned in paragraph (2)(b) in the 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 5(2B) rights (as defined in regulation 1(2)) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996⁽¹⁶⁾.

Bulk transfer arrangements

Bulk transfers (transfers of undertakings) etc.

122.—(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”);
- (b) it is agreed by –
 - (i) the Committee,
 - (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 (Northern Ireland) Act 1993 and waive any rights they might have under that Chapter by virtue of the cessation of their active membership.

(2) The Committee must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights 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 (Northern Ireland) Act 1993, as it applies by virtue of regulation 119, (assuming in any case where the member would not be entitled to such a payment that he was).

(3) The Committee must provide each member with sufficient information in writing to check that the requirement of paragraph (2) is satisfied before he agrees as mentioned in paragraph (1)(c).

(4) Where paragraph (1) applies, the Committee must –

- (a) set aside (whether in cash or in assets or both) such part of the fund (“the transfer payment”) as an actuary appointed by it 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 Committee must certify to the new scheme’s trustees or managers the amount included in the transfer payment which represents each member’s contributions.

(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 fund by reason of membership covered by the transfer payment.

(7) Paragraph (6) overrides anything to the contrary in the former Regulations or these Regulations.

⁽¹⁶⁾ S.R. 1996 No. 493; the definition of “section 5(2B) rights” was substituted by S.R. 1997 No. 160 Schedule 1, paragraph 5

Calculation of amount of transfer payment under regulation 122

123.—(1) The amount of the transfer payment to be paid under regulation 122 is the amount determined by an actuary appointed by the Committee to be equal to the value at the date the members join the new scheme of the actual and potential liabilities payable from the 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) But 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

124.—(1) If a person who becomes an active member has relevant pension rights, he may request the Committee 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; or
- (d) a self-employed pension arrangement,

but do not include rights to benefits under a scheme, contract or arrangement which are attributable (directly or indirectly) to a pension credit.

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

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

(5) But 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.

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

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

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

Right to count credited period

125.—(1) Where a transfer value has been accepted under regulation 124, 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 (Northern Ireland) 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.
- (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 he became a member (or, if more than twelve months later or such longer period as the Committee may allow, the date on which the transfer value is received) and his normal retirement date or, if earlier, the date on or after the member's 60th birthday on which the sum of items referred to in sub-paragraphs (a) to (c) of regulation 33(4) is 85 years or more.
- (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 31st March 1972.
- (7) The Committee 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 100(2)(c)(i).

Credited periods for transferring members with mis-sold pension rights

- 126.**—(1) Regulation 125(3) does not apply where –
- (a) the transferring person is a person about whom information may be given under Article 164(1) of the Pensions (Northern Ireland) Order 1995 (mis-sold personal pensions), as it has effect in the case of the Scheme (see regulation 111); and
 - (b) the transfer value satisfies the conditions specified in paragraph (2).
- (2) Those conditions are –
- (a) that it is paid by the trustees or managers of the personal pension scheme mentioned in Article 164(1)(a)(ii) of that Order;
 - (b) that it represents all the rights relating to the member in that scheme;
 - (c) that it is paid on an application made to the Committee before the expiry of the period of 12 months beginning with the date the transferring person becomes an active member (or such longer period as it may allow); and
 - (d) that in the opinion of the Committee 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 –
- (a) of the amount that would be necessary (as at the date on which the request for the calculation of the restitution amount is received by the Committee) to purchase a period of membership for these Regulations equal to the length of the personal pension period on the basis of a transfer from a scheme which is not a club scheme (including the value

of rights under the Pensions (Increase) Act (Northern Ireland) 1971⁽¹⁷⁾ and the Pensions (Increase) (Northern Ireland) Order 1974⁽¹⁸⁾;

- (b) of the transfer value paid out of the Scheme to the personal pension scheme; and
- (c) of interest on any such transfer value at such rate as is approved for the time being by the Government Actuary, calculated over the period commencing with the date on which that transfer value was paid out of the Scheme and ending with the date as at which the transfer value is taken to be paid to the Scheme.

(5) The Committee must determine the amount 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 for which the transferring person was eligible to be an active member but in respect of which he made contributions to the personal pension scheme instead.

(7) Where a transfer value has been accepted in relation to a woman to whom this regulation applies and in respect of whom a transfer value has been paid previously by the Committee to a personal pension scheme any part of which transfer value was attributable to membership before 5th April 1988, then the credited period shall be apportioned as membership before 6th April 1988 and as membership after 5th April 1988 in the same proportions as it would have been had the woman become or remained a member of the Scheme throughout the personal pension period.

(8) If in the opinion of the Committee the transfer value does not satisfy the conditions specified in paragraph (2) for the reason only that it is less than the restitution amount, the Committee may accept the transfer value on the basis that the credited period which the member may count is such proportion of the personal pension period as the Committee determines.

Rights as to service not matched by credited period

127.—(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 26(3);
- (c) regulation 43(4) and (5) (amount of active member’s surviving spouse’s long-term pension);
- (d) regulation 88(1) (return of contributions).

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

(4) The Committee 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 100(2)(c)(i).

(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.

⁽¹⁷⁾ 1971 c. 35

⁽¹⁸⁾ S.I. 1974/1267 (N.I. 12)

Community scheme transferees

Community scheme transferees

128.—(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.