

2005 No. 206

LOCAL GOVERNMENT

**Local Government Pension Scheme (Amendment)
Regulations (Northern Ireland) 2005**

Made - - - - - *8th April 2005*

Coming into operation *1st May 2005*

The Department of the Environment, in exercise of the powers conferred by Article 9 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972(a) and now vested in it(b) and of every other power enabling it in that behalf and after consultation with the Northern Ireland Local Government Association, the Northern Ireland Local Government Officers' Superannuation Committee and such representatives of other persons likely to be affected by the Regulations as appeared to it to be appropriate, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Amendment) Regulations (Northern Ireland) 2005.

(2) These Regulations shall come into operation on 1st May 2005.

(3) In these Regulations “the principal Regulations” means the Local Government Pension Scheme Regulations (Northern Ireland) 2002(c).

Amendment of Regulations

2. The principal Regulations shall be amended in accordance with regulations 3 to 9.

Employees of non-Scheme employers: community admission bodies

3. For regulation 4 there shall be substituted the following regulation –

“Employees of non-Scheme employers: community admission bodies

4.—(1) Subject to the requirements of this regulation and regulation 4B, the Committee may make an admission agreement with any community admission body.

(2) The following are community admission bodies –

(a) a body 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

(a) S.I. 1972/1073 (N.I. 10)
(b) S.R. & O. (N.I.) 1973 No. 504 Article 7 (1); S.I. 1976/424 (N.I. 6)
(c) S.R. 2002 No. 352

- (ii) is approved by the Department for the purpose of admission to the Scheme;
- (b) a body to the funds of which any Scheme employer contributes;
- (c) a body representative –
 - (i) of local authorities,
 - (ii) of local authorities and officers of local authorities,
 - (iii) of officers of local authorities which is formed for the purpose of consultation as to the common interests of local authorities, and the discussion of matters relating to local government, or
 - (iv) of Scheme employers;
- (d) a statutory undertaker;
- (e) a non-statutory undertaker;
- (f) the managers of a voluntary school within the meaning of Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(a);
- (g) the governing body of an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997(b).

(3) Approval under paragraph (2)(a)(ii) may be subject to such conditions as the Department thinks fit and it may withdraw approval at any time if such conditions are not met.

(4) Where, at the date the admission agreement is made with a body referred to in paragraph (2)(b), the contributions paid to the body by any 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 who provides funding (and, if more than one, all of them) guarantees the liability of the body to pay all amounts due from it under the Regulations.

- (5) In this regulation –
 - (a) “a non-statutory undertaker” means a body who, though not authorised by any statutory provision to do so, is primarily engaged in carrying on –
 - (i) any railway, light railway, road transport, water transport, canal, inland navigation, dock, harbour or pier; or
 - (ii) any undertaking for the promotion of industrial development or the promotion of the development of tourist traffic;
 - (b) “a statutory undertaker” means a body authorised by any statutory provision to carry on –
 - (i) any railway, light railway, road transport, water transport, canal, inland navigation, dock, harbour, or pier; or
 - (ii) any undertaking for the promotion of industrial development or the promotion of the development of tourist traffic.

Employees of non-Scheme employers: transferee admission bodies

4A.—(1) Subject to the requirements of this regulation and regulation 4B, the Committee 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 the transfer of the service or assets by means of a contract or other arrangement;
- (b) a public service and which is approved by the Department for the purposes of admission to the Scheme.

(3) Only those employees of the transferee admission body who are employed in connection with the provision of the service or assets referred to in paragraph (2) are eligible to be members of the Scheme.

(a) S.I. 1986/594 (N.I. 3) as amended by S.I. 1993/2810 (N.I. 12) and S.I. 1997/1772 (N.I. 15)
 (b) S.I. 1997/1772 (N.I. 15)

(4) In the case of an admission agreement with a transferee admission body under paragraph (2)(a) the Scheme employer, if it is not also the Committee, must be a party to the admission agreement.

(5) Approval under paragraph (2)(b) may be subject to such conditions as the Department thinks fit and it may withdraw approval at any time if such conditions are not met.

(6) An admission agreement with a transferee admission body shall require that:

(a) in the case of a body under –

(i) paragraph (2)(a), the Scheme employer; or

(ii) paragraph (2)(b), the transferee admission body, to the satisfaction of the Committee,

shall 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; and

(b) 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.

(7) The indemnity or bond must be with –

(a) a person who has permission under Part IV of the Financial Services and Markets Act 2000(a) 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.

(8) An admission agreement with a transferee admission body shall make provision for the relevant matters set out in Schedule 2.

(9) Where a transferee admission body undertakes to meet the relevant requirements of this regulation, and –

(a) in the case of a body under paragraph (2)(a), the Scheme employer undertakes to meet the relevant requirements of this regulation; or

(b) in the case of a body under paragraph (2)(b), the Department approves the body for admission to the Scheme and the conditions, if any, to which the approval is subject, have been met;

the Committee must admit to the Scheme the eligible employees of the transferee admission body specified by the body and where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

Requirements for admission agreements

4B.—(1) In regulations 4 and 4A an admission agreement is an agreement that all or any specified class of the admission body's employees may be members.

(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 the Committee makes an admission agreement, it must promptly inform the Department of the date the agreement takes effect, the admission body's name and, in the case of an admission agreement with a transferee admission body under regulation 4A (2)(a), the name of the relevant Scheme employer.

(a) 2000 c. 8

(4) The Committee must notify the Commissioners of the Inland Revenue of the admission of an admission body within the time prescribed in regulations made under section 605 of the Taxes Act^(a) and provide such information as may be so prescribed.

(5) The Committee 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.

(6) 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 for determination to the Department.

(7) An employee of an admission body may not be a member if he is a member of another occupational pension scheme (within the meaning of section 1 of the Pension Schemes (Northern Ireland) Act 1993^(b)) other than where the accrual of benefits under the occupational pension scheme would not affect approval of the Scheme as an approved scheme.

(8) These 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.”.

Further restriction on eligibility

4. For regulation 5(6) there shall be substituted –

“(6) A person who is a member and is an employee of a transferee admission body is treated as leaving a local government employment when he ceases to be employed in connection with the provision of a service or assets under regulation 4A(2) as a result of which employment he became eligible to join the Scheme.”.

Re-employed and rejoining deferred members

5. For regulation 34(10) there shall be substituted –

“(10) In the case of a member who first becomes a member on or after 2nd April 2001 any period of membership in the employment of a community admission body within –

(a) regulation 4(2)(a)(ii), or

(b) regulation 4(2)(b) where, at the date the admission agreement is made, the contributions paid to the body by any one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources;

shall not be aggregated with any other periods of membership for the purpose of calculating his retirement grant.”.

Special circumstances where revised actuarial valuations and certificates must be obtained

6.—(1) In regulation 78(2) –

(a) for “a guarantee or indemnity” there shall be substituted “an indemnity or bond”; and

(b) “transferor” shall be deleted.

(2) For regulation 78(6) there shall be substituted –

“(6) In this regulation “transferee admission body” has the same meaning as in regulation 4A(2).”.

Interpretation

7. In Schedule 1 –

(a) 1988 c. 1 The current regulations are the Retirement Benefit Schemes (Information Powers) Regulations 1995, S.I. 1995/3103, as amended

(b) 1993 c. 49, as amended by S.I. 1993/3147(N.I. 11)

- (a) in the definition of “admission agreement employee” for “4” there shall be substituted “4B(8)” ;
- (b) in the definition of “admission agreement”, for “4(2)” there shall be substituted “4B(1)”;
- (c) in the definition of “admission body”, for “regulation 4(3)” there shall be substituted “regulations 4(2) and 4A(2)”;
- (d) in the definition of “Scheme employer”, for “4(15)” there shall be substituted “4B(8)”.

Matters to be included in an admission agreement in certain cases

8. For Schedule 2, there shall be substituted Schedule 2 as set out in the Schedule to these Regulations.

Revenue restrictions

9. In paragraph 1(1) of Schedule 4, for the definition of “continuity break” there shall be substituted –

““continuity break” is a change of employment from a Scheme employer (including an admission body) to –

- (a) a community admission body within –
 - (i) regulation 4(2)(a)(ii); or
 - (ii) regulation 4(2)(b) where, at the date that the admission agreement is made, the contributions paid to the body by any one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources; or
- (b) a transferee admission body,

but does not include a change in the case of a person who was a member of the Scheme on 2nd April 2001.”.

Transitional provisions

9. Nothing in these Regulations shall affect any admission agreement made in accordance with the principal Regulations before the date of coming into operation of these Regulations and so far as it is necessary to give effect to any such agreement the principal Regulations shall be treated as if they had continued in effect without the amendments made by these Regulations.

Consequential amendments

11. The Local Government (Superannuation) (Milk Marketing Board for Northern Ireland) Regulations (Northern Ireland) 1997(a) shall be amended as follows –

- (a) in regulation 1(2) (interpretation) for the definition of “admitted employee” there shall be substituted ““admission agreement employee”, has the meaning assigned to it by Schedule 1 to the Principal Regulations”;
- (b) in regulation 2 –
 - (i) for “admitted employee” there shall be substituted “admission agreement employee”; and
 - (ii) for “regulation 4(3)” and “regulation 4” there shall be substituted “regulation 4(2)” and “regulation 4” respectively.

Sealed with the Official Seal of the Department of the Environment on 8th April 2005.

(L.S.)

J. Ritchie

A senior officer of the Department of the Environment

(a) S.R.1997 No. 137 as amended by S.R. 2000 No. 177, S.R. 2001 No. 64 and S.R.2002 No. 353

MATTERS TO BE INCLUDED IN AN ADMISSION AGREEMENT IN CERTAIN CASES

1. A requirement for the transferee admission body to pay to the Committee all contributions and payments due under the Regulations.
2. If required by regulation 4A(6), a reference to the indemnity or bond in accordance with regulation 4A(7) and a warranty from the transferee admission body that such an indemnity or bond is in place.
3. A provision requiring the transferee admission body to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and in any employer's guide published by the Committee and provided to the transferee admission body.
4. An undertaking from the transferee admission body to the Committee that it will not do anything to prejudice the status of the Scheme as an exempt approved scheme within the meaning given by section 592(1) of the Taxes Act.
5. A representation and warranty from the transferee admission body to the Committee that all the transferee admission body's employees or class of employees who are specified as members are employed in connection with the provision of the service or assets being carried out by the transferee admission body as a result of those matters referred to in 4A(2).
6. An undertaking from the transferee admission body that it will promptly notify the Committee in writing of any material change in the terms and conditions of employment which affect entitlement to benefits under the Scheme for its employees who are members and of any terminations of employment by virtue of redundancy or in the interests of efficiency.
7. A requirement that the transferee admission body notifies the Committee of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion.
8. A requirement that the transferee admission body notifies the Committee of any matter which may affect, or is likely to affect, its participation in the Scheme and that it gives immediate notice of any actual or proposed change in its status which may give rise to a termination, including take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution.
9. A minimum period of three months' notice to terminate the admission agreement but automatic termination, as required by regulation 4B(2), in the event that the transferee admission body ceases to be such.
10. A right for the Committee to terminate the agreement in the event of –
 - (a) the insolvency, winding up or liquidation of the transferee admission body,
 - (b) a breach by the transferee admission body of any of its obligations under the admission agreement (but where the breach is capable of remedy only where it has not been remedied within a reasonable time),
 - (c) the withdrawal of approval by the Commissioners of Inland Revenue to the participation of the transferee admission body as a Scheme employer, or
 - (d) a failure by the transferee admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the Committee requiring it to do so.
11. A requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the Committee.
12. In relation to a transferee admission body under regulation 4A(2)(a) –
 - (a) a reference to the date of the contract, other arrangement or direction by which the body met the requirements of that regulation,
 - (b) a provision whereby the Scheme employer may set off against any payments due to the transferee admission body an amount equal to any overdue employer and employee

contributions and other payments (and interest payable under the Regulations) due from the transferee admission body as an employing authority,

- (c) a provision requiring the Scheme employer to keep under assessment the level of risk arising as a result of the matters set out in regulation 4A(6),
- (d) a provision that where a representation or notification must be given to the Committee under paragraphs 5, 6, 7 and 8 of this Schedule, that representation or notification is also given to the Scheme employer, and
- (e) a requirement that the admission agreement in its final form shall be available for public inspection at the appropriate offices of the Scheme employer, if different from the Committee.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Government Pension Scheme Regulations (Northern Ireland) 2002 (the principal Regulations) which comprise the Local Government Pension Scheme (the Scheme).

Regulation 3 amends regulation 4 of the principal Regulations by substituting new regulation 4, 4A and 4B which provide for the Northern Ireland Local Government Officers' Superannuation Committee to make admission agreements to enable employees of non-Scheme employers to be members of the Scheme. The main changes are –

- to separate the requirements for “community” and “transferee” admission bodies into separate regulations;
- to extend the definition of transferee admission body, to include bodies (other than community admission bodies) that carry out a public service and have been approved by the Department for admission to the Scheme; and
- to require an indemnity or bond to be entered into by the transferee admission body where it is identified as being necessary following a risk assessment.

The amended regulation 4 of the principal Regulations makes provision for the admission of community admission bodies. These are bodies which provide public services, otherwise than for the purposes of gain.

The inserted regulation 4A of the principal Regulations makes provision for the admission of transferee admission bodies. These are bodies which either provide a service or assets transferred from Scheme employers or carry out a public service and have been approved by the Department for admission to the Scheme.

The inserted regulation 4B of the principal Regulations makes further provisions in relation to admission agreements with both types of admission bodies.

Regulation 4 makes a consequential amendment to regulation 5(6) of the principal Regulations to provide when employees of the transferee admission bodies are treated as leaving local government employment for the purposes of the Scheme.

Regulation 5 amends regulation 34(10) of the principal Regulations, which covers re-employed and rejoining deferred members, to provide that for members who have accrued Scheme membership with certain admission bodies, specified periods of such membership may not be aggregated in calculating lump sum benefits.

Regulation 6 amends regulation 78(2) of the principal Regulations, which deals with special circumstances where revised actuarial valuations and certificates must be obtained.

Regulations 7 and 9 make consequential amendments to references to the amended provisions in Schedules 1 and 4 to the principal Regulations. Regulation 8 substitutes a new Schedule 2 to the principal Regulations, as set out in the Schedule to these Regulations.

Regulation 10 provides that the amendments made by these Regulations do not affect admission agreements entered into before the date that these Regulations come into operation.

Regulation 11 makes consequential amendments to the Local Government (Superannuation) (Milk Marketing Board for Northern Ireland) Regulations (Northern Ireland) 1997.

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