
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 228

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

PART 9

TRANSFERS

Interpretation of Part

72. In this Part—

“the 1993 Act” means the Pension Schemes Act 1993⁽¹⁾;

“Chapters 4 and 5” means Chapters 4 and 5 of Part 4 of that Act (transfer values and early leavers)

“club scheme” means an occupational pension scheme which—

- (a) (except where it is established and maintained in the Channel Islands or the Isle of Man) is a registered scheme;
- (b) provides benefits calculated by reference to final pay;
- (c) is open to new participants, or is a closed scheme the trustees or managers of which also provide an open scheme which is a club scheme for new employees of the same employer and of the same grade or level of post as the participants in the closed scheme; and
- (d) complies with reciprocal arrangements for the payment and receipt of transfer values with the schemes made under section 7 of the Superannuation Act 1972.

Application of Chapter 4 etc

73.—(1) For the purposes of—

- (a) sections 12C (requirements as to transfer, commutation etc. for contracting out), 19 (discharge of liability) and 20 (transfer of accrued rights);
- (b) Chapters 4 and 5; and
- (c) any regulations made under any of those sections or Chapters 4 and 5,

of the 1993 Act, the managers of the Scheme in relation to a member are the fund authority.

(2) Despite regulation 2 of the Occupational Pension Schemes (Transfer Values) Regulations 1996⁽²⁾ (pre 1986 leavers), Chapter 4 shall apply to all members of the Scheme regardless of the date of termination of their pensionable service.

(1) 1993 c. 48; Part 5 was inserted by the Pensions Act 2004 (c. 35), section 264.

(2) S.I.1996/1847.

(3) A member with a period of membership of under three months shall have the same rights to a cash transfer sum as if the three month condition in section 101AA(1)(b)(i) of the 1993 Act⁽³⁾ were satisfied and Chapter 5 applied to that member.

(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) Regulation 10(2)(a) 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, in any case, no election has been made under regulation 13(1) (re-employed and rejoining deferred members) or regulation 14 (concurrent employments) to have the service which terminated aggregated with later or concurrent service or regulation 41(4) (rights to return of contributions) of these Regulations does not apply.

(7) For this regulation and regulation 74 (rights to payment out of fund authority's pension funds)–

- (a) the fund authority, in relation to a member, is the body maintaining the pension fund to which the member was contributing immediately before the member's pensionable service terminated; but
- (b) if that fund has been closed, the fund authority is the body which would be liable to pay to the member the member's pension for that employment if the member had been entitled to receive payment of such a pension when the member's pensionable service terminated.

(8) In this regulation "pensionable service" has the same meaning as in section 70 of the 1993 Act.

Rights to payment out of fund authority's pension fund

74.—(1) A member may apply for a transfer under Chapters 4 or 5 (as modified by regulation 73) and where the member does so the amount of any transfer payment due in respect of the member under the relevant Chapter may only be paid by the fund authority from its pension fund if it is a recognised transfer (within the meaning of section 169 of the Finance Act 2004⁽⁴⁾).

(2) Where such a transfer payment is to be or has been paid from a 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–

- (a) the former regulations;
- (b) any local Act scheme;
- (c) the Earlier Regulations;
- (d) the Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 1998⁽⁵⁾; or
- (e) any other provision of these Regulations, the Benefits Regulations or the Transitional Regulations.

Contracting-out requirements affecting transfers out

75.—(1) Subject to paragraph (2), there must be deducted from the transfer payment to be made in respect of any person–

(3) Section 101AA was inserted by section 264 of the Pensions Act 2004.

(4) 2004 c. 12.

(5) S.I. 1998/364.

- (a) the amount of any contributions equivalent premium payable pursuant to section 55 of the 1993 Act; or
 - (b) an amount sufficient to meet the liability in respect of the person's contracted out rights.
- (2) The amount mentioned in paragraph (1) may not be deducted where the transfer payment is made to a registered pension scheme which is contracted out.
- (3) Where the amount mentioned in paragraph (1)(a) is deducted, the appropriate administering authority must use that amount to pay the premium.
- (4) Where the amount mentioned in paragraph (1)(b) is deducted, the appropriate administering authority may use the amount in preserving the liability mentioned in that paragraph in the appropriate fund, unless the member wishes a transfer payment in respect of it to be paid to the trustees or managers of a non contracted out registered pension scheme.
- (5) Contracted out rights, in relation to a member, are—
- (a) the member and the member's surviving spouse's or civil partner's or nominated cohabiting partner's rights to guaranteed minimum pensions; and
 - (b) the member's section 9(2B) rights (as defined in regulation 1(2) of the Occupational Pension Schemes (Contracting out) Regulations 1996(6)).

Bulk transfers (transfers of undertakings etc.)

76.—(1) This regulation applies where—

- (a) two or more members' active membership ends on their joining a registered non local government scheme (“the new scheme”);
 - (b) it is agreed by—
 - (i) the members' appropriate administering authority;
 - (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—
 - (i) agree in writing that that payment should be made instead of any payment which they otherwise might require to be made under Chapter 4 or 5; and
 - (ii) waive any rights they might have under those Chapters by virtue of the cessation of their active membership.
- (2) The appropriate administering authority must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which each of the members would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5, as it applies by virtue of regulation 73 (application of chapter 4) (assuming in any case where the member would not be entitled to such a payment that the member was).
- (3) The appropriate administering authority must provide each member with sufficient information in writing to check that fact before each member agrees as mentioned in paragraph (1) (c).
- (4) The appropriate administering authority must—
- (a) set aside (whether in cash or in assets or both) such part of the appropriate fund (“the transfer payment”) as an actuary appointed by the authority and an actuary appointed by

(6) S.I. 1996/1172. The definition of “section 9(2B) rights” was substituted by S.I. 1997/786 and amended by S.I. 1999/3198.

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 appropriate administering authority must certify to the new scheme's trustees or managers the amount included in the transfer payment which represents each member's contributions and interest on them.

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

(7) Paragraph (6) overrides anything to the contrary in—

- (a) the former regulations;
- (b) any local Act scheme;
- (c) the Earlier Regulations;
- (d) the Local Government Pension Scheme (Scotland) (Transitional Provisions) Regulations 1998(7); or
- (e) these Regulations or the Benefits Regulations.

Calculation of amount of transfer payment under regulation 76

77.—(1) The amount of the transfer payment to be paid under regulation 76 is the amount determined by an actuary appointed by the members' appropriate administering authority to be equal to the value at the date they join the new scheme of the actual and potential liabilities payable from its 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 the actuary 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) The actuary must specify in the valuation the actuarial assumptions the actuary 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.

Inward transfers of pension rights

78.—(1) If a person who becomes an active member has relevant pension rights, the person may request the fund authority to accept a transfer value for some or all those rights from the relevant transferor.

(2) Relevant pension rights are accrued rights under a registered scheme but do not include rights to benefits under the scheme 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 1993 Act.

(4) For the purposes of this regulation and regulation 79 (right to count credited period), the fund authority, in relation to a transferring person, is the body maintaining the pension fund of the Scheme to which the person is contributing.

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

(6) But the relevant transferor for the rights specified in paragraph (3) is the trustees or managers of the scheme, or the insurance company, to which a payment in respect of his accrued rights has been made.

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

(8) That notice must be given before the expiry of the period of 12 months beginning with the date the person became an active member (or such longer period as the person's employer may allow).

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

Right to count credited period

79.—(1) Where a transfer value has been accepted under regulation 78 (inward transfers of pension rights), the member may count the credited period as a period of membership for these Regulations⁽⁸⁾.

(2) If the transfer value—

(a) is paid by the trustees or managers of a club scheme and the member has made the request under regulation 78 before the expiry of 12 months beginning with the date the member became an active member;

(b) represents all the rights relating to the member in that scheme; and

(c) has been calculated—

(i) in a case where Chapter 4 or Chapter 5 applies, in accordance with that Chapter; and

(ii) otherwise, in a manner consistent with that prescribed under the relevant 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 paragraph (2) does not apply, the credited period must be calculated in a manner consistent with Chapter 4 or Chapter 5.

(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 the member became a member (or, if more than twelve months later, the date on which the transfer value is received) and the member's normal retirement age.

(5) The fund authority must give the member a written notice—

(a) stating the period of membership the member may count under paragraph (1); and

(b) containing a conspicuous statement giving the address from which further information may be obtained.

Community scheme transferees

80.—(1) The persons mentioned in paragraph (2) are entitled to such rights under the Scheme as are specified in guidance issued by the scheme actuary.

(2) Those persons are—

⁽⁸⁾ See also regulation 7(1)(c) of the Benefits Regulations.

- (a) a person who became employed by a Community institution after having been employed in local government employment; or
 - (b) a surviving spouse, civil partner, nominated cohabiting partner or dependant or child of such a person.
- (3) In this regulation—
- (a) “Community institution” means a body treated as one of the Communities' institutions for the purposes of the Communities' scheme; and
 - (b) “the Communities' scheme” means the pension scheme provided for officials and other servants of the Communities in accordance with regulations adopted by the Council of the European Communities.

Changes of fund

81.—(1) This regulation applies where—

- (a) a pension fund becomes an active member’s appropriate fund;
- (b) immediately before it does so, another fund was the member’s appropriate fund; and
- (c) in a case where regulation 13 (re-employed and rejoining deferred members), 14 (concurrent employment) or 41(4) (rights to return of contributions) applies to the member, the member has made a choice or election under the relevant regulation.

(2) Where the member’s appropriate administering authority has also changed, the authority which has ceased to be the member’s appropriate administering authority must make such payment to the member’s later appropriate administering authority as is indicated in guidance issued by the scheme actuary for this regulation.

(3) Where paragraph (2) applies as respects 10 or more members by virtue of a single event, the amount of the payment under that paragraph shall be determined by agreement between the actuary appointed by the administering authority by which the payment must be made and the actuary appointed by the administering authority to which it must be made.

(4) Where the actuaries cannot agree on the amount within 12 months of the date of transfer or, where there is more than one date of transfer, the date of the last transfer which relates to the single event—

- (a) the matter shall be referred to a third actuary, chosen by agreement between the actuaries or, in default of agreement, by the President of the Scottish Faculty of Actuaries; and
- (b) that actuary’s determination shall be final.

(5) The costs of determining the amount to be transferred shall be paid in equal shares by the members' former appropriate fund and the members' new appropriate fund.

(6) Any payment under paragraph (2) must be credited to the new appropriate administering authority’s fund.

(7) Where the member’s appropriate administering authority has not changed, it must arrange for a payment such as is indicated in guidance issued by the scheme actuary for this regulation to be made from the member’s former appropriate fund to the member’s new appropriate fund.

(8) Paragraph (1) does not apply where a member enters an employment which is concurrent with another in which the member is also an active member.

Changes of fund and variable time employees

82.—(1) An inter fund transfer under regulation 81(2) in respect of a member who is a variable time employee prior to the transfer and who remains a variable time employee after the transfer shall be on the basis that his period of membership transfers on a day for day basis.

(2) An inter fund transfer under regulation 81(2) in respect of a member who is a variable time employee prior to the transfer and who becomes a whole time or part time employee after the transfer shall be on the basis that his period of membership transfers on a pro rata basis using the formula–

$$\text{period of membership} \times \frac{\text{annual rate of pay in the variable – time employment}}{\text{annual rate of pay in the employment post transfer}}$$

= period of membership credited in the post transfer employment.