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STATUTORY INSTRUMENTS

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**1995 No. 1019**

**The Local Government Pension Scheme Regulations 1995**

**PART K**

**INTERCHANGE ETC**

*Transfers out*

**Outwards transfers**

**K2.**—(1) Subject to regulation K4, where a person has ceased to be a member by virtue of—

- (a) ceasing to be employed in local government employment, or
- (b) a notification under regulation B12 (leaving the Scheme),

and the conditions in paragraph (2) are satisfied, then the fund authority shall pay a transfer value in respect of him to be used in accordance with section 95 of the Pension Schemes Act 1993 (ways of taking right to cash equivalent) in one or more of the ways set out in subsection (2) of that section, at his option.

(2) The conditions are that—

- (a) he ceased to be a member as described in paragraph (1)—
  - (i) where the transfer value is to be paid to an occupational pension scheme, before his NRD, or
  - (ii) otherwise, at least one year before his NRD;
- (b) he is a person who—
  - (i) has a statutory pension entitlement,
  - (ii) after ceasing to be a member as described in paragraph (1), has taken up non-local government employment in which he participates in an occupational pension scheme, or
  - (iii) after so ceasing, entered into a contract for a personal pension scheme or a self-employed pension arrangement or an appropriate policy;
- (c) he has duly made an application in writing to his fund authority for a transfer value to be paid and has not subsequently withdrawn it; and
- (d) if he ceased to be employed in his local government employment before 31st March 1972, his local government employer has consented to the payment of the transfer value.

(3) For the purposes of paragraph (2)(c) an application is only duly made if—

- (a) in the case of a request for the transfer value to be paid to an occupational pension scheme, it is made before the applicant's NRD;
- (b) in any other case, it is made—
  - (i) at least one year before the applicant's NRD, or

- (ii) before the expiry of the period of six months beginning with the date on which he ceased to be a member,
  - whichever is the later; and
  - (c) in the case of a person within paragraph (2)(b)(ii) or (iii), it is made within 12 months after the applicant took up the non-local government employment or, as the case may be, entered the contract (or such longer period as the local government employer may in any particular case allow).
- (4) A person who has made an application under paragraph (2)(c) may withdraw it by giving notice in writing to his fund authority, but such a notice is of no effect if, before receiving it, the fund authority have entered into an agreement with a third party to use the whole or part of that person's transfer value in one or more of the ways specified in section 95(2) of the Pension Schemes Act 1993.
- (5) A person who withdraws an application may make another.
- (6) Where a person is entitled to separate preserved benefits by virtue of regulation D12(1)(c)—
- (a) he may make an application under paragraph (2)(c) in respect of all or any of those separate entitlements, and
  - (b) where his application does not relate to all of them, he may make a further application in respect of all or any of the remainder.

### **Time for payment of transfer value under regulation K2**

**K3.**—(1) Where an application is duly made to a fund authority under regulation K2(2)(c) in respect of any person, they shall pay a transfer value not later than—

- (a) twelve months after the date on which they receive the application, or
- (b) if—
  - (i) his NRD is earlier,
  - (ii) he ceased to be a member as described in regulation K2(1) at least one year before his NRD, and
  - (iii) he made his application under regulation K2(2)(c) before the expiry of the period of six months beginning with the date on which he ceased to be a member,

his NRD.

(2) Where—

- (a) proceedings before a court have been commenced against a person at any time before the expiry of the period of twelve months beginning with the date on which he ceased to be a member,
- (b) those proceedings (including any proceedings on appeal) have not been concluded at least three months before the date by which the fund authority are required to pay the transfer value under paragraph (1), and
- (c) it appears to the fund authority at that date that the proceedings may lead to all or any part of the benefits payable under these regulations to or in respect of that person being forfeited under regulation H4,

then the fund authority need not pay a transfer value in relation to that person until the expiry of the period of three months beginning with the date on which those proceedings are concluded.

### **Cases where right to transfer value excluded**

**K4.**—(1) A transfer value shall not be paid in relation to a person—

- (a) who has received any benefit (other than a return of contributions) under the Acts of 1937 to 1953 and the regulations made under those Acts, the former regulations, any local Act scheme, the 1974 regulation, the 1986 regulations or these regulations in respect of his local government employment,
- (b) who ceased to be employed in local government employment on or after 6th April 1978, having attained state pensionable age, and whose accrued rights for the purposes of regulation K5 relate wholly or partly to service before he attained that age;
- (c) in respect of whom a transfer value has been paid by the fund authority or a predecessor of that authority since he ceased to be employed in his local government employment, or
- (d) who, on becoming employed in approved non-local government employment became entitled to count service in his local government employment in relation to his approved non-local government employment, without any condition as to receipt of a transfer value.

(2) Subject to paragraph (3), in relation to a person who has received a return of contributions in respect of local government employment in which he has ceased to be employed, a transfer value may only be paid in relation to any period in respect of which he is entitled to preserved benefits.

(3) Where a person ceased to be employed on or after 1st April 1974, but before 1st January 1980, paragraph (2) only applies if when he ceased to be so employed he had—

- (a) an aggregate of at least five years' service which has to be taken into account as reckonable service and qualifying service under the 1974 regulations, or
- (b) if he was subject to local Act scheme, an aggregate of at least five years' service which was to be taken into account under the Scheme for the purposes of determining whether he was entitled to benefit.

#### **Amount of transfer value under regulation K2**

**K5.**—(1) The amount of any transfer value payable under regulation K2 shall be calculated in accordance with the following provisions.

(2) Subject to the provisions of this Part, a transfer value to be paid in accordance with the provisions of regulation K2 in respect of a person shall be an amount equal to the capitalised value—

- (a) of the rights which have accrued in respect of him under these regulations at the material date, and
- (b) of any associated rights under the Pensions (Increase) Act 1971(1) and the Pensions (Increase) Act 1974(2),

less a sum in respect of any state scheme premium which is payable or has been paid and not recovered in respect of a period of service taken into account in the valuation of those rights.

(3) Subject to regulation K9, where the transfer value is, without reasonable cause or excuse, not paid before the expiry of the period of six months beginning with the material date, the transfer value mentioned in paragraph (2) shall be increased by—

- (a) interest, calculated on a daily basis over the period from the material date to the date on which the transfer value is paid at the rate set out in regulation 4(4)(a) of the Occupational Pension Schemes (Transfer Values) Regulations 1985(3), or
- (b) the amount by which the transfer value falls short of what it would have been if the material date had been the date on which the transfer value was paid;

whichever is the greater.

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(1) 1971 c. 56.  
(2) 1974 c. 9.  
(3) S.I. 1985/1931.

(4) The reference in paragraph (2)(a) to rights which have accrued at the material date is a reference—

- (a) in the case of such a person as is described in regulation K2(6), to those rights in respect of which his application under regulation K2(2)(c) was made; or
- (b) if the person does not have a statutory pension entitlement by virtue of satisfying paragraph (a) of regulation D3, to the rights which would have accrued under regulation D11, if he had fulfilled one of the requirements mentioned in paragraph (1)(b) of that regulation;

and for the purpose of determining the accrued rights in respect of a widow's or widower's pension of a person who was unmarried on ceasing to be a member—

- (i) in the case of a man, if any part of his membership can be counted by virtue of regulation K14(1)(a) of these Regulations or regulation N8(1)(a) of the 1974 Regulations; and
- (ii) in the case of a woman, if any part of her membership is treated as membership after 5th April 1988 by virtue of regulation K14(1)(a) and (2)(b) of these Regulations, all the person's membership shall be taken into account.

(5) In paragraph (2) “capitalised value” means the capitalised value at the material date as determined by the fund authority, in such manner as may be approved by the Government Actuary or by an actuary authorised by him to act on his behalf for that purpose, having regard to investment conditions and the contingencies on which benefits are, or are to be, payable under these regulations.

(6) In this regulation “the material date” means—

- (a) the date on which the person ceased to be employed in local government employment or to be a member as described in regulation K2(1), or
- (b) the date on which his application for payment of a transfer value is received by his fund authority,

whichever is later.

### **Special provision as respects pre-6th April 1988 service**

**K6.**—(1) Subject to regulation K9, where—

- (a) a transfer value is payable to the trustees or managers of an approved non-local government scheme,
- (b) the service to which it relates includes relevant former service, and
- (c) the amount of the transfer value payable in respect of the relevant former service would be greater if it were calculated in accordance with the 1986 regulations as they had effect immediately before 6th April 1988,

then the amount of the transfer value attributable to the relevant former service shall be calculated on the basis mentioned in paragraph (c).

(2) In paragraph (1) “relevant former service” means service which the person was entitled to count as reckonable service before 6th April 1988.

### **Reductions of the transfer value: unsecured GMPs, pre-1988 service and forfeiture**

**K7.**—(1) Where—

- (a) a person requests a transfer value to be paid—
  - (i) to an occupational pension scheme which is not contracted-out,
  - (ii) to a personal pension scheme which is not an appropriate personal pension scheme,
  - (iii) to a self-employed pension arrangement, or

- (iv) in the case of a person who is entitled to benefits under regulation D9(1), to an occupational pension scheme which is contracted-out;
- (b) the trustees or managers of the scheme or arrangement are able and willing to have transferred to it only the liability for a member's accrued rights other than his and his surviving spouse's rights to guaranteed minimum pensions; and
- (c) he does not require the portion of his transfer value that represents his guaranteed minimum pension to be used in one of the ways specified in section 95(2)(b) and (c) of the Pension Schemes Act 1993(4),

then his transfer value shall be reduced by the amount of a state scheme premium sufficient to meet the liability in respect of those guaranteed minimum pensions.

(2) Where—

- (a) a person has ceased to be a member by virtue of a notification under regulation B12 (leaving the Scheme), and
- (b) his total period of membership before 6th April 1988 amounts to at least two years,

that person shall be entitled to a transfer value under regulation K2(1) in respect only of that part of his accrued rights which is attributable to his membership after 5th April 1988.

(3) Where—

- (a) a transfer value limited in accordance with paragraph (2) has been paid in respect of a person, and
- (b) that person has subsequently ceased to be employed in local government employment—
  - (i) before his NRD, or
  - (ii) where regulation K2(3)(b) applies, at least one year before his NRD,

a right to a transfer value in respect of any part of his accrued rights to which, but for the operation of paragraph (2), he would have been entitled on so ceasing, shall accrue to him on the date of cessation and shall be valued accordingly.

(4) In relation to any person to whom paragraph (3) applies—

- (a) regulation K2(3)(b)(ii) shall have effect as if there were substituted for the words “a member” the words “employed in local government employment”; and
- (b) the definition of “material date” in regulation K5(6) shall have effect as if the words “or to be a member, as described in regulation K2(1)” were omitted.

(5) For the purposes of paragraphs (2) to (4), where a person ceases to be employed in local government employment but enters again into local government employment, then if—

- (a) the interval between those two employments does not exceed one month; or
- (b) the second of the employments results from the exercise of a right to return to work under section 39 or 41 of the Employment Protection (Consolidation) Act 1978(5) (right to return to work following pregnancy or confinement),

they shall be treated as a single employment unless the employee elected under regulation D12(1)(c).

(6) Where—

- (a) under regulation H4, any corresponding provision of earlier legislation or a local Act scheme, the employing authority direct that all or any of the benefits payable under these regulations in respect of a person shall be forfeited, and

(4) 1993 c. 48.

(5) 1978 c. 44; sections 39 and 41 were substituted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 23, Schedule 2.

- (b) the direction is given before the last date on which the fund authority is required to pay a transfer value in respect of those benefits under these regulations and no such payment has been made,

any transfer value payable in respect of that person shall be reduced in proportion to the reduction in the total value of the benefits or, as the case may be, shall be withheld.

### **Minimum transfer values**

**K8.**—(1) Subject to regulation K9, a transfer value paid by a fund authority in respect of a person shall be at least equal to the aggregate of the contributions, transfer values and sums mentioned in paragraph (2), less any state scheme premium paid or payable.

- (2) The contributions, transfer values and sums referred to in paragraph (1) are—
- (a) any contribution made by that person under Part C (other than contributions under regulation C24),
  - (b) any transfer values paid to the fund authority under this Part in respect of that person, and
  - (c) any sums paid under this Part by way of interfund adjustments in respect of that person to an authority which was his previous fund authority (within the meaning of regulation K20),

in so far as those contributions, transfer values or sums relate to the accrued rights in respect of which the transfer value is paid.

(3) A transfer value paid under this Part shall be at least equal in amount to the cash equivalent, if any, to which a person would otherwise be entitled under Chapter IV of Part IV of the Pension Schemes Act 1993<sup>(6)</sup> (including any state scheme premium which is paid or payable).

### **Modifications where transfer is to club scheme**

**K9.**—(1) Regulations K5(3), K6, K8(1) does not apply where the transfer value is to be paid to the trustees or managers of a club scheme.

- (2) In this Part “club scheme” means an occupational pension scheme which—
- (a) provides benefits calculated by reference to the remuneration of the participant;
  - (b) (except where it is established and maintained in the Channel Islands or the Isle of Man) is approved by the Commissioners of Inland Revenue under Chapter I of Part XIV of the Income and Corporation Taxes Act 1988<sup>(7)</sup>;
  - (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 statutory schemes and schemes made under section 7 of the Superannuation Act 1972<sup>(8)</sup>.

### **General provisions about payment of transfer values**

**K10.**—(1) The transfer value under regulation K2 shall be paid to the scheme managers by the fund authority out of their pension fund.

(2) The fund authority shall provide the scheme managers and the person to whom the transfer value relates with a written notice showing how it was calculated.

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<sup>(6)</sup> 1993 c. 48.

<sup>(7)</sup> 1988 c. 1.

<sup>(8)</sup> 1972 c. 11.

(3) A notice provided under paragraph (2) shall include a statement of the kind required by regulation J4(2)(c).

#### **Termination of right to payment out of fund authority's pension fund**

**K11.**—(1) Where a transfer value is to be or has been paid under regulation K2, no other payment or transfer of assets shall be made out of the pension fund on account of the service to which the transfer value relates, except as provided in regulation K12.

(2) Paragraph (1) has effect notwithstanding anything to the contrary in the Acts of 1937 to 1953 and the regulations made under those Acts, the former regulations, any local Act scheme, the 1974 regulations, the 1986 regulations (except regulations J3 and J6) or any other provision of these regulations.

#### **Revival of rights for certain Community scheme transferees**

**K12.**—(1) Schedule K1 shall have effect for the purpose of making provision as respects persons—

- (a) in respect of whom transfer values are paid under regulation K2 on their transfer to the Communities' scheme, and
- (b) who subsequently leave the scheme without rights to either an immediate or prospective pension.

(2) In this regulation and that Schedule "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.