
STATUTORY INSTRUMENTS

1996 No. 414

**The Local Government Superannuation
(Scotland) Amendment Regulations 1996**

Transfer of rights of persons to whom regulation J13 applies

13. For regulation J14 and the heading thereto there shall be substituted the following:—

“Transfer of pension rights

J14.—(1) In this regulation, unless the context otherwise requires—

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

“appropriate part of the fund” means the part determined in accordance with paragraph (8);

“contracted-out” has the meaning given by section 7 of the 1993 Act⁽²⁾;

“eligible employer” means a scheduled body or a body which has entered into an admission agreement;

“pensionable service” has the meaning given by section 70(2) and (3) of the 1993 Act;

“relevant beneficiaries” means the pensionable employees to whom this regulation applies and other persons who under these Regulations are or may become entitled to benefit through such pensionable employees;

“the scheme managers” means the scheme managers of the transferee scheme;

“the transfer date” means in the case of—

- (a) a person within paragraph (2)(a)(i), the date of transfer of the undertaking;
- (b) a person within paragraph (2)(a)(ii), the date his employer ceases to be an eligible employer; and
- (c) a person within paragraph (2)(b), the date on which he becomes subject to an approved non-local government scheme;

“transferee scheme” means the approved non-local government scheme to which a person transfers his pension rights under this regulation;

“undertaking” has the same meaning as in the Transfer of Undertakings (Protection of Employment) Regulations 1981⁽³⁾.

(2) This paragraph applies—

- (a) to a person who ceases to be a pensionable employee because—
 - (i) the undertaking in which he is employed is transferred to a body which is not an eligible employer; or

(1) 1993 c. 48.

(2) Section 7 was amended by the Pensions Act 1995 (c. 26), section 136(1) and Schedule 5, paragraph 22.

(3) S.I.1981/1794; regulation 2(1) was relevantly amended by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 33(2).

- (ii) the body by which he is employed ceases to be an eligible employer for whatever reason,
and in respect of whom the body employing him after the transfer date can make other provision under an approved non-local government scheme; and
 - (b) to a person to whom regulation J13 applies.
- (3) A person within paragraph (2)(a) shall be treated for the purposes of these Regulations as having ceased to hold his employment on the transfer date.
- (4) Where—
 - (a) a person to whom paragraph (2) applies has not reached state pensionable age on the transfer date, and
 - (b) before the transfer date or, with the consent of his employing authority, the appropriate administering authority and the scheme managers, within 3 months after the transfer date, he has given written notice to the appropriate administering authority and, if different, to his employing authority that he wishes to transfer his pension rights under these Regulations to the transferee scheme, and
 - (c) the scheme managers, the appropriate administering authority and, if different, his employing authority have each given their consent before the transfer date or, where appropriate, within 3 months of the transfer date,

the appropriate administering authority shall set aside and pay to the scheme managers the appropriate part of the superannuation fund whether in cash or in assets or both (“the transfer payment”) for the benefit of the relevant beneficiaries, subject to the provisions of paragraph (9).

(5) The appropriate administering authority shall not give their consent under paragraph (4)(c) unless the person transferring his pension rights will acquire pension rights under the transferee scheme at least equivalent to those which he would have obtained if a transfer value had been paid to the scheme managers under regulation J2.

(6) The appropriate administering authority shall provide the person transferring his pension rights with sufficient information in writing to check that the condition in paragraph (5) is satisfied.

(7) Notwithstanding anything in the Acts of 1937 to 1953 and the regulations made thereunder, the former regulations, any local Act scheme or any provision of the 1974 Regulations or these Regulations, where a payment or transfer of assets is to be or has been made under this regulation, no other payment or transfer of assets shall be made out of the superannuation fund on account of service or employment to which the payment or transfer of assets under this regulation relates.

- (a) (8) The appropriate part of the fund shall be the amount of the value at the transfer date of the actual and potential liabilities of the appropriate superannuation fund accrued at the transfer date in respect of the relevant beneficiaries as determined by the actuary to the appropriate superannuation fund on the basis of actuarial assumptions specified by the actuary, adjusted as the actuary shall think fit to take into account—
 - (i) any period between the transfer date and the date of actual payment of the transfer payment; and
 - (ii) any other matters as the actuary at his sole discretion shall think fit.
- (b) The employing authority shall bear the costs of determining the appropriate part of the fund and apportioning the fund or, if there is more than one employing

authority involved, each shall bear such part of the costs as the actuary of the appropriate superannuation fund determines.

- (9) Where a transfer payment in respect of a person is made under paragraph (4), then—
- (a) if the payment is to a transferee scheme which is contracted-out and the transferee scheme undertakes to accept liability for the guaranteed minimum pension, no deduction shall be made from the transfer payment;
 - (b) in any other case, there shall be deducted from the transfer payment the amount of any transfer premium which may be paid under section 55(3) of the 1993 Act⁽⁴⁾ or contributions equivalent premium which may be paid pursuant to section 55(2) of the 1993 Act and such amount shall be used either in paying such a transfer premium or contributions equivalent premium or, at the discretion of the appropriate administering authority, in preserving the liability for the guaranteed minimum in the appropriate superannuation fund; and
 - (c) in every case, the appropriate administering authority shall certify to the scheme managers the amount included in the transfer payment which represents the person's contributions and interest on them and may require the scheme managers to undertake to treat only such amounts as employee's contributions in the transferee scheme.

J14A. Where under regulation B6—

- (a) a body has made an admission agreement (“the first admission agreement”) with an administering authority (“the first administering authority”) and that first admission agreement ceases to have effect; and
- (b) thereupon an admission agreement (“the second admission agreement”) between that body and a different administering authority (“the second administering authority”) takes effect,

regulation J14 shall apply to the exclusion of Part Q as if—

- (i) a person employed by that body when the first admission agreement ceased to have effect and the second admission agreement took effect were a person within paragraph (2)(a) of regulation J14;
- (ii) the superannuation fund maintained by the second administering authority were the transferee scheme;
- (iii) the second administering authority were the scheme managers; and
- (iv) the date the second admission agreement takes effect were the transfer date.

J14B. Where—

- (a) an undertaking (within the meaning of regulation J14(1)) is transferred from an employing authority (“the first employer”) to a body (“the second employer”) which thereupon enters into an admission agreement with an administering authority (“the new administering authority”) in respect of one or more persons (“the transferring employees”) who were pensionable employees in relation to their employment with the first employer and who remain pensionable employees in relation to their employment with the second employer;
- (b) the new administering authority is different from the body which maintains the superannuation fund to which the first employer contributed in respect of the transferring employees immediately before the transfer; and

(4) Section 55 was amended by the Pensions Act 1995, Schedule 5, paragraph 50.

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- (c) in his employment with the second employer each transferring employee is entitled to reckon any reckonable service which he was entitled to reckon in his employment with the first employer,

regulation J14 shall apply to the exclusion of Part Q as if—

- (i) a transferring employee were a person within paragraph (2)(a) of regulation J14;
- (ii) the superannuation fund maintained by the new administering authority were the transferee scheme;
- (iii) the new administering authority were the scheme managers; and
- (iv) the date the admission agreement with the new administering authority takes effect were the transfer date.”.