STATUTORY RULES OF NORTHERN IRELAND

1996 No. 260

EDUCATION

Teachers' Superannuation (Additional Voluntary Contributions) Regulations (Northern Ireland) 1996

Made - - - -	*27th June 1996*
Coming into operation	*31st July 1996*

The Department of Education, in exercise of the powers conferred on it by Articles 11(1), (2), 2A(**1**) and (3) and 14(1), (2) and (3)(**2**) of, and paragraphs 1, 3, 5, 6, 8, 10, 11 and 13 of Schedule 3 to the Superannuation (Northern Ireland) Order 1972(**3**), and of every other power enabling it in that behalf, and after consultation with representatives of the education and library boards, and of teachers and with such representatives of other persons likely to be affected as appeared to it to be appropriate as required by Article 11(5) of that Order, and with the consent of the Department of Finance and Personnel(**4**), hereby makes the following Regulations:—

Citation and commencement

1.—(1) These Regulations may be cited as the Teachers' Superannuation (Additional Voluntary Contributions) Regulations (Northern Ireland) 1996, and shall come into operation in accordance with paragraph (2).

(2) These Regulations shall come into operation on 31st July 1996 and shall have effect from 1st April 1989.

Interpretation

2.—(1) In these Regulations—

"approved scheme" means a retirement benefits scheme approved under Chapter 1 of Part XIV of the Taxes Act;

"authorised insurance company" means either—

(**1**) Article 2A was inserted by S.I.1990/1509 (N.I. 13) Article 10(3)
(**2**) Article 14 was amended by S.I. 1990/1509 (N.I. 13) Article 12
(**3**) S.I. 1972/1073 (N.I. 10) as amended by S.I. 1992/3218 regulation 82(1) and Schedule 10 paragraph 6
(**4**) Formerly Department of Finance: *see* S.I. 1982/378 (N.I. 6) Article 3; consent function was transferred from the Department of the Civil Service by S.I. 1982/338 (N.I. 6) Article 4

(a) a company which is a United Kingdom branch or office of an insurance company to which Part II of the Insurance Companies Act 1982(**5**) applies and which is authorised under section 3 or 4 of that Act to carry on long-term insurance business; or

(b) an EC company as defined by section 2(6) of that Act(**6**) which is lawfully carrying on long-term insurance business in the United Kingdom;

"child" has the same meaning as in regulation 2(2) of the Teachers' (Compensation for Redundancy and Premature Retirement) Regulations (Northern Ireland) 1991(**7**);

"comparable Northern Ireland Service" has the same meaning as in regulation 2(1) of the Principal Regulations;

"contributor" is to be construed in accordance with regulation 7;

"the Department" means the Department of Education;

"dependant" in relation to a participator or a contributor means—

(a) any surviving spouse;

(b) any person who is a child of a participator or contributor; and

(c) any person in respect of whom at the time of death of a participator or contributor a nomination under regulation 58 of the Principal Regulations(**8**) has effect;

"free-standing additional voluntary contributions scheme" means an approved scheme which falls within section 591(2)(*h*) of the Taxes Act;

"the Index" at any time means the index of retail prices published by the Central Statistical Office of the Chancellor of the Exchequer or any successor agreed as appropriate by the Board of Inland Revenue, for the calendar month three months prior to that time;

"lump sum death benefit" means a lump sum which will become payable in the event of a person dying while paying regular contributions to provide for it;

"participator" means—

(a) a contributor who has made a benefits election under regulation 12(5);

(b) a person who ceased to be a contributor not being a person in respect of whom the Department has paid a transfer value under regulation 11; or

(c) a person in respect of whom a transfer value has been accepted under regulation 10;

"pension element" shall be construed in accordance with regulation 5(2);

"personal pension scheme" means a scheme approved under Chapter IV of Part XIV of the Taxes Act;

"Principal Regulations" means the Teachers' Superannuation Regulations (Northern Ireland) 1977(**9**);

"reckonable service" shall be construed in accordance with Regulation 3 of the Principal Regulations(**10**);

"regular contributions" means contributions, paid pursuant to an election under regulation 4(1)(*a*) or (*c*);

(**5**) 1982 c. 50
(**6**) As inserted by S.I. 1994/1696 regulation 4(2)
(**7**) S.R. 1991 No. 132
(**8**) Regulations 57 to 62 were substituted by S.R. 1988 No. 363 regulation 9
(**9**) S.R. 1977 No. 260 as amended by S.R. 1978 No. 147, S.R. 1978 No. 351, S.R. 1979 No. 380, S.R. 1980 No. 305, S.R. 1980 No. 435, S.R. 1981 No. 151, S.R. 1982 No. 12, S.R. 1982 No. 162, S.R. 1982 No. 346, S.R. 1987 No. 76, S.R. 1987 No. 86, S.R. 1987 No. 315, S.R. 1988 No. 64, S.R. 1988 No. 72, S.R. 1988 No. 167, S.R. 1988 No. 363, S.R. 1989 No. 25, S.R. 1989 No. 181 and S.R. 1991 No. 132
(**10**) Regulation 3 was amended by S.R. 1980 No. 305 regulation 5 and S.R. 1987 No. 315 regulation 4

"retire" means become entitled under regulation 48 of the Principal Regulations(**11**) to payment of retirement benefits;

"retirement pension" has the meaning given by regulation 12(2);

"retirement benefits scheme" has the meaning given in section 611 of the Taxes Act;

"salary" means—

(a) in relation to reckonable service the salary calculated in accordance with regulations 9 and 10 of the Principal Regulations; and

(b) in relation to contributions payable under regulations 27 and 28 of the Principal Regulations(**12**), the salary determined in accordance with the provisions of those Regulations for the purposes of calculating the said contributions;

"Taxes Act" means the Income and Corporation Taxes Act 1988(**13**);

"tax year" means the 12 months beginning with 6th April in any year.

(2) For the purposes of these Regulations the pension equivalent of a lump sum shall be calculated by dividing the cash value of the lump sum by 12.

Making and acceptance of elections

3.—(1) Any election under these Regulations shall—

(a) be made by giving written notice to the Department; and

(b) subject to paragraphs (2) and (3), be accepted by it.

(2) An election under these Regulations shall not be accepted by the Department if—

(a) the amount paid in contributions in any tax year pursuant to that election would be such as to cause the total of contributions paid in that tax year pursuant to these Regulations to exceed the limit imposed by regulation 8(3); or

(b) the benefits to be paid as a result of the contributions paid pursuant to that election would be likely to exceed the amount permitted by regulation 14 and the Schedule; or

(c) in the case of an election under regulation 4(1)(*c*), the amount specified in the election as the amount to be secured is less than the amount specified in regulation 4(2)(*d*).

(3) An election falling within regulation 17(2) shall not be accepted by the Department if any information required by that regulation is not given.

Election to pay regular and lump sum contributions

4.—(1) A person employed in reckonable service may at any time elect to pay—

(a) regular contributions for investment under regulation 9(1);

(b) a lump sum contribution for investment under regulation 9(1); or

(c) regular contributions to secure the payment of a lump sum death benefit under these Regulations.

(2) An election under paragraph (1) shall specify—

(a) in the case of an election under sub-paragraph (*a*) or (*c*), the amount of each regular contribution or, if expressed as a percentage of salary, that percentage.

(b) in the case of an election under sub-paragraph (*b*) the amount of the contribution;

(**11**) Regulation 48 was amended by S.R. 1978 No. 351 regulation 7, S.R. 1980 No. 305 regulation 19 and S.R. 1988 No. 363 regulation 6

(**12**) Regulation 27 was amended by S.R. 1978 No. 147 regulation 3(*f*) and S.R. 1988 No. 167 regulation 5

(**13**) 1988 c. 1

(c) in the case of an election under sub-paragraph (*a*) or (*b*) the fund or funds in which contributions are to be invested; and

(d) in the case of an election under paragraph (1)(*c*) the amount to be secured which must not be less than £5,000.

Provision for lump sum death benefit

5.—(1) This regulation shall apply where a person elects under regulation 4(1)(*c*) to pay regular contributions to secure the payment of a lump sum death benefit.

(2) A person who elects to pay regular contributions to secure the payment of a lump sum death benefit may at the same time, or at any time while paying those contributions, elect that if the lump sum becomes payable, the whole or part of it "the pension element" shall be applied by the Department for the purchase of a pension policy from an authorised provider to provide a pension or pensions for one or more dependants.

(3) An election under paragraph (2) shall specify—

(a) for whom a pension is, or pensions are, to be provided;

(b) if more than one pension is to be provided, the proportion of the pension element that is to be applied to the purchase of each of them; and

(c) in respect of every pension to be provided, whether the annual rate of the pension—

(i) is to be fixed; or

(ii) is to vary in accordance with the Index; or

(iii) is to increase yearly by a specified percentage or, if lower than that percentage, by any increase in the Index for the year in question.

(4) Subject to regulation 8(3), a person who has continued to pay regular contributions until he attains his 60th birthday but does not then retire may elect to pay further regular contributions until he attains his 61st birthday to secure the payment of a lump sum death benefit; and so long as he has not retired further elections may be made annually in respect of years commencing on his 61st and subsequent birthdays.

(5) An election made by a person under paragraph (4) shall lapse if the person retires or ceases to be employed in reckonable service during the year in question.

(6) An election under regulation 4(1)(*c*) or an election under paragraph (4) shall have effect for the purpose of the entitlement to benefit from the date when that election is accepted by the Department.

Variation and cancellation of elections

6.—(1) A contributor who has elected under regulation 4(1)(*a*) to pay regular contributions may at any time by giving written notice to the Department—

(a) subject to regulation 8(3), alter the amount of the regular contributions;

(b) require any contributions payable pursuant to the election to be invested in future under regulation 9 in a different way;

(c) require the Department to realise any investment and to reinvest the proceeds under regulation 9 in a different way; or

(d) cancel his election under regulation 4(1)((*a*).

(2) A contributor who has elected under regulation 4(1)(*b*) to pay a lump sum contribution may at any time by giving written notice to the Department require the Department to realise any investment and to reinvest the proceeds under regulation 9 in a different way.

(3) A contributor who has elected to pay regular contributions under regulation 4(1)(*c*) may at any time by giving written notice to the Department—

(a) subject to regulation 8(3), elect that a specified larger lump sum is to be secured and the regular contributions increased accordingly; or

(b) if the contributor has made an election under regulation 5(2), cancel it or alter in any specified way the manner in which the pension element is to be applied; or

(c) cancel his election under regulation 4(1)(*c*).

(4) A person paying further regular contributions pursuant to an election under regulation 5(4) may at any time make an election under regulation 5(2) or do anything authorised by paragraph (3).

(5) The Department shall give effect as soon as is reasonably practicable to the terms of any notice given under this regulation.

Contributor

7.—(1) Subject to paragraph (2), a person is a contributor while an election under regulation 4(1)(*a*) or (*c*) has effect or if he has paid a lump sum pursuant to an election under regulation 4(1)(*b*).

(2) A person who—

(a) has become entitled to retirement benefits under regulation 48 of the Principal Regulations;

(b) has, under regulation 6(1)(*d*) or (3)(*c*), cancelled the election to pay regular contributions; or

(c) subject to paragraph (3), has ceased to be employed in reckonable service and is not paying contributions under regulations 27 and 28 of the Principal Regulations (additional contributions for current period),

ceases to be a contributor.

(3) For the purposes of this regulation a person who—

(a) has ceased to be employed in reckonable service; and

(b) has re-entered reckonable service within 3 months,

shall be treated as having continued to be employed in reckonable service.

Payment of contributions and amount of regular contributions

8.—(1) Regular contributions shall be paid to the Department at intervals of one month.

(2) Payment of regular contributions under paragraph (1) shall be effected by deduction by the contributor's employer of the appropriate amounts from the contributor's salary and such deductions shall—

(a) commence to be made from the salary in respect of the first whole pay period falling after the date on which the employer receives authorisation to make them; and

(b) be remitted by that employer to the Department within 14 days after their deduction.

(3) The total of contributions paid in any tax year shall not exceed the lesser of

$(A - B - C)$ and D,

where—

A is 15 per cent of the person's salary for that year;

B is the total of any contributions paid by him in the year to another approved scheme;

C is the total of the contributions paid by him in the year under the Principal Regulations; and

D is the amount which would be likely to provide benefits of the largest amounts permitted by regulation 14 and the Schedule.

Investment of contributions

9.—(1) Any contributions paid by a contributor for investment under this regulation in accordance with any notice under regulation 4(2) or 6(1) or (2) shall be invested by the Department in one or more of the funds authorised by it for the purposes of these Regulations managed by an authorised insurance company selected by it.

(2) Regular contributions to secure the payment of a lump sum death benefit shall be invested by the Department with an authorised insurance company selected by it so as to secure the payment of a lump sum death benefit of the amount required by any notice under regulation 4(2) or 6(3).

Inward transfers

10.—(1) Where a person who enters employment in reckonable service has during previous employment paid contributions to—

(a) a free-standing additional voluntary contribution scheme; or

(b) an approved scheme which provides additional benefits through additional voluntary contributions paid by that person but does not fall within section 591(2)(*h*) of the Taxes Act, that person whether or not he becomes a contributor, may give written notice to the Department that he wishes the Department to accept from the trustees or managers of such a scheme a transfer value representing the value of the investments from his contributions.

(2) Where a transfer value is accepted by the Department it shall be invested by it, in accordance with the wishes of the person entering employment in reckonable service, in one or more of the funds authorised by the Department for the purposes of these Regulations managed by an authorised insurance company selected by it.

Outward transfers

11.—(1) Subject to paragraph (2), the Department shall, on application by a person who has ceased to be a contributor by virtue of regulation 7(2)(*c*), pay a transfer value representing the value of investments made under regulation 9(1) or 10(2) to one of the following schemes in which the person may be participating:—

(a) an approved scheme which provides additional benefits but does not fall within section 591(2)(*h*) of the Taxes Act; or

(b) a personal pension scheme; or

(c) any other approved scheme, provided the trustees or managers certify that the transfer value shall not be used to purchase benefits in the form of a tax-free lump sum.

(2) A transfer value shall not be payable under paragraph (1) unless one is payable in respect of that person under regulation 75 of the Principal Regulations(**14**).

Retirement and dependants' pensions

12.—(1) The benefits that may be provided on retirement in accordance with this regulation under a pension policy purchased as described in paragraph (7) are a retirement pension and one or more dependants' pensions.

(2) A retirement pension is a pension commencing not earlier than the date of retirement and is payable to the participator for life.

(**14**) Regulation 75 was substituted by S.R. 1989 No. 25 regulation 12(2)

(3) A dependants' pension is a pension which would become payable to a dependant on the death of the participator after his retirement and is payable during the life of that dependant, except that, in the case of a dependant who is a child, it shall cease to be payable when that person ceases to be a child.

(4) A pension policy purchased as described in paragraph (7) shall not provide for any retirement pension or dependants' pension capable in whole or in part of surrender, commutation or assignment (except as provided by paragraphs (9) and (10)).

(5) Not earlier than one month before retirement, a participator, by giving written notice to the Department, shall make a benefits election which shall specify—

(a) whether a retirement pension is to be provided;

(b) for whom, if anyone, dependants' pensions are to be provided;

(c) if more than one pension is to be provided, either—

(i) the proportion of the amount secured by the investments made under regulation 9(1) or 10(2) which is to be applied to the purchase of each of them; or

(ii) the dependants' pensions to be provided expressed as a percentage of the retirement pension;

(d) in respect of every pension to be provided, whether the annual rate of the pension—

(i) is to be fixed; or

(ii) is to vary in accordance with the Index; or

(iii) is to increase yearly by a specified percentage or, if lower than that percentage, by an increase in the Index for the year in question; and

(e) the authorised provider who is to provide each pension.

(6) In the case of a retirement pension, the election made in accordance with paragraph (5) may also specify that if the participator dies within the period of 5 years beginning when the retirement pension commences the balance that would have been payable during the remainder of that period if the pension had continued at the rate in force at the time of the participator's death is to be paid as a lump sum to his personal representatives.

(7) Subject to paragraphs (9) and (10), upon receipt of an election in accordance with paragraph (5) the Department shall, as soon as is reasonably practicable, realise the investments made under regulation 9(1) or 10(2) and apply the amount obtained for the purchase of a pension policy from an authorised provider chosen by the participator to provide the benefits specified in that election.

(8) Subject to paragraphs (9) and (10), if no benefits election under paragraph (5) has been made six months after the participator retires the Department may realise the investments made under regulation 9(1) or 10(2) and apply the amount obtained for the purchase of a pension policy from an authorised insurance company selected by it to provide such benefits as appear to the Department to be suitable.

(9) If the participator dies before retirement, or after retirement but before a policy such as is mentioned in paragraph (7) is purchased, the Department shall as soon as reasonably practicable realise the investments made under regulation 9(1) or 10(2) and pay the amount obtained to the personal representatives of the participator as a lump sum.

(10) In the case of a retirement pension, where there are exceptional circumstances of serious ill-health affecting the participator, the Department may realise the investments without purchasing any pension and in that event shall pay the amount obtained to him as a lump sum.

(11) If the annual rate of the retirement pension purchased in accordance with paragraph (7) or (8), when aggregated with the annual rate of any pensions payable and the annual equivalent of any lump sums payable to the participator under the Principal Regulations arising from the participator's

employment in reckonable service, does not exceed any amount prescribed by regulations for the time being in force under section 17(1) of the Pension Schemes (Northern Ireland) Act 1993(**15**), the authorised provider may discharge the liability for payment of the benefits under the pension policy by payment of a lump sum representing their capital value.

Lump sum death benefit

13.—(1) Where a contributor who is paying regular contributions to secure payment of a lump sum death benefit dies when no election under regulation 5(2) has effect, the Department shall pay the lump sum secured by those contributions to his personal representatives.

(2) Where on the death of a contributor an election under regulation 5(2) has effect—

(a) the department shall apply the pension element by purchasing a pension policy from the authorised provider determined in accordance with paragraph (3) or (4) to provide the pension or pensions in accordance with the terms of that election; and

(b) the Department shall pay any balance of the lump sum death benefit to his personal representatives.

(3) Any dependant for whom a pension is to be provided pursuant to paragraph (2) who has attained the age of 18 years at the date of death of the contributor may within six months of the date of death of the contributor make an election specifying the authorised provider by whom the pension is to be provided and where such an election is made the Department shall apply the pension element for the purchase of that pension from that authorised provided.

(4) Where no election has been made pursuant to paragraph (3) the Department shall purchase a pension policy from an authorised insurance company selected by it.

(5) If at the time of the death of the contributor any person specified in a notice of election given under regulation 5(3) had died or ceased to be a dependant, the proportion of the lump sum death benefit that was to have been applied to the purchase of a pension for that person shall be paid to the personal representatives of the contributor.

Benefit limits

14.—(1) The Schedule has effect for limiting the benefits that may be paid under these Regulations.

(2) The maximum annual rate of a retirement pension or dependant's pension ascertained from the Schedule may be increased by up to 3 per cent for each complete year that has elapsed, or in proportion to the increase in the Index that has occurred since payment of the pension became payable, if greater.

Repayment of investments in certain cases

15.—(1) In the case of a person who—

(a) ceases to be employed in reckonable service; and

(b) is entitled to receive a return of contributions under regulation 42 of the Principal Regulations; and

(c) has applied for and received such a return of contributions,

the Department shall make arrangements for that person to receive a lump sum representing the total realisable value of the investments made by the Department in respect of that person under regulation 9(1) or 10(2).

(**15**) 1993 c. 49

(2) There shall be deducted from any lump sum payable under paragraph (1) the amount of tax chargeable under section 598 of the Taxes Act.

Payment by the Department

16.—(1) Where pursuant to an election made under regulation 12(5) or 13(3) the Department purchases a pension policy from an authorised provider other than an authorised insurance company selected by it, the Department shall not, except in the circumstances described in paragraph (2), be liable for payment of any pension under that policy.

(2) Where pursuant to an election under regulation 5(2) or 12(5) or pursuant to regulation 12(8) or 13(4) the Department purchases a pension policy from an authorised insurance company selected by it the Department shall be liable to make to the person entitled to it any payment of pension under the policy which has not been made by that authorised insurance company.

(3) If when a participator dies a lump sum would have been payable under regulation 13 but the whole or part of that sum cannot be paid under that regulation by reason of regulation 14 and paragraph 14 of the Schedule the Department shall pay to the participator's personal representatives the amount which cannot be paid under regulation 13, so far as it does not exceed the prescribed amount, but subject to any deduction of tax under paragraph (7).

(4) If by reason of regulation 14 and the Schedule a pension provided under regulation 12 is not payable in full, the Department shall pay to the participator an amount, or aggregate of amounts, not exceeding the prescribed amount, out of the investments realised by virtue of regulation 12(7) which would otherwise have been applicable to the purchase of the pension but subject to any deduction of tax under paragraph (7).

(5) In paragraphs (3) and (4) the reference to the prescribed amount is to an amount calculated in accordance with the method for the time being specified in regulations made for the purposes of section 591 of the Taxes Act as the method to be used for calculating the amount of any surplus funds.

(6) The amount of any tax chargeable under the Taxes Act on payments made under these Regulations shall be deducted by the Department before payment to the participator or his personal representatives as the case may be.

Information

17.—(1) Any person making an election under these Regulations and the employer of such person shall give the Department such information as it may reasonably require for the purposes of its functions under these Regulations.

(2) A person making—

(a) an election under regulation 4(1)(*c*) or 5(4) to secure the payment of a lump sum death benefit; or

(b) an election under regulation 6(3)(*a*); or

(c) an election under regulation 6(4) corresponding to one that could have been made under regulation 6(3)(*a*),

shall, in particular, give to the Department such information about his health as it may reasonably require.

Payments in respect of deceased persons

18.—(1) This regulation applies where a person dies and the total of—

(a) any sums that were due to the person under these Regulations; and

(b) any sums payable under these Regulations to the person's personal representatives does not exceed £5,000.

(2) Where this regulation applies the Department may, without requiring the production of proof of title, pay the amount due under paragraph (1)(*a*) and (*b*)—

(a) to the deceased's personal representatives; or

(b) to the person, or to or among any one or more of any persons, appearing to it to be beneficially entitled to the estate and any person to whom such a payment is made, and not the Department, shall thereafter be liable to account for any amount so paid.

Determination of questions

19. All questions arising under these Regulations shall be determined by the Department and a determination by it is final.

Retrospective effect

20.—(1) Subject to paragraph (3), any sum paid to the Department by a teacher while employed in reckonable service in anticipation of these Regulations shall be treated as if it had been paid under these Regulations.

(2) A sum is one paid in anticipation of these Regulations if—

(a) it was paid after 2nd February 1989 and before 31st July 1996 on the understanding that if these Regulations providing for additional voluntary contributions were made it would be treated as such a contribution; and

(b) it would not, if these Regulations had been in operation throughout the tax year ending with 5th April 1989, have exceeded the limit imposed by regulation 8(3).

(3) Nothing in this regulation shall be taken to have imposed on the Department any obligation to make any investment before 1st April 1989, but—

(a) an investment so made shall be treated as having been made under these Regulations; and

(b) if any investment was so made and an event on which a benefit would have been payable occurred before the commencement of these Regulations, the benefit shall be paid to the person entitled thereto.

Sealed with the Official Seal of the Department of Education for Northern Ireland on

L.S.

D. Woods

27th June 1996. Assistant Secretary

The Department of Finance and Personnel hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on

L.S.

J. G. Sullivan

27th June 1996.

Assistant Secretary

SCHEDULE

Regulation 14

Benefit Limits

Part I

Interpretation

1. Paragraphs 2 to 6 have effect for defining expressions used in this Schedule.

2. "Total retirement benefits" means the total of—

(a) the annual rate of the participator's retirement pension under these Regulations;

(b) the annual rate of any retirement pension under the Principal Regulations; and

(c) the annual equivalent of any retirement lump sum under the Principal Regulations;

together with the total of so much of—

(d) the annual rate of any pension payable to the participator under any approved scheme; and

(e) the annual equivalent of any retirement lump sum under any approved scheme—

as is attributable to contributions paid while employed in reckonable service.

3. "The material date" means the earliest of—

(a) the retirement date;

(b) the date on which the retirement pension under these Regulations commenced; and

(c) the date on which the participator ceased to be employed in reckonable service or, as the case may be, to contribute under regulations 27 and 28 of the Principal Regulations(**16**).

4.—(1) Subject to sub-paragraph (3) and paragraph 5 "final remuneration" means the greater of A and B, where

A is the participator's highest year's adjusted salary in respect of employment in reckonable service, or salary in respect of a period of contributions under regulations 27 and 28 of the Principal Regulations, during the period 5 years ending on the material date; and

B is the average of the participator's salary for any period of 3 or more consecutive years ending no earlier than 10 years before the material date,

but, in respect of any year other than the one ending on the material date, the salary shall be taken to have been increased in proportion to any increase in the index from the end of that year up to the material date.

(2) In this paragraph "adjusted salary" means

$C + D$,

where—

C is the participator's total taxable salary for the year in question less any bonus payments and payments for overtime ("fluctuating emoluments"); and

D is the average, for a period ending with the year in question, of any fluctuating emoluments where the period is one of at least 3 years or, if shorter, the period during which the fluctuating emoluments have been payable.

(**16**) Regulation 27 was amended by S.R. 1978 No. 147 regulation 3(*f*) and S.R. 1988 No. 167 regulation 5

(3) In respect of the tax year 1987/88 and subsequent tax years, "final remuneration" shall not include any sums chargeable to tax under section 148 of the Taxes Act or chargeable under Schedule E to Part I of the Taxes Act and arising from the acquisition or disposal of shares, or an interest in shares, or from a right to acquire shares except where the shares or interest in shares or right to acquire shares which gave rise on or after 17th March 1987 to a Schedule E tax liability had been acquired before that date.

5.—(1) Where the participator entered employment in reckonable service on or after 1st June 1989 and the final remuneration, calculated under paragraph 4, exceeds the permitted maximum under section 590C of the Taxes Act(**17**), no account shall be taken of the excess over that permitted maximum.

(2) Paragraph (1) shall not apply to a person who was employed in reckonable service before 1st June 1989 and who resumes such employment following—

(a) an absence on maternity leave in respect of which she enjoyed a right to return to work under Articles 28 and 29 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(**18**);

(b) a period of secondment or additional period of absence necessarily attributable to that secondment; and

(c) in any other case, a break in employment in reckonable service not exceeding one year.

(3) Paragraph (1) shall not apply to a person who was in comparable Northern Ireland service before 1st June 1989 and who enters employment in reckonable service provided there has not been a period of more than one year between cessation of employment in comparable Northern Ireland service and the date of entering employment in reckonable service.

6.—(1) "Retained benefits" means the total of any pensions, including the annual equivalent of any lump sum payable to the participator—

(a) in respect of employment before the participator entered employment in reckonable service, under a retirement benefits scheme or under an annuity contract falling within section 431(4)(*d*) of the Taxes Act; or

(b) under a retirement annuity contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act; or

(c) under a personal pension scheme.

Part II

Retirement Pensions

7. The annual rate of a participator's retirement pension under these Regulations shall not be such as to cause the participator's total retirement benefits to exceed the permitted amount.

8.—(1) If the participator retires on his 60th birthday, except where paragraph 10 applies, the permitted amount is the greater of E and F, where—

E is 1/60th of the participator's final remuneration for each year of reckonable service up to a maximum of 40 years; and

F is the lesser of G and H.

(**17**) Section 590C was inserted by the Finance Act 1989 (c. 26) Schedule 6 paragraph 4

(**18**) S.I. 1976/147 (N.I. 28). Articles 14 to 32 were substituted by Article 3 and Schedule 1 to the Industrial Relations (Northern Ireland) Order 1993 S.I. 1993/2668 (N.I. 11)

(2) In sub-paragraph (1)—

(a) G is—

(i) in relation to a participator who entered employment in reckonable service before 17th March 1987, the fraction of final remuneration ascertained by reference to the number of years of reckonable service at age 60, from the following Table—

TABLE

Years of employment in reckonable service at age 60	Fraction
not more than 5	1/60th for each year
6	8/60ths
7	16/60ths
8	24/60ths
9	32/60ths
10 or more	40/60ths

and

(ii) in any other case, 1/30th of the participator's final remuneration for each year of reckonable service up to a maximum of 20 years; and

(a) H is 2/3rds of the participator's final remuneration less any retained benefits.

9. If the participator retires on a date later than his 60th birthday, the permitted amount is—

(a) where the participator first entered employment in reckonable service before 1st June 1989, the greater of J, K and, where applicable, L, where—

J is an amount calculated in accordance with paragraph 8 as at that date;

K is an amount calculated in accordance with paragraph 8 as at the participator's 60th birthday increased, up to the date of his retirement, in proportion to any increase in the index during that period; and

L is, in the case of a participator with more than 40 years of reckonable service, 1/60th of the participator's final remuneration for each year of reckonable service up to a maximum of 45 years excluding any years before the participator's 60th birthday in excess of 40 years; and

(b) in any other case, the lesser of the amounts calculated in accordance with paragraph 8(2)(*a*)(ii) and (2)(*b*).

10.—(1) If the participator retires on his 60th birthday, having at a date before that birthday ceased to be employed in reckonable service—

(a) where the participator first entered employment in reckonable service before 1st June 1989, the permitted amount is the greater of

$(M - R)$ and

$\left(\frac{N \times Q}{P} + R\right)$

where—

M is 1/60th of the participator's final remuneration for each year of reckonable service up to a maximum of 40 years;

N is the number of years on which M is calculated;

P is the number of years on which M would have been calculated if the participator had continued in employment in reckonable service up to his 60th birthday;

Q is the maximum amount calculated in accordance with paragraph 8 if the participator had continued in employment in reckonable service up to his 60th birthday;

R is the appropriate increase; and

(b) where the participator first entered employment in reckonable service after 31st May 1989, the permitted amount is the lesser of the amounts calculated in accordance with paragraph 8(2)(*a*)(ii) and (2)(*b*).

(2) For the purposes of sub-paragraph (1) the appropriate increase is an increase in the amount in question in proportion to any increase in the Index from the cessation of employment in reckonable service to the date of payment of retirement benefits.

11.—(1) If the participator retires and is entitled to receive retirement benefits by virtue of regulation 48A of the Principal Regulations(**19**), the permitted amount is—

(a) where the participator first entered employment in reckonable service before 1st June 1989, the greater of S and

$$\frac{(N \times Q)}{P}$$

and

(b) in any other case, T, where—

N, P and Q have the same respective meanings as in paragraph 10;

S is 1/60th of the participator's final remuneration for each year of reckonable service up to a maximum of 40 years; and

T is the lesser of the amounts calculated in accordance with paragraph 8(2)(*a*)(ii) and (2)(*b*).

12.—(1) If the participator retires and is entitled to receive retirement benefits by virtue of regulation 48(1)(*c*) of the Principal Regulations, whether or not those benefits were enhanced under regulation 49(3) of those Regulations(**20**), the permitted amount is that fraction of his final remuneration which he could have received calculated in accordance with paragraph 8 had he remained in employment in reckonable service until his 60th birthday.

Part III

Dependants' Pensions

13.—(1) Where only one dependant's pension is payable the annual rate of that pension under these Regulations shall not be such as to cause the total of the annual rates of the relevant benefits to exceed the permitted amount.

(2) For the purposes of sub-paragraph (1) the relevant benefits are—

(a) the dependant's pension; and

(**19**) Regulation 48A was inserted by S.R. 1978 No. 147 and amended by S.R. 1978 No. 351 and S.R. 1981 No. 151
(**20**) Regulation 49(3) was amended by S.R. 1988 No. 363 Regulation 7

(b) any similar pension payable to the dependant under the Principal Regulations or under a free-standing additional voluntary contributions scheme to which contributions were paid while the participator was employed in reckonable service,

and the permitted amount is 2/3rds of the maximum retirement pension.

(3) Where two or more dependants' pensions are payable—

(a) the annual rate of each such pension shall not be such as to cause the annual rates of the relevant benefits payable to the dependant in question to exceed the permitted amount referred to in sub-paragraph (2); and

(b) the total of the annual rates of such pensions shall not be such as to cause the total of the annual rates of the relevant benefits to exceed that permitted amount.

(4) For the purposes of sub-paragraph (3) the relevant benefits are—

(a) the dependants' pensions; and

(b) any similar pensions payable as mentioned in sub-paragraph (2)(*b*),

and for the purposes of paragraph (3)(*b*) the permitted amount is the annual rate of the maximum retirement pension.

(5) Subject to sub-paragraph (6), the maximum retirement pension is the participator's permitted amount calculated in accordance with paragraphs 8 to 12 but disregarding any retained benefits.

(6) In calculating the maximum retirement pension—

(a) if the participator died whilst employed in reckonable service and before attaining his 60th birthday, it shall be assumed that he continued employment in reckonable service at the same salary up to, and retired on, his 60th birthday; and

(b) if the participator died whilst employed in reckonable service and had attained his 60th birthday, it shall be assumed that he retired on the day before the date of his death.

Part IV

Lump Sum Death Benefit

14.—(1) The lump sum death benefit under regulation 13 shall not be such as to cause the total of that lump sum and any death benefits totalling £2,500 or more that are payable under relevant schemes to exceed the permitted amount.

(2) Relevant schemes are—

(a) approved schemes;

(b) schemes approved under Chapter IV of Part XIV of the Taxes Act;

(c) free-standing additional voluntary contributions schemes;

(d) retirement annuity contracts approved under Chapter III of Part XIV of the Taxes Act; and

(e) the scheme constituted by the Principal Regulations.

(3) The permitted amount is the greater of—

(a) £5,000; or

(b) 4 times the participator's remuneration.

(4) The participator's remuneration is the greatest of U, V and W, where—

U is what the participator's final remuneration would have been if the date of death had been the material date;

V is the participator's highest year's adjusted salary for the purpose of calculating U; and

W is the participator’s total taxable earnings during any period of 12 months ending not more than 3 years before the date of death, increased as mentioned in paragraph 4(1).

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision for the payment of additional voluntary contributions by teachers who are members of the Teachers' Superannuation Scheme as constituted by the Teacher’s Superannuation Regulations (Northern Ireland) 1977, (“the Principal Regulations”) in order to secure additional benefits financed by investment of those contributions.

The Regulations have effect retrospectively to 1st April 1989 by virtue of Article 14(1) of the Superannuation (Northern Ireland) Order 1972.

The Regulations provide for the making of elections of various kinds. Regulation 3 contains general provisions as to their making and acceptance; regulation 4 provides for elections to pay lump sum and regular contributions so as to secure additional retirement and dependants' pensions and further provides for elections to pay regular contributions so as to secure a lump sum death benefit in the event of death while paying such contributions; regulation 5 permits teachers who have elected to provide a lump sum death benefit to apply that sum, either in whole or part, to the purchase of dependants' pensions; regulation 6 allows elections made under regulation 4 to be varied or cancelled.

When an election has effect a person is a contributor for the purpose of these Regulations but, generally, ceases to be a contributor if he is no longer in employment in reckonable service (regulation 7).

Regulation 8 deals with the payment of contributions and imposes a limit on their total amount.

Regulation 9(1) requires the Department to invest contributions with an insurance company selected by it in one or more of the specified funds in accordance with any wishes expressed by the contributor. Regulation 9(2), referring to an election to provide a lump sum death benefit, requires contributions to be invested so as to secure payment of the amount specified. Regulation 10 requires a transfer value accepted from another additional voluntary contributions scheme also to be invested as appropriate, while regulation 11 sets out the provisions regarding payment of a transfer value (representing the value of the investments) to an insurance company or a superannuation scheme.

On retirement, investments (except those providing for a lump sum death benefit) are to be realised and retirement or dependants' pension, or both, are to be purchased with the proceeds from an authorised provider chosen by the participator to provide the benefits specified in the notice of election. Such pensions are payable for life, and are not able to be commuted or assigned, but provision is made to allow the proceeds of the realisation of investments to be paid as a lump sum in specified circumstances (regulation 12).

Regulation 13 provides for the payment of lump sum death benefits secured by contributions under regulation 4.

Regulation 14, with the Schedule, imposes maximum permitted limits on benefits payable under Regulations.

Regulation 15 provides for the realisable value of investments to be repaid where contributions under the Principal Regulations are repaid.

Regulation 16 provides that the Department is not liable for payments under a pension policy purchased from an authorised provider except in the circumstances specified in regulation 16(2), regulation 16 also makes provision for the payment of lump sums to personal representatives of a deceased participator. Regulation 17 requires the Department to be given information needed for the purposes of its functions under the Regulations. Regulation 18 provides for any payments, up to a maximum of £5,000, payable to the personal representatives of deceased persons, to be made without confirmation or proof of title. Regulation 19 provides for questions to be determined by the Department.

Regulation 20 provides for payments made by employees in anticipation of these Regulations to be treated as contributions made under these Regulations and for benefits to be payable where such payments were invested and a relevant event occurred before the commencement of the Regulations.