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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 393**

**The Teachers' Superannuation (Scotland) Regulations 2005**

**PART C**

**TEACHERS' CONTRIBUTIONS**

**Salary on which contributions are payable**

**C1.**—(1) Subject to paragraphs (2) to (9) and regulation C2, a teacher's contributable salary shall, for the purpose of these Regulations, be the aggregate of the amounts payable by his or her employer in respect of their pensionable employment—

- (a) whether by way of salary or in kind; and
- (b) in satisfaction of any contractual or statutory liability arising out of sickness leave or maternity, paternity or adoption leave.

(2) The following payments or allowances shall not be treated as part of the teacher's contributable salary—

- (a) payments in respect of overtime, special services or extra duties;
- (b) any emoluments receivable from or out of an educational endowment or bequest;
- (c) any additional allowance paid to a teacher serving outside the British Islands under arrangements approved by the Scottish Ministers for the interchange of teachers;
- (d) payments by way of travelling or expense allowances;
- (e) any sums chargeable to tax under section 148 of the Taxes Act<sup>(1)</sup>;
- (f) subject to paragraph (9), the equivalent money value to the teacher of the provision of a motor vehicle by or on behalf of his or her employer;
- (g) any compensation paid under the Local Government (Compensation for Reduction of Remuneration on Reorganisation) (Scotland) Regulations 1995<sup>(2)</sup>.

(3) The Scottish Ministers may make a direction, in such cases as they think appropriate, disapplying any exclusion under paragraph (2) from the salary of a teacher.

(4) In determining the contributable salary to which a teacher is entitled for the purposes of abatement of annual pension under regulation E18, the following payments to that teacher shall be disregarded—

- (a) any payments in respect of employment in connection with education which, while employed in pensionable employment or comparable British service, the teacher undertook in addition to such service and which he or she continues after ceasing such service, not exceeding, when expressed as an annual rate, the average annual rate of such payments for the last 3 years of employment in pensionable employment or comparable British service;

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(1) 1988 c. 1. Section 148 is repealed by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 8, Part 1.

(2) S.I. 1995/2865 as amended by S.I. 1997/720.

- (b) any payments in respect of employment in connection with education outside the British Islands, being employment in which, in the opinion of the Scottish Ministers, it is expedient to facilitate the employment of teachers from Scotland; and
- (c) any fees in respect of employment for the purposes of the Scottish Certificate of Education or the General Certificate of Secondary Education.

(5) Subject to paragraphs (6) and (7), in relation to a teacher who enters pensionable employment on or after 1st June 1989, where his or her salary, calculated in terms of paragraph (1), exceeds the permitted maximum in terms of section 590C of the Taxes Act(3), the excess over that permitted amount shall not be treated as contributable salary for the purpose of these Regulations.

(6) Paragraph (5) shall not apply to a teacher who was in pensionable employment before 1st June 1989 and who resumes pensionable employment following—

- (a) an absence on maternity leave in respect of which she enjoyed a right to return to work under Part VIII of the Employment Rights Act 1996 and regulations made thereunder(4);
- (b) a period of secondment or additional period of absence necessarily attributable to that secondment; or
- (c) in any other case, a break in teaching employment not exceeding one year.

(7) Paragraph (5) shall not apply to a teacher who was in comparable British service before 1st June 1989 who enters pensionable employment, provided there has not been a period of more than one year between cessation of employment in comparable British service and entering pensionable employment.

(8) For the purposes of paragraph (7) “comparable British service” does not include service which is pensionable under a superannuation scheme for teachers in public employment in the Channel Islands and the Isle of Man.

(9) Notwithstanding paragraph (2)(f), where on 15th November 1993 a teacher was paying contributions on a sum which represents the equivalent money value to him or her of the provision of a motor vehicle, the equivalent money value to him or her of the provision of a motor vehicle provided from time to time by or on behalf of the employer shall be treated as salary on which contributions will continue to be payable until the earlier of the date on which—

- (a) a motor vehicle as no longer provided for him or her; or
- (b) he or she ceases to be employed by the employer employing him or her on 15th November 1993.

### **Salary on which contributions are payable – election**

**C2.**—(1) Subject to paragraph (12), a teacher who—

- (a) continues in pensionable employment but whose contributable salary is reduced, otherwise than by reason of sick leave or maternity, paternity or adoption leave, and who satisfies the conditions in paragraph (2); or
- (b) leaves pensionable employment with one employer (“employer A”) and—
  - (i) takes up employment again with employer A, or
  - (ii) takes up employment with another employer (“employer B”),
 at a lower contributable salary and who satisfies the conditions in paragraph (3),

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(3) 1988 c. 1. Section 590C was inserted by the Finance Act 1989 (c. 26), section 75 and Schedule 6, paragraph 4, is amended by the Finance Act 1993 (c. 34), section 107 and is prospectively repealed by the Finance Act 2004 (c. 12), Schedule 42, Part 3. See S.I. 2004/773 for the current permitted maximum.

(4) 1996 c. 18. Part VIII (sections 71-80) of the 1996 Act were substituted by the Employment Relations Act 1999 (c. 26) section 7 and Schedule 4, Part I and to which there are amendments not relevant to these Regulations. The current Regulations are the Maternity and Paternal Leave etc. Regulations 1999 (S.I. 1999/3312).

may make an election that his or her salary is to be treated as having continued at the rate specified in paragraph (4).

- (2) The conditions referred to in paragraph (1)(a) are—
- (a) that on the date when the contributable salary was reduced the teacher had attained the age of 50;
  - (b) that on that date he or she had been in pensionable employment or excluded employment for at least 5 years; and
  - (c) that the responsibility of that teacher's post after the reduction in contributable salary is lower than the responsibility of any of the posts which he or she had held during the period of 5 years immediately preceding the date of the reduction in contributable salary.
- (3) The conditions referred to in paragraph (1)(b) are—
- (a) that on the date of leaving pensionable employment with employer A the teacher had attained the age of 50;
  - (b) that on that date he or she had been in pensionable employment or excluded employment for at least 5 years;
  - (c) that the responsibility of the teacher's new post with employer A or, as the case may be, the teacher's post with employer B is lower than the responsibility of any of the posts which he or she had held during the period of 5 years immediately preceding the date on which he or she left employment with employer A as described in paragraph (1);
  - (d) that employer A notifies the Scottish Ministers that the teacher has provided satisfactory service during the period of 5 years referred to in sub paragraph (c) or, where he or she has been employed by employer A for less than 5 years, during the period when he or she was employed by employer A; and
  - (e) that no more than one year had elapsed between leaving pensionable employment with employer A as described in paragraph (1) and taking up pensionable employment again with employer A or, as the case may be, taking up pensionable employment with employer B.
- (4) The rate of salary referred to in paragraph (1) is—
- (a) where the teacher falls within paragraph (1)(a) and is employed in full time service after the reduction in contributable salary, the rate applicable immediately before the reduction;
  - (b) where the teacher falls within paragraph (1)(b) and is re employed in full time service with employer A, or is employed in full time service with employer B, the rate applicable immediately before he or she left employment with employer A as described in paragraph (1);
  - (c) where the teacher falls within paragraph (1)(a) and is employed in part time service after the reduction in contributable salary, the rate which would have been applicable immediately before the reduction if he or she had been employed for the same number of hours or for the same proportion of the year, term, month or week, as the case may be, as he or she is employed immediately after the reduction; and
  - (d) where the teacher falls within paragraph (1)(b) and is employed in part time service at the start of their re employment with employer A or their employment with employer B, the rate which would have been applicable immediately the teacher left their employment with employer A as described in paragraph (1) if the teacher had been employed for the same number of hours or for the same proportion of the year, term, month or week, as the case may be, as he or she is employed at the start of his or her re employment with employer A or, as the case may be, his or her employment with employer B,

increased, in each case, on each increase day by—

$$\frac{(RI \quad RE)}{RF}$$

where—

RI is the retail prices index for the month in which the increase day occurs; and

RE is the retail prices index for the month in which the election was made.

(5) For the purposes of paragraph (4) the “increase day” is the first day of the month in each year following the month in which—

- (a) the salary was reduced, in a case where the teacher falls within paragraph (1)(a), or
- (b) the teacher left his or her employment with employer A as described in paragraph (1) in a case where the teacher falls within paragraph (1)(b),

and the first increase day is that falling in the year after the year in which the salary was reduced or the teacher left his or her employment with employer A, as the case may be.

(6) An election for the purposes of paragraph (1)—

(a) must be made by giving written notice to the Scottish Ministers before the date which is 3 months after—

- (i) the reduction in salary, in a case where the teacher falls within paragraph (1)(a); or
- (ii) taking up employment again with employer A or, as the case may be, taking up employment with employer B, in a case where the teacher falls within paragraph (1)(b);

(b) has effect from—

- (i) the day after the last day on which the teacher’s salary was payable at the rate applicable immediately before the reduction in contributable salary, in a case where the teacher falls within paragraph (1)(a); or
- (ii) the day on which the teacher takes up employment again with employer A or, as the case may be, takes up employment with employer B, in a case where the teacher falls within paragraph (1)(b); and

(c) subject to paragraph (7), continues to have effect until the teacher ceases to be in pensionable employment unless he or she—

- (i) elects to pay additional contributions under regulation C8 or C9; or
- (ii) takes up pensionable employment with another employer (“employer C”) within 6 months of ceasing to be in pensionable employment.

(7) An election for the purposes of paragraph (1) may be cancelled by giving written notice to the Scottish Ministers at any time.

(8) Notice of cancellation—

- (a) has effect from the first day of the month following that in which it was received; and
- (b) is irrevocable.

(9) If, while an election made for the purposes of paragraph (1) has effect, there is any further reduction in salary during a period of sick leave or maternity, paternity or adoption leave, the rate of salary specified in paragraph (4) is, during that period, to be treated as having been reduced in the same proportion as the actual rate.

(10) In paragraphs (1)(a) and (1)(b) the reference to contributable salary is, in the case of a teacher employed in part-time service, a reference to the salary which would have been the teacher’s contributable salary if the teacher had been in full-time service.

(11) In this regulation “the retail prices index” means the index of retail prices published by the Office for National Statistics.

(12) Paragraph (1) shall not apply where a teacher is in pensionable employment by virtue of regulation B9.

### **Ordinary contributions**

**C3.**—(1) Subject to paragraph (2), a teacher who is in pensionable employment is to pay contributions of 6 per cent of contributable salary for the time being.

(2) A teacher who has made an election under regulation C2(1) shall, in addition to the contributions referred to in paragraph (1), pay contributions of the required percentage of the difference between the teacher’s actual contributable salary and the contributable salary at the rate referred to in regulation C2(4) to the extent that such contributions are not paid by any employer referred to in regulation H4 under an election mentioned in that regulation.

(3) No contributions are to be paid by a teacher in respect of any reckonable service beyond a total of 45 years.

### **Contributions where an election under regulation B2(4) has been made**

**C4.**—(1) This regulation applies where—

- (a) a teacher has elected under regulation B2(4) that his or her part time employment should be pensionable; and
- (b) the Scottish Ministers have specified that the election shall have effect from an earlier date than the first day of the month after that in which the notice is given.

(2) Where this regulation applies the teacher shall—

- (a) pay the contributions calculated in accordance with regulation C3 referable to the back period; and
- (b) unless the Scottish Ministers determine otherwise, pay interest on such contributions which have accrued on each reference date, at 7 per cent per annum compounded with yearly rests from the reference date in question to the date of payment of the contributions.

(3) For the purposes of this regulation—

- (a) the first reference date is the date a year after the end of the month in which the beginning of the back period falls;
- (b) the next reference date is the date a year after the first reference date and each subsequent reference date is the date a year after the previous reference date; and
- (c) the contributions which have accrued on a reference date are the contributions which would be outstanding on that date if the teacher had been in pensionable employment during the back period and if contributions had not been paid in accordance with regulation C15.

### **Additional contributions to purchase past added years**

**C5.**—(1) This regulation applies to a teacher who—

- (a) is in pensionable employment otherwise than by virtue of regulation B9; and
- (b) first became employed in pensionable employment, or has been credited with reckonable service on the receipt of a transfer value in respect of comparable British service that began, before he or she attained the age of 55; and
- (c) has not become entitled to payment of retirement benefits under regulation E6(1)(a) or (b).

(2) Subject to paragraphs (4) to (9), a teacher to whom this regulation applies may elect to pay additional contributions in accordance with—

- (a) Part I of Schedule 4 (“Method A”); or
- (b) Part II of Schedule 4 (“Method B”),

in order to become entitled to count an additional period (“the past period”) as reckonable service.

(3) Subject to paragraphs (4), (5), (7) and (10), the employer of a teacher to whom this regulation applies may elect to pay additional contributions in respect of the teacher in accordance with Part II of Schedule 4 (“Method B”).

(4) The past period must not exceed the maximum calculated in accordance with Schedule 3, and—

- (a) must have begun after the teacher attained the age of 20;
- (b) must have ended—
  - (i) before the teacher attained the age of 60;
  - (ii) before the date of the election; and
  - (iii) if the teacher has become entitled to payment of retirement benefits by virtue of regulation E6(1)(d), before the relevant termination of employment;
- (c) must be one during which the teacher was not in full time pensionable employment, unless—
  - (i) contributions in respect of the period have been repaid after 31st May 1973; or
  - (ii) the right to count reckonable service in respect of it has been extinguished by payment of a transfer value;
- (d) if payment is to be made by Method A, must satisfy paragraph 2 of Schedule 4; and
- (e) unless payment is to be made by Method B and notice of the election is given no earlier than the date of applying for payment of retirement benefits, must be a period of not less than 30 days.

(5) If the teacher is already entitled to count any reckonable service in respect of the past period, that period is for the purposes of payment under this regulation and those of regulation D1 reduced by the length of that service.

(6) Where payment is to be made by Method A, the period during which additional contributions are to be paid (“the contribution period”) must satisfy paragraph 2 of Schedule 4.

(7) Subject to paragraph (8), an election under this regulation may be made at any time.

(8) A teacher may not simultaneously make different elections under this regulation, except that an election to make payment by Method A may be made at the same time as an election to make payment by Method B in respect of a different past period.

(9) An election under paragraph (2) must be made by giving written notice to the Scottish Ministers, which—

- (a) is to specify the past period;
- (b) is to specify the method by which payment is to be made;
- (c) where payment is to be made by Method A, is to specify the length of the contribution period; and
- (d) where payment is to be made by Method A, is to contain a declaration that the teacher has no reason to believe that his or her health may prevent them from continuing in pensionable employment until payment has been completed.

(10) An election under paragraph (3) must be made by giving written notice to the Scottish Ministers which—

- (a) is to specify the teacher in respect of whom it is made; and
- (b) is to specify the past period.

(11) An election under this regulation shall be revoked only where a written request seeking revocation has been accepted in writing by the Scottish Ministers but any additional contributions paid to the date of such acceptance shall not be refunded.

(12) Where payment is to be made by Method A and—

- (a) within 12 months after the date of the election the teacher becomes incapacitated; and
- (b) the declaration required by paragraph (9)(d) was not made in good faith,

the election is to be treated as not having been made and any additional contributions paid are to be refunded.

### **Additional contributions to purchase past added years in the case of a deceased teacher**

**C6.**—(1) This regulation applies where a teacher dies in circumstances where—

- (a) had he or she ceased to be in pensionable employment on the date of death, he or she would have become entitled under regulation E6 to payment of retirement benefits; and
- (b) in respect of whom another person is entitled under regulation E30 to a long term pension.

(2) Where this regulation applies, the person, or in the case of a child, a person acting on the child's behalf, may by giving written notice to the Scottish Ministers within 3 months after the death make any election which, on the hypothesis stated in paragraph (1)(a), the deceased teacher could have made under regulation C5.

(3) Subject to paragraph (4), an election under this regulation has effect as if it had been made under regulation C5 by the deceased teacher.

(4) The additional contributions except to the extent that they are, with the consent of any person entitled to it, met out of a terminal sum, payable by the person referred to in sub-paragraph (1)(b).

(5) This regulation does not apply to a teacher who at the date of his or her death was in pensionable employment by virtue of regulation B9.

### **Additional contributions to purchase past added years under earlier provisions**

**C7.**—(1) Part I of Schedule 5 has effect where immediately before the date on which these Regulations come into force additional contributions remained to be paid by virtue of regulations 22 to 25 of the 1977 Regulations(5).

(2) Part II of Schedule 5 has effect where immediately before the date on which these Regulations come into force additional contributions remained to be paid by virtue of regulation 26 of the 1977 Regulations.

### **Additional contributions to purchase current added years**

**C8.**—(1) Subject to paragraphs (11) to (14), this regulation applies to a teacher who—

- (a) before attaining the age of 60 has ceased to be in pensionable employment, otherwise than by virtue of an election under regulation B7;
- (b) was not then incapacitated;
- (c) did not then become entitled to payment of retirement benefits; and
- (d) has not become a member of another occupational pension scheme.

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(5) *S.I. 1977/1360*. Regulation 22 was substituted by and Regulation 23 amended by *S.I. 1983/1431*. Regulation 25 was amended by *S.I. 1980/344*. The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

(2) Subject to paragraphs (3), (4) and (10), a teacher to whom this regulation applies may elect to pay additional contributions in order to become entitled to count as reckonable service a period (“the period”) beginning on the day after the cessation of the pensionable employment, or where paragraph (4)(a) applies on the day after the last day of the earlier period.

(3) The period—

- (a) must end before the teacher’s 60th birthday;
- (b) must not in any case exceed the maximum calculated in accordance with Schedule 3;
- (c) if the teacher has become employed—
  - (i) as a teacher in any school outside the British Islands in which, in the opinion of the Scottish Ministers, it is expedient to facilitate the employment of teachers from Scotland; or
  - (ii) in an educational service outside the British Islands in employment which to a substantial extent involves the control or supervision of teachers in such schools, must not exceed 6 years; and
- (d) in any case to which paragraph (c) does not apply, must not exceed 3 years.

(4) If the teacher has paid additional contributions under this regulation for an earlier period and—

- (a) has not since the end of that period been in pensionable employment; or
- (b) has since been in pensionable employment but for less than 12 months,

the earlier period is to be deducted from the maximum allowed by paragraph (3)(b).

(5) If before the end of the period the teacher—

- (a) becomes entitled to payment of retirement benefits;
- (b) becomes a member of another occupational pension scheme; or
- (c) dies,

the period is to be treated as having ended on the day on which the relevant event occurred; and if before the end of the period the teacher fails to pay an additional contribution, or a late payment is not accepted under paragraph (9), it is to be treated as having ended on the day up to which contributions have been paid.

(6) An additional contribution is payable for each financial year and is a percentage of the notional salary for so much of the period as falls within that year.

(7) For the purposes of paragraph (6)—

- (a) the notional salary is an amount notified by the former employer, or (where no such notification is given) estimated by the Scottish Ministers, as being what the teacher’s contributable salary would have been if pensionable employment had not ceased and the teacher had continued to be employed in the same post and on the same terms taking into account, where appropriate, any election under regulation C2(1); and
- (b) the percentage is  $(A + B)$  where A is the percentage specified in regulation C3 and B is the required percentage which is to be applied to contributable salary to determine employers’ contributions under Part H.

(8) The additional contribution for a financial year is to be paid directly to the Scottish Ministers—

- (a) where the period has not ended during the financial year, within 3 weeks after the end of the financial year; and
- (b) in any other case, within 6 weeks after the end of the period or the date of a written notification by the Scottish Ministers that payment is due, whichever is the later.



(9) A late payment of a contribution may for special reasons be accepted by the Scottish Ministers; but if it is accepted the teacher is to pay interest on the amount of the contribution at 4 per cent per annum, compounded with yearly rests, from the due date of payment to the date of payment.

(10) An election under this regulation must be made by giving written notice to the Scottish Ministers, which must specify the period and must be given—

- (a) if paragraph (3)(c) applies, within 6 months; and
- (b) in any other case, within 3 months,

after the cessation of the teacher's pensionable employment or, if later, the end of a previous period for which he or she has paid additional contributions under this regulation.

(11) For the purposes only of this regulation a teacher remains in pensionable employment while absent from duty during and in consequence of a trade dispute.

(12) Paragraph (11) applies—

- (a) even if the teacher was not participating in or financing or otherwise directly interested in the trade dispute; and
- (b) even if the teacher's employer was not a party to the trade dispute.

(13) In this regulation, "trade dispute" has the meaning given by section 244 of the Trade Union and Labour Relations (Consolidation) Act 1992(6).

(14) This regulation does not apply to a teacher in relation to pensionable employment by virtue of regulation B9.

#### **Additional contributions for current period: service in a reserve force**

**C9.**—(1) This regulation applies to a teacher who ceases to be in pensionable employment by virtue of being called out or recalled for permanent service in Her Majesty's armed forces in pursuance of a call out notice or call out order or a recall order made under the Reserve Forces Act 1996(7), provided that—

- (a) the teacher does not apply for payment of any retirement benefits to which he or she would otherwise be entitled on ceasing to be in such employment; and
- (b) he or she does not accrue any reckonable service in the Armed Forces Pension Scheme or become a member of any other occupational pension scheme during his or her period of permanent service.

(2) Subject to paragraphs (10) and (11), a teacher to whom this regulation applies may elect to pay additional contributions in order to become entitled to count as reckonable service a period ("the period") beginning on the day after the cessation of the pensionable employment and ending with the date on which he or she is released from permanent service or discharged.

(3) An additional contribution is payable for each financial year and is—

- (a) 6 per cent of the notional salary for so much of the period as falls within that financial year; and
- (b) where an election has been made under regulation C2(1), an amount equivalent to any contributions which would have been paid under regulation C3(2) for so much of the period as falls within that financial year taking the reference in that regulation to the teacher's actual contributable salary as a reference to the notional salary disregarding the election under regulation C2(1).

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(6) 1992 c. 52.

(7) 1996 c. 14.

(4) The notional salary is the salary that would have been payable if pensionable employment had not ceased and the teacher had continued to be employed in the same post and on the same terms taking into account, where appropriate, any election under regulation C2(1).

(5) Subject to paragraphs (7) and (8), an election under this regulation must be made in writing to the Scottish Ministers at any time between the cessation of pensionable employment and 6 months after the return to pensionable employment following service in a reserve force.

(6) An election has effect only if the teacher pays—

- (a) any contribution under this regulation within 3 months of the date of a written notification by the Scottish Ministers that payment is due; and
- (b) all contributions and payments due by him or her in respect of the period by virtue of any election made under regulation C5, C10 or C14.

(7) An election made before the end of the period must specify the day on which the period begins; and an election made after the end of the period must specify the period.

(8) Subject to paragraph (10), where the teacher dies during service in a reserve force without having made an election under this regulation, such an election shall be deemed to have been made so that the period beginning on the day after the cessation of the pensionable employment and ending with the date of his or her death shall count as reckonable service.

(9) Any contribution due under this regulation at the date of a teacher's death during his or her service in a reserve force shall be deducted from any benefits payable under these Regulations.

(10) Notwithstanding that a teacher to whom this regulation applies has not made an election under this regulation, he or she shall be entitled to count the period as reckonable service where during the period his or her service pay, when aggregated with any payments under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(8), is less than the remuneration he or she would have received if he or she had during the period continued in the pensionable employment in which he or she was employed immediately before being called into service in a reserve force.

(11) For the purposes of paragraph (10), “service pay” means the pay for performing service in a reserve force, and includes marriage, family and other similar allowances.

### **Additional contributions for family benefits**

**C10.**—(1) Parts I and III of Schedule 6 have effect for enabling men and unmarried women to pay additional contributions (“family benefit contributions”) in order to secure, or to increase, family benefits in respect of reckonable service before 1st April 1972.

(2) Parts II and III of Schedule 6 have effect for enabling married women to pay family benefit contributions in respect of reckonable service before 6th April 1988.

### **Return of contributions**

**C11.**—(1) Subject to paragraph (3), this regulation applies where a teacher has ceased to be in pensionable employment and—

- (a) he or she is not qualified for retirement benefits; and
- (b) no transfer value under regulation G1 has since been paid or become payable in respect of the teacher; and
- (c) he or she did not within the relevant period re-enter pensionable employment; and
- (d) the relevant period is not a period, or part of a period, for which the teacher has elected to pay additional contributions under regulation C8 or C9.

(2) The relevant period is the period of one month beginning when the teacher ceased to be in pensionable employment.

(3) This regulation shall not apply if part of the teacher's reckonable service is attributable to a transfer value paid in respect of him or her to the Scottish Ministers by the trustees or managers of a personal pension scheme, notwithstanding that the teacher has less than 2 years' service.

(4) For the purposes of paragraph (1), a woman who ceased to be in pensionable employment wholly or partly because of pregnancy or confinement is to be treated—

(a) as having remained in such employment while she enjoyed the right to return to work conferred by Part VIII of the Employment Rights Act 1996(9); and

(b) if she has exercised that right, as not having ceased to be in pensionable employment.

(5) Where this regulation applies the teacher is entitled to have returned the balance of his or her contributions, calculated in accordance with regulation C12.

(6) The entitlement takes effect at the end of the relevant period, or on the teacher's 70th birthday if earlier.

### **Calculation for the purposes of regulation C11**

**C12.**—(1) The balance of contributions referred to in regulation C11(5) is to be calculated as at the date of the calculation, or the teacher's 70th birthday if earlier ("the calculation date").

(2) The balance is  $(A - B) - C$ , where—

A is the total of the amounts specified in paragraph (3);

B is the total of the deductions specified in paragraph (4); and

C is the amount of the tax chargeable on  $(A - B)$  under section 598 of the Taxes Act(10).

(3) The amounts are those of—

(a) all contributions paid, under regulations C3, C5 and C8 to C10 except—

(i) any treated as employer's contributions; and

(ii) any paid in respect of a period of employment for which an incapacity gratuity under regulation E21 has been received;

(b) contributions paid in respect of any comparable British service in respect of which the teacher is entitled to count reckonable service by virtue of the acceptance of a transfer value;

(c) if the teacher was entitled to count any reckonable service by virtue of the acceptance of a transfer value in respect of an employment that was not comparable British service, either—

(i) any payment by way of repayment of contributions, and interest, that he or she would otherwise have been entitled to receive under the rules of the pension scheme to which he or she was subject in the employment; or

(ii) if that scheme made no provision for the repayment of contributions, the contributions he or she paid under it in respect of the employment; and

(d) interest to the calculation date, at 3 per cent per annum, compounded with yearly rests—

(i) on the contributions mentioned in sub paragraphs (a) and (b), from the first day of the financial year following that in which they were paid; and

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(9) 1996 c. 18. Part VIII (sections 71-80) of the 1996 Act were substituted by the Employment Relations Act 1999 (c. 26), section 7 and Schedule 4, Part I, to which there are amendments not relevant to these Regulations.

(10) 1988 c. 1. Section 595 is amended by the Finance Act 1989 (c. 26), Schedule 6 and is prospectively repealed by the Finance Act 2004 (c. 12) Schedule 42, Part 3.

- (ii) where sub paragraph (c) applies, from the first day of the financial year following that in which the transfer value was paid.
- (4) The deductions are—
  - (a) the amount of any previous repayment of contributions;
  - (b) if the Scottish Ministers have made a payment in lieu of contributions or the teacher is entitled to equivalent pension benefits, half the amount of the payment in lieu of contributions that was, or as the case may be would otherwise have been, made; and
  - (c) if the Scottish Ministers have paid a contributions equivalent premium, the amount recoverable by them under sections 61 to 63 of the 1993 Act<sup>(11)</sup>.

### **Return of certain contributions paid for family benefits**

**C13.**—(1) This paragraph applies where a member who has made no election under paragraph 2 of Schedule 6—

- (a) becomes entitled under regulation C11 to the return of the balance of his contributions; or
  - (b) becomes entitled to payment of retirement benefits, unless on his death family benefits would become payable.
- (2) Where paragraph (1) applies the member is entitled to be repaid an amount calculated in accordance with paragraphs (3) to (5).
- (3) Where no family benefit would have been payable if the member had died before 1st April 1972, the amount includes the whole of the member’s normal contributions and any additional contributions.
- (4) Where paragraph (3) does not apply, the amount includes—
- (a) half the normal contributions paid in respect of any period during which family benefits would have been payable in the event of the member’s death; and
  - (b) the whole of the normal contributions paid in respect of any other period; and
  - (c) the whole of any additional contributions.
- (5) The remainder of the amount consists of interest at 3 per cent per annum compounded with yearly rests, from the first day of the financial year following that in which the contributions were paid to—
- (a) the date of the calculation; or
  - (b) the member’s 70th birthday; or
  - (c) the date of the member’s death,
- whichever is the earliest.
- (6) There is to be deducted from the amount the tax chargeable on it under section 598 of the Taxes Act.
- (7) Where a member who has made no election under paragraph 3 of Schedule 6 dies and—
- (a) he was entitled under regulation C11 to be repaid the balance of his contributions; or
  - (b) a death grant is payable under regulation E24 and no family benefit other than a children’s pension is payable,

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(11) 1993 c. 48. Section 61 is amended and repealed in part by the Pensions Act 1995 (c. 26) (“the 1995 Act”), Schedules 5 and 7 respectively; section 62 is repealed in part by the 1995 Act, Schedule 7; section 63 is amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) section 1 and Schedule 1 and repealed in part by the 1995 Act, Schedule 1.

the member's personal representatives are entitled to be paid an amount calculated in accordance with paragraphs (3) to (5) but with the interest component calculated to the date of the member's death.

### **Repayment of returned contributions**

**C14.**—(1) A teacher to whom contributions were returned before 1st June 1973—

- (a) who is in pensionable employment; or
- (b) who is in comparable British service and in respect of whom no transfer value has been paid since the end of his or her last pensionable employment,

may at any time, by giving written notice to the Scottish Ministers, elect to repay the contributions, with interest, to them.

(2) Interest is payable at the rate of 3.5 per cent per annum from the date on which the contributions were returned to the date on which their repayment is completed, and—

- (a) where the repayment is made by a single payment, is payable on the full amount of the contributions and is compounded with yearly rests; and
- (b) where the repayment is made by instalments, is payable on the balance for the time being outstanding and is compounded with yearly rests on 31st March.

(3) While a teacher is in pensionable employment, payments under this regulation shall be made in instalments and are, subject to paragraph (5), payable—

- (a) at equal intervals, of not more than 6 months; and
- (b) for a whole number of years not exceeding 5 and ending before his or her 60th birthday.

(4) Instalments are of equal amounts unless in any year the payment of an instalment of an amount equal to that paid in previous years would exceed the limit specified in paragraph (5) and in that event the instalments (and the corresponding period over which they are payable) shall be recalculated so that they do not exceed that limit.

(5) The annual amount of instalments paid under paragraph (3) is to be such that  $(A + B)$  does not exceed 15 per cent of the annual rate of the teacher's contributable salary in the year where—

A is the annual amount of the instalments; and

B is the annual amount of other contributions paid under Part C (except any treated as employer's contributions) or towards the provision of a pension otherwise than under these Regulations.

(6) If a teacher has commenced payment of instalments in accordance with this regulation and before they have all been repaid—

- (a) he or she becomes entitled to payment of retirement benefits; or
- (b) a death grant becomes payable in respect of him or her,

the balance outstanding, less any interest previously calculated but which relates to a future period of repayment, is to be deducted from the appropriate terminal sum and the repayment of contributions is to be treated as having been completed.

(7) If, in a case not falling within paragraph (6), a teacher who has commenced payment of instalments in accordance with this regulation ceases to be employed in pensionable employment before completing payment, he or she shall make a single payment of the balance outstanding, less any interest previously calculated but which relates to a future period of repayment.

(8) For the purposes of this regulation, a teacher is to be treated as being in pensionable employment if he or she is paying additional contributions under regulation C8 or under regulation C9.

(9) This regulation does not apply to a teacher who is in pensionable employment by virtue of regulation B9.

### **Deduction, payment and recovery of contributions**

**C15.**—(1) The employer of a teacher in pensionable employment is to deduct from the teacher's salary each month—

- (a) the contributions payable under regulation C3(1);
- (b) any contributions payable under regulation C3(2);
- (c) any additional contributions payable in accordance with Part I of Schedule 4 as a result of an election under regulation C5;
- (d) any additional contributions payable by virtue of regulation C7 or C10; and
- (e) any instalments payable under regulation C14(3),

and any amount not so deducted in any month is to be deducted from the teacher's salary no later than 30th April next following the end of the financial year in which it ought to have been deducted.

(2) If and so far as deductions are not made under paragraph (1), any sum remaining due is to be paid by the teacher to the Scottish Ministers on receipt of a written demand specifying the sum.

(3) If the sum is not paid within 6 weeks after the date of the demand, interest is payable on it at 4 per cent per annum, compounded with yearly rests, from the expiry of the 6 weeks to the date of payment.

(4) Without prejudice to any other means of recovery, any sum due to the Scottish Ministers under paragraph (2) or (3) may be recovered by deducting it from any benefits payable under Part E.

(5) Any sum which is due under regulation C4(2)(a) shall be paid to the Scottish Ministers on receipt of a written demand (without prejudice to the obligation to pay the sums referred to in regulation C4(2)(b)).

(6) Amounts due from a teacher under this Part which are not deductible under paragraph (1) are to be paid by the teacher to the Scottish Ministers.

(7) If any amount to which paragraph (6) applies, except one due under regulation C4, C8 or C14, is not paid within 6 months after the end of the period to which it relates, but remains payable, interest is payable on it at 4 per cent per annum, compounded with yearly rests, from the expiry of the 6 months to the date of payment.