

SCHEDULE 12

Regulations G1 and G2

TRANSFER VALUES

PART I

OUTWARD TRANSFERS

1. Subject to paragraphs 2 to 6 and 9 and 10, a transfer value to be paid in accordance with the provisions of regulation G1 in respect of a teacher shall be—

- (a) the capitalised value of his or her accrued rights under these Regulations at the guarantee date, and any associated rights under the 1971 Act<sup>(1)</sup> and the Pensions (Increase) Act 1974<sup>(2)</sup>,

together with—

- (b) where the transfer value is without reasonable cause or excuse not paid within 6 months of the guarantee date, and it is not to be made to a club scheme, the greater of—
  - (i) interest, if any, calculated on a daily basis over the period from the guarantee date to the date on which the transfer value is paid, at the rate set out in regulation 10(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(3)</sup>; or
  - (ii) the amount by which the transfer value falls short of what it would have been if the guarantee date had been the date on which the transfer value was paid.

2. Where—

- (a) a transfer value is payable to an approved pension or superannuation scheme which is not a club scheme; and
- (b) it falls to be calculated by reference to service rendered by the teacher before 21st October 1988,

the transfer value payable shall be the total of A and the greater of B or C, where—

A is a transfer value calculated in accordance with paragraph 1 in respect of the teacher's reckonable service after 20th October 1988;

B is a transfer value calculated in accordance with paragraph 1 in respect of the teacher's reckonable service before 21st October 1988; and

C is a transfer value calculated as if Schedule 10 to the 1977 Regulations<sup>(4)</sup>, as in force on 5th April 1988, had continued in force, in respect of his or her service before 21st October 1988.

3. Where, prior to the last date on which he or she is required to pay a transfer value under these Regulations, the Scottish Ministers have determined under regulation E22 that the benefits payable under these Regulations shall be withheld in whole or part, any transfer value payable in respect of that person shall be reduced in proportion to the reduction in the total value of the benefits or shall be withheld as the case may be.

4. Where—

- (a) a teacher requests that a transfer value be paid to—
  - (i) an occupational pension scheme which is not contracted out; or

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(1) 1971 c. 56.

(2) 1974 c. 9.

(3) S.I. 1996/1847.

(4) S.I. 1977/1360. Schedule 10 was substituted by S.I. 1988/1618 and amended by S.I. 1989/666. The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

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- (ii) a personal pension scheme which is not an appropriate personal pension scheme; or
- (iii) a self-employed pension arrangement; and
- (b) the trustees or managers of the occupational pension scheme, personal pension scheme or self employed pension arrangement are able or willing to have transferred to it only the liabilities for a teacher's accrued rights other than that teacher and their spouse's rights to guaranteed minimum pensions or that teacher's accrued right so far as attributable to service in contracted-out employment on or after 6th April 1997; and
- (c) the teacher does not require the Scottish Ministers to use that portion of the transfer value that represents guaranteed minimum pension or his or her accrued rights so far as attributable to service in contracted-out employment on or after 6th April 1997 in one of the ways specified in regulation G1,

the teacher's transfer value shall be reduced by the amount sufficient to meet the liability in respect of the teacher's and his widow's or, as the case may be, her widower's pensions being guaranteed pensions or pensions so far as attributable to service in contracted-out employment on or after 6th April 1997 and that person's protected rights.

**5.—(1)** Subject to sub paragraph (2), in respect of a person who is in excluded employment by virtue of an election under regulation B7, the transfer value calculated in accordance with this Part shall be the aggregate of the following:—

- (a) in relation to the teacher's retirement benefits, that part of the teacher's accrued rights which bears the same proportion to his or her total accrued rights as his reckonable service after 5th April 1988 bears to his or her total reckonable service; and
- (b) in relation to that teacher's spouse's pension, that part of his or her accrued rights applicable to service after 5th April 1988.

(2) Sub paragraph (1) shall not apply to a person whose reckonable service before 6th April 1988 amounts to less than 2 years.

**6.** Subject to paragraph 7, where—

- (a) a transfer value limited in accordance with paragraph 5(1) has been paid in respect of a teacher; and
- (b) that teacher has subsequently ceased to be employed in excluded employment other than by virtue of an election under regulation B8 before attaining the age of 60 years, or, where regulation G1(6) applies, the age of 59 years,

a right to a transfer value in respect of any part of that teacher's accrued rights to which, but for the operation of paragraph 5(1), he or she would have been entitled on ceasing to be employed in pensionable employment, shall accrue to the teacher on the date on which he or she ceased to be employed in excluded employment and shall be valued accordingly.

**7.** In relation to any teacher to whom paragraph 6 applies—

- (a) regulation G1(5) shall have effect as if for the words "he or she ceased to be employed in pensionable employment or entered excluded employment" there were substituted the words "terminated excluded employment"; and
- (b) the definition of "material date" in paragraph 14 shall have effect as if for the words "ceased to be employed in pensionable employment or entered excluded employment" there were substituted the words "terminated excluded employment".

**8.** For the purposes of paragraph 6, where a teacher ceases to be employed in excluded employment other than by virtue of an election under regulation B8 but that person enters again into excluded employment or enters pensionable employment, then, if there is between those two employments—

- (a) an interval not exceeding one month; or
- (b) an interval of any length if the second of the employments results from the exercise of a right to return to work under Part VIII of the Employment Rights Act 1996<sup>(5)</sup>, they shall be treated as a single employment.

9. Where one or more transfer values have been paid to the Scottish Ministers in respect of a teacher, any transfer value paid by him or her shall be at least equal to the aggregate of that transfer value or those transfer values and any contributions made by that teacher under regulations C1, C5 and C8, except where it falls to be made to a club scheme.

10. A transfer value paid under this Part shall be at least equal in amount to the cash equivalent, if any, to which a teacher would otherwise be entitled under section 94 of the 1993 Act<sup>(6)</sup>.

## PART II

### INWARD TRANSFERS

11. Where a transfer value has been paid to, and accepted by, the Scottish Ministers, there shall be credited to the teacher, in respect of whom the payment was made, a period of reckonable service calculated in accordance with paragraph 12 or paragraph 13 as the case may be.

12. Except where paragraph 13 applies, for the purposes of paragraph 11—

- (a) where the transfer value—
  - (i) is paid by the trustees or managers of a club scheme;
  - (ii) represents all of the teacher's accrued rights in that scheme; and
  - (iii) has been calculated in a manner consistent with the methods adopted and assumptions made by the Scottish Ministers in determining the amount of transfer values to be paid to club schemes under Part I of this Schedule,

the period of reckonable service to be credited to the teacher shall be equal to the period of service which, if used to calculate a transfer value to be paid to an occupational pension scheme which is a statutory scheme under Part I of this Schedule, would produce an amount equal to the transfer value received by the Scottish Ministers, and in making the calculation regard shall be had to the teacher's age, rate of pensionable pay, marital status and, in addition, to any other factor notified to the Scottish Ministers by the trustees or managers of the scheme making the payment as having been taken into account in determining its amount; and

- (b) in any other case, the period of reckonable service credited to the teacher shall be calculated in a manner consistent with the methods adopted and assumptions made by the Scottish Ministers in determining the amount of transfer values to be paid to occupational pension schemes (which do not fall to be treated as statutory schemes) under Part I of this Schedule, due allowance being given for the expected increase in the salary of teachers between the appropriate date and the date on which the teacher in respect of whom the transfer value was paid would attain the age of 60 years.

13.—(1) This paragraph applies where—

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(5) 1996 c. 18 ("the 1996 Act"). 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.

(6) 1993 c. 48. Section 94 is amended by the Pensions Act 1995 (c. 26), section 154, the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 12 and is prospectively repealed by the Pensions Act 2004 (c. 35), Schedule 12.

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- (a) the previous scheme is a personal pension scheme or an approved pension or superannuation scheme which is not a club scheme and the teacher has entered pensionable employment after 31st December 1985;
  - (b) the teacher has made an election under regulation B8 ;
  - (c) the previous election under regulation B7 was made before 30th June 1994;
  - (d) the teacher has been in excluded employment between the date of the election under regulation B7 and the date of the election under regulation B8;
  - (e) the teacher is an individual as is mentioned in section 172(1) of the 1995 Act<sup>(7)</sup>; and
  - (f) the Scottish Ministers accept a payment of the amount specified in sub paragraph (3).
- (2) In this paragraph—
- (a) “the period of original pensionable employment” means the period during which the teacher was in pensionable employment before he or she made his or her election under regulation B7; and
  - (b) “the period of transferred-out employment” means the period of pensionable employment (if any) in respect of which a transfer value was paid under regulation G1 by virtue of the election under regulation B7.
- (3) The amount referred to in sub paragraph (1)(f) is  $(A \times B)$

where—

A is the transfer value which satisfies paragraph 10 and which would enable the teacher to count the period of excluded employment as reckonable service as if it had been pensionable employment; and

B is the greater of—

- (a) the transfer value, if any, paid under regulation G1 in respect of the teacher in consequence of his or her ceasing to be in pensionable employment by virtue of his or her election under regulation B7, together with—
  - (i) in a case where a transfer value was paid to the Scottish Ministers pursuant to regulation G2 within 4 weeks of the notice under regulation G2(1), an amount, determined actuarially, which represents the income which would have been received had such sum been invested during the period starting at the end of the month in which the transfer value was paid under regulation G1 and ending at the end of the month in which the notice under regulation G2(1) was made; and
  - (ii) in any other case the amount referred to in sub-paragraph (i) above together with a further amount, determined actuarially, which represents the income which would have been received compounded with monthly rests, had such sum been invested during the period starting at the end of the month in which the notice under regulation G2(1) was made and ending at the end of the month in which the transfer value was paid to the Scottish Ministers; and
- (b) the amount which would be paid as a transfer value under regulation G1 in respect of the teacher if at the date on which he or she made the election under regulation B8—
  - (i) he or she was in pensionable employment and made an election under regulation B7; and
  - (ii) the transfer value was in respect of a period of pensionable employment equal to the period of transferred-out employment.

(7) 1995 c. 26, amended by S.I. 2001/3649, article 148.

- (4) Where this paragraph applies the teacher is entitled to count as reckonable service—
- (a) the reckonable service arising from the period of original pensionable employment; and
  - (b) such service arising from the period of excluded employment as if it had been pensionable employment.

### PART III

#### INTERPRETATION

**14.** In this Schedule—

- (a) “accrued rights” means the rights which have accrued in respect of a teacher under these Regulations at the material date, or which would have accrued in respect of him or her if the period of service necessary to satisfy the requirements of regulation E5 had been the period which he or she had completed at that date;
- (b) “appropriate date” means the date on which the person in respect of whom the transfer value is paid became employed in pensionable employment or, if the transfer value is received more than 12 months after that date, the date on which it is received;
- (c) “capitalised value” means the capitalised value at the material date as determined by the Scottish Ministers, having regard to investment conditions and the contingencies on which benefits are, or are to be, payable under these Regulations;
- (d) “club scheme” means an occupational pension scheme which—
  - (i) is a contracted-out scheme;
  - (ii) provides benefits calculated by reference to the remuneration of the participant;
  - (iii) is open to new members or, if it is a closed scheme, its trustees or managers also manage an open scheme which is a club member for new recruits of the same grade or level of post as the participants in the closed scheme;
  - (iv) has undertaken to comply with the reciprocal arrangements for the payment and receipt of transfer values agreed from time to time between members of the club; and
  - (v) is approved for the purposes of this Schedule by the Treasury; and
- (e) “protected rights” has the same meaning as in section 10 of the 1993 Act<sup>(8)</sup>.

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<sup>(8)</sup> 1993 c. 48. Section 10 is amended by the Social Security Contributions (Transfer of Functions etc) Act 1999 (c. 2), Schedule 1, paragraph 36 and the Welfare Reform and Pensions Act 1999 (c. 30) section 32 and is prospectively amended by the Pensions Act 1995 (c. 26) Schedule 5, paragraph 25 and the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraph 22.