

## SCHEDULE 12

### 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—

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- (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>.

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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.