

**1989 No. 1139**

**EDUCATION, ENGLAND AND WALES**

**The Education (Reorganisation in Inner London)  
(Compensation) Regulations 1989**

<i>Made</i> - - - -	<i>5th July 1989</i>
<i>Laid before Parliament</i>	<i>7th July 1989</i>
<i>Coming into force</i> -	<i>28th July 1989</i>

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The Secretary of State, in exercise of the powers conferred by section 24 of the Superannuation Act 1972(a), with the consent of the Treasury(b), hereby makes the following Regulations:-

### PART I

#### PRELIMINARY

##### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Education (Reorganisation in Inner London) (Compensation) Regulations 1989 and shall come into force on 28th July 1989.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation or Part or to the Schedule is to be construed as a reference to the regulation or Part which bears that number in, or as the case may be to the Schedule to, these Regulations, and any reference to a numbered paragraph in a regulation of or the Schedule to these Regulations is to be construed as a reference to the paragraph bearing that number in that regulation or, as the case may be, in the Schedule.

(3) In these Regulations, unless the context otherwise requires—

“the 1978 Act” means the Employment Protection (Consolidation) Act 1978(c);

“the 1988 Act” means the Education Reform Act 1988(d);

“the 1982 Regulations” means the Local Government (Compensation for Premature Retirement) Regulations 1982(e);

“the 1984 Regulations” means the Local Government (Compensation for Redundancy and Premature Retirement) Regulations 1984(f);

“the 1986 Regulations” means the Local Government Superannuation Regulations 1986(g);

“the 1988 Regulations” means the Teachers’ Superannuation (Consolidation) Regulations 1988(h);

“the 1989 Regulations” means the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1989(i);

“compensation period” is to be construed in accordance with regulation 8(2);

“emoluments” is to be construed in accordance with regulation 6;

“employment in education” means employment which was, or would but for an election under regulation B6 of the 1988 Regulations have been, pensionable employment within the meaning of those Regulations;

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(a) 1972 c.11.

(b) See S.I. 1981/1670.

(c) 1978 c.44; sections 81, 82, 84 and 94 and Schedules 4 and 6 apply as modified by the Redundancy Payments (Local Government) (Modification) Order 1983 (S.I. 1983/1160, amended by S.I. 1985/1872, 1988/907, 1989/532).

(d) 1988 c.40.

(e) S.I. 1982/1009, amended by S.I. 1984/740, 1986/151, 1988/466.

(f) S.I. 1984/740.

(g) S.I. 1986/24; relevant amendments were made by S.I. 1988/466.

(h) S.I. 1988/1652, to which there are amendments not relevant to these Regulations.

(i) S.I. 1989/298.

“employment in local government” means employment in which the employee was, or would but for a relevant disqualification have been, a pensionable employee within the meaning of the 1986 Regulations;

“former employment” means employment with ILEA or LRB under a contract which has been terminated;

“ILEA” means the Inner London Education Authority established by section 18 of the Local Government Act 1985(a) and “LRB” means the London Residuary Body established by section 57 of that Act;

“new employment” means—

(a) in relation to a person dismissed by reason of redundancy, a qualifying employment following the former employment which by virtue of section 84 or 94 of the 1978 Act precludes him from receiving any redundancy payment, and

(b) in any other case, an employment which would have fallen within (a) above if the person had been dismissed by reason of redundancy,

and “new employer” is to be construed accordingly;

“normal retiring age”, in relation to a person’s former employment, means—

(a) the age, if any, at which he could under his contract or any enactment have been compelled to retire, or

(b) where there is no such age, the age of 65;

“person” means a person to whom these Regulations apply;

“qualifying employment” means employment with ILEA, with LRB, with an inner London council within the meaning of Part III of the 1988 Act, or with any person for the time being exercising functions which became functions of ILEA by virtue of section 45 of the Local Government Act 1985 (Horniman and Geffrye museums);

“redundancy payment” means a redundancy payment under Part VI of the 1978 Act;

“relevant date” means the relevant date as defined by section 90(1) of the 1978 Act or, where a contract of employment is terminated by the abolition of ILEA, 31st March 1990;

“relevant disqualification” has the meaning given in regulation 3 of the 1982 Regulations; and

“relevant local government service” has the meaning given in paragraph 1(b) of Schedule 2 to the Redundancy Payments (Local Government) (Modification) Order 1983.

(4) Where these Regulations require anything to be done within a specified period after or from a specified day or event, the period begins immediately after the specified day or, as the case may be, the day on which the specified event occurs.

#### **Purposes and application**

2.—(1) These Regulations are made for the purposes of section 173 of the 1988 Act and apply to any person who suffers loss of employment or loss or diminution of emoluments which—

(a) is attributable to any provision made by or under Part III of that Act, and

(b) occurs in the circumstances mentioned in paragraph (2),

and who either did not have or has released any such rights as are mentioned in section 173(4) of that Act (contractual rights acquired before 21st November 1987 entitling a person to a compensation payment).

(2) The circumstances are—

(a) in the case of loss of employment, that the employment in question was with ILEA or LRB and the loss is suffered after 31st March 1990, and

(b) in the case of loss or diminution of emoluments, that the loss or diminution arises from the termination of the person’s employment with ILEA or LRB and is suffered after 13th July 1989, and

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(a) 1985 c.51.

- (c) in either case, that the loss or diminution is not attributable to the termination before 2nd April 1990 of a contract made after 17th February 1988 which provides for his employment for a fixed term extending beyond 1st April 1990.

## PART II

### LOSS OF EMPLOYMENT

#### Compensation where redundancy is certified

3.—(1) This regulation applies to a person if—

- (a) when his former employment was terminated he had attained the age of 50 but had not attained the age of 65 and was qualified by service, and
- (b) LRB have certified that the employment was terminated by reason of redundancy,

but if his former employment was not employment in which he was a pensionable employee within the meaning of the 1986 Regulations or pensionable employment within the meaning of the 1988 Regulations he may, within 13 weeks after being notified that LRB have certified as mentioned in sub-paragraph (b), by giving written notice to LRB elect that this regulation is not to apply to him.

(2) A person is qualified by service—

- (a) where his former employment was employment in local government, if the total of his reckonable service and any qualifying service (within the meaning of the 1986 Regulations) is, or would but for a relevant disqualification have been, not less than 5 years, and
- (b) where his former employment was employment in education, if he has, or but for an election under regulation B6 of the 1988 Regulations would have, completed a qualifying period (within the meaning of regulation E3 of those Regulations) of at least 5 years.

(3) Subject to paragraph (6), where this regulation applies the like compensation is payable as would, on the required assumptions, have been payable under the relevant provisions.

(4) Where the former employment was employment in local government, the relevant provisions are those of the 1982 Regulations and Part II of the 1984 Regulations and the required assumptions are—

- (a) that the 1982 Regulations apply with the modifications set out in Part I of the Schedule to these Regulations,
- (b) that the person is an eligible person within the meaning of the 1982 Regulations, and
- (c) that he is required—
  - (i) unless he elects to be credited with a shorter period, to be credited with the maximum period of additional service under regulation 5 of the 1982 Regulations, and
  - (ii) if he is entitled to a redundancy payment, to be paid the maximum compensation under Part II of the 1984 Regulations.

(5) Where the former employment was employment in education, the relevant provisions are those of the 1989 Regulations and the required assumptions are—

- (a) that the 1989 Regulations apply with the modifications set out in Part II of the Schedule to these Regulations,
- (b) that the person is an eligible teacher within the meaning of the 1989 Regulations, and
- (c) that he is required—
  - (i) unless he elects to be credited with a shorter period, to be credited with the maximum period of service under regulation 6 of the 1989 Regulations, and
  - (ii) if he is entitled to a redundancy payment, to be paid the maximum compensation under regulation 5 of those Regulations.

(6) In the case of a woman who would have been entitled to a redundancy payment but for section 82(1)(b) of the 1978 Act (attainment of the age of 60), paragraphs (4)(c)(ii) and 5(c)(ii) do not apply and she is instead entitled to compensation equal to the redundancy payment to which she would have been entitled if the 1978 Act had applied with the modifications set out in paragraphs 11, 12(c) and 13 of the Schedule.

#### **Compensation in other cases of redundancy**

4.—(1) A person who is entitled to a redundancy payment and who on the relevant date—

(a) had not attained the age of 41, and  
(b) had been employed in relevant local government service for 5 years or more,  
is entitled to compensation of the amount specified in paragraph (2).

(2) The amount mentioned in paragraph (1) is the difference between—

(a) the redundancy payment, and  
(b) 2 weeks' pay (calculated as if Schedule 14 to the 1978 Act, except paragraph 8, had applied) for each year of relevant local government service in which he was not below the age of 18.

(3) A person who is entitled to a redundancy payment and who on the relevant date—

(a) had not attained the age of 41, and  
(b) had not been employed in relevant local government service for 5 years or more,  
is entitled to compensation of the amount specified in paragraph (4).

(4) The amount mentioned in paragraph (3) is the difference between—

(a) the redundancy payment, and  
(b) the redundancy payment to which he would have been entitled if the 1978 Act had applied with the modification set out in paragraph 13 of the Schedule.

(5) A person who is entitled to a redundancy payment and—

(a) who on the relevant date had attained the age of 41, and  
(b) to whom regulation 3 does not apply,  
is entitled to compensation of the amount specified in paragraph (6).

(6) The amount mentioned in paragraph (5) is the difference between—

(a) the redundancy payment, and  
(b) the redundancy payment to which he would have been entitled if the 1978 Act had applied with the modifications set out in paragraphs 12 and 13 of the Schedule.

(7) A woman who would have been entitled to a redundancy payment but for section 82(1)(b) of the 1978 Act is entitled to compensation of the amount specified in paragraph (8).

(8) The amount mentioned in paragraph (7) is that of the redundancy payment to which she would have been entitled if the 1978 Act had applied with the modifications set out in Part III of the Schedule.

#### **Date for certain calculations**

5. In the case of a person who immediately before 1st April 1990 is in employment with ILEA, in making any calculation for the purposes of regulation 3(4)(c)(ii) or (5)(c)(ii) or regulation 4(2)(b), (4)(b), (6)(b) or (8) the calculation date for the purposes of Part II of Schedule 14 to the 1978 Act is to be taken to be 31st March 1990.

## PART III

### LOSS OR DIMINUTION OF EMOLUMENTS

#### Emoluments

6.—(1) Subject to paragraphs (2) and (3), a person's emoluments in an employment are all the salary, wages, fees and other payments made to him as an employee for his own use, and the money value of any accommodation or other allowances in kind appertaining to the employment.

(2) A person's emoluments do not include—

- (a) unless it is a usual incident of the employment, any payment for overtime or bonus payment,
- (b) any allowance payable to him to cover the cost of providing office accommodation or clerical or other assistance,
- (c) any travelling or subsistence allowance or other moneys to be spent, or to cover expenses incurred, by him for the purposes of the employment,
- (d) any payment for loss of holidays made to him on his ceasing to hold the employment,
- (e) any payment accepted by him in lieu of notice to terminate his contract of employment, or
- (f) any compensation paid to him under these Regulations or otherwise.

(3) Where a person has been absent from work his emoluments are to be treated as including any payments which would have been made to him but for his absence.

(4) Subject to paragraph (5), the annual rate of a person's emoluments in his former employment is the amount of his emoluments in that employment for the period of 12 months immediately preceding the relevant date, or if greater—

- (a) in the case of emoluments payable monthly, the amount of his emoluments for the last complete month of that period multiplied by 12, or
- (b) in the case of emoluments payable weekly or at intervals of 2 or 4 weeks, the amount of his emoluments for the last complete 8 weeks of that period multiplied by

$$\frac{365}{56}$$

(5) Where a person's emoluments for the period of 12 months immediately preceding the relevant date included any fees or other variable payments, the annual rate of his emoluments in his former employment includes the annual average of those payments during—

- (a) the period of 5 years immediately preceding the relevant date, or
- (b) such other period as is reasonable in the circumstances.

#### Entitlement to compensation in respect of loss or diminution of emoluments

7.—(1) A person suffers loss or diminution of emoluments if A is greater than B, where—

- A is the annual rate of his emoluments in his former employment, and
- B is the amount of the emoluments that would be received in respect of his new employment during the first 12 months of that employment if the contract continued for that period with no variation.

(2) A person who suffers loss or diminution of emoluments is entitled to compensation if—

- (a) his former employment was terminated before he reached normal retiring age, and
- (b) he is not entitled to any compensation under Part II, and
- (c) he had on the relevant date been employed from 29th July 1988 in relevant local government service consisting of employment with ILEA or LRB or both, and

- (d) on the relevant date, or on 1st April 1990 if earlier, he had been employed for not less than 3 years in relevant local government service.

#### **Amount of compensation in respect of loss or diminution of emoluments**

8.—(1) Subject to paragraphs (3) to (6) and regulation 9, the compensation to which a person is entitled under regulation 7 is an annual sum equal to  $((A + B) - C) - D$ , where—

- A is the annual rate of his emoluments in his former employment,  
B is any amount by which A would, by the end of a compensation period, have been increased if it had been the annual rate of an official pension within the meaning of the Pensions (Increase) Act 1971(a) beginning, and first qualifying for increases under that Act, on the day after the relevant date or, where the relevant date is 31st March 1990 or an earlier date, 25th November 1989,  
C is the amount of his emoluments in his new employment, or in any subsequent employment by virtue of which compensation continues to be payable as provided in regulation 9(2), during a compensation period, and  
D is any part of the excess of  $(A + B)$  over C in respect of which compensation was payable during that period under regulations made under section 259 of the Local Government Act 1972(b) or under any instrument made under any enactment, whenever enacted, to the like effect.

(2) For the purposes of this regulation and of regulations 11 and 12, the compensation periods are the 8 consecutive periods of 12 months of which the first begins on the first day of the new employment; but the running of a compensation period is suspended during any period during which the person is not employed in a qualifying employment, and in that event the start of the following compensation period is postponed accordingly.

(3) Where the contractual weekly hours in the new employment or a subsequent employment fall short of those in the former employment by more than 2 hours, then, to the extent that C comprises the emoluments of that new or subsequent employment—

(a) C is to be multiplied by  $\frac{E}{F}$ , and

(b) the annual sum is to be multiplied by  $\frac{F}{E}$ ,

where E is the number of the contractual weekly hours in the former employment and F is the number of those in the new or subsequent employment.

(4) In respect of any compensation period the annual sum is not to exceed the total of £5,000 and any amount by which that sum would by the end of the period have been increased if it had been the annual rate of an official pension within the meaning of the Pensions (Increase) Act 1971 beginning, and first qualifying for increases under that Act, on 1st April 1986.

(5) In respect of the eighth compensation period there is payable one half of the annual sum.

(6) No compensation is payable in respect of any period after the earlier of—

- (a) the end of the eighth compensation period, and  
(b) the person's attaining normal retiring age.

#### **Cessation of new employment**

9.—(1) This regulation applies where, before compensation has by virtue of regulation 8(6) ceased to be payable, the person ceases to be employed with his new employer.

(2) If he becomes employed in a qualifying employment and is, or would if he had been dismissed by reason of redundancy have been, precluded by virtue of section 84 or 94 of the 1978 Act from receiving a redundancy payment, compensation continues to be payable in accordance with regulation 8.

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(a) 1971 c.56.

(b) 1972 c.70.

(3) In any other case, no compensation is payable in respect of any period after the cessation of his employment with the new employer.

## PART IV

### MISCELLANEOUS

#### Calculation of compensation

10. In calculating the amount of any compensation to which a person is entitled under these Regulations no account is to be taken of any temporary increase or decrease in his emoluments which is attributable to any provision made by or under Part III of the 1988 Act.

#### Payment of compensation

11.—(1) Compensation to which a person is entitled under these Regulations is payable by LRB.

(2) Subject to paragraphs (3) and (4), compensation under Part III is payable at the end of each compensation period.

(3) LRB may during a compensation period, at such intervals as they think fit, and having regard to any material change of circumstances occurring during that period, make interim payments to a person entitled to compensation under Part III on account of any compensation that may become payable to him at the end of that period.

(4) If the total of any payments made to a person under paragraph (3) during any of the first seven compensation periods exceeds or falls short of the compensation payable at the end of that period, the excess or shortfall is to be deducted from, or as the case may be added to, any compensation payable to him at the end of the following compensation period.

(5) The provision made by paragraph (4) for the deduction of excesses from compensation payable is without prejudice to any other lawful means of recovery.

#### Claims and decisions

12.—(1) A claim for compensation under these Regulations must be made to LRB by notice in writing, which may be sent by post.

(2) A decision by LRB on a claim, and any decision made by them as to the amount of compensation payable for any period, is to be notified by them in writing to the person concerned, and in their notification they must—

- (a) give reasons for the decision,
- (b) show how any compensation has been calculated, and
- (c) inform the claimant of his right to institute proceedings under paragraph (3) and of the address to which any application instituting such proceedings should be sent.

(3) If the person is dissatisfied with LRB's decision, or they have not notified him of a decision within 13 weeks after, as the case may be—

- (a) their receiving a claim, or
- (b) the end of any compensation period,

he may institute proceedings for the determination of the matter by an industrial tribunal established in pursuance of the Industrial Tribunals (England and Wales) Regulations 1965(a).

(4) Proceedings under paragraph (3) must be instituted within 13 weeks after, as the case may be—

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(a) S.I. 1965/1101, amended by S.I. 1967/301, 1970/941, 1977/1473.



- (a) the notification of LRB's decision, or
- (b) the expiry of the 13 weeks mentioned in that paragraph.

## SCHEDULE

### PART I

Regulation 3(4)

#### MODIFICATION OF 1982 REGULATIONS

1. For every reference in the 1982 Regulations to an employing authority substitute a reference to LRB.
2. In regulation 3 (definitions)-
  - (a) delete the definition of "employing authority", and
  - (b) at the end of the regulation insert:

"the 1989 Regulations" means the Education (Reorganisation in Inner London) (Compensation) Regulations 1989."
3. In regulation 3A (meaning of "redundancy payment")-
  - (a) in paragraph (1)(b) for the words from "Part II" to "(the 1984 regulations)" substitute "regulation 3(4)(c)(ii) or (6) of the 1989 Regulations", and
  - (b) for paragraph (2)(a) and (b) substitute "any compensation paid to him in respect of the termination under regulation 3(4)(c)(ii) or (6) of the 1989 Regulations."
4. In regulation 14 (other payments)-
  - (a) delete paragraph (2), and
  - (b) in paragraph (8)(c) delete the words "or as compensation for".
5. Delete regulation 20 (paying authority).

### PART II

Regulation 3(5)

#### MODIFICATION OF 1989 REGULATIONS

6. For every reference in the 1989 Regulations to the compensating authority substitute a reference to LRB.
7. In regulation 2(2) (interpretation)-
  - (a) after the definition of "the 1985 Regulations" insert:

"the 1989 Regulations" means the Education (Reorganisation in Inner London) (Compensation) Regulations 1989;" and
  - (b) for (c) of the definition of "redundancy payment" substitute:

" (c) any compensation paid to him under regulation 3(5)(c)(ii) or (6) of the 1989 Regulations; and"
8. In regulation 13(2)(a) (termination payments) delete the words ", or as compensation for,".
9. In regulation 17 (liability for compensation)-
  - (a) in paragraph (1) delete the words "Subject to paragraph (6)," and
  - (b) delete paragraph (6).
10. Delete regulations 18 to 20 and Part I of the Schedule.

### PART III

Regulations 3(6), 4(4), (6), (8)

#### MODIFICATION OF 1978 ACT

11. For section 82(1)(a) and (b) substitute "has attained the age of sixty-five".
12. In Schedule 4 (calculation of redundancy payments)-
  - (a) for paragraph 2(a), (b) and (c) substitute:

- “(a) six weeks’ pay for each year of employment, up to a maximum of eight years, which consists wholly of weeks counting under paragraphs 3 to 12 of Schedule 13 in which the employee was not below the age of forty-one; and
- (b) two weeks’ pay for each year of employment not falling within sub-paragraph (a) which consists wholly of weeks so counting in which the employee was not below the age of eighteen.”;
- (b) in paragraph 3 for the words “twenty years”, in both places where they occur, substitute “twenty-five years”; and
- (c) in paragraph 4(2) for the words from “, in relation to a man” to “her birth” substitute “means the sixty-fourth anniversary of the day of the employee’s birth”.

13. In Schedule 14, delete paragraph 8(1)(c) (weekly pay in excess of specified limit to be disregarded in calculating redundancy payment).

4th July 1989

*Kenneth Baker*  
Secretary of State for Education and Science

We consent

5th July 1989

*David Maclean*  
*Kenneth Carlisle*  
Two of the Lords Commissioners of Her Majesty’s Treasury

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made for the purposes of section 173 of the Education Reform Act 1988, and accordingly constitute the only statutory provision under which compensation may be paid in cases falling within section 173(1) and (2) (certain persons suffering loss of employment or loss or diminution of emoluments which is attributable to provision made by or under Part III of the Act).

In Part II of these Regulations, which deals with loss of employment, regulation 3 requires the maximum lump sum and annual compensation under the existing regulations there mentioned to be paid where the person is 50 or over and it has been certified that his employment was terminated by reason of redundancy. In other cases where there is an entitlement to a redundancy payment under the Employment Protection (Consolidation) Act 1978, lump sum compensation is payable and is to be calculated by reference to that Act as modified by the Regulations (regulation 4).

In Part III, which deals with loss or diminution of emoluments, regulation 6 defines “emoluments” and regulation 7 sets out the conditions of entitlement. Regulation 8 requires annual compensation, calculated by reference to the difference between former and current emoluments, to be paid for up to 8 consecutive 12-month periods. Regulation 9 concerns changes of employment subsequent to the initial loss or diminution.

The miscellaneous provisions in Part IV require certain increases and decreases in emoluments to be left out of account (regulation 10), deal with the payment of compensation and in particular allow advance payments to be made on account of Part III compensation (regulation 11), and provide for questions to be determined in the first instance by the London Residuary Body, and in cases of dispute or default by an industrial tribunal (regulation 12).

Section 24 of the Superannuation Act 1972 confers express power to make regulations retrospective in effect. Regulation 2(2)(b) confers entitlement in relation to loss or diminution of emoluments occurring after 13th July 1989.