

SCHEDULE D5

Regulations D15, E6, F1 and F10.

RE-EMPLOYED PENSIONERS

PART I

REDUCTION OF RETIREMENT PENSION

*Application of Part I*

1.—(1) Subject to sub-paragraph (3), this Part of this Schedule applies to a person who, since becoming entitled to a retirement pension in relation to a former employment, has entered a new employment with a LGPS employer.

(2) In this Part of this Schedule “retirement pension” includes an annual pension under the former regulations and a retirement pension under the 1974 regulations or the 1986 regulations.

(3) This Part of this Schedule does not apply where the new employment is employment by virtue of which the person is entitled to participate in benefits provided under regulations made under section 9 of the Superannuation Act 1972(1) (superannuation of teachers).

*General reduction rule*

2. Subject to paragraphs 3, 7 and 9, while the person holds the new employment the annual rate of the retirement pension is reduced—

- (a) if the annual rate of remuneration of the new employment, equals or exceeds the indexed annual rate of remuneration of the former employment, to zero; and
- (b) otherwise, by the amount (if any) which is necessary to secure that the potential receipts during the new employment do not exceed the indexed annual rate of remuneration of the former employment.

3. Where within the last 12 months of the former employment the person held another concurrent employment with any LGPS employer, former local authority or local Act authority, which he has ceased to hold without becoming entitled to a retirement pension in relation to it, and either—

- (a) he has ceased to hold the concurrent employment after ceasing to hold the former employment; or
- (b) he has ceased to hold the concurrent employment first, and entered the new employment within 12 months after ceasing to hold the concurrent employment,

then—

- (i) if he does not devote substantially more of his time to the new employment than he devoted to the concurrent employment during the 12 months before he ceased to hold it, the annual rate of the retirement pension is not reduced; and
- (ii) in any other case, paragraph 2 applies as if the indexed annual rate of remuneration of the former employment included the indexed annual rate of remuneration of the concurrent employment.

4. In paragraphs 2 and 3—

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(1) 1972 c. 11; section 9 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 4(1), 8(3), (4), 11(1), (3).

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- (a) references to the indexed annual rate of remuneration of the former or, as the case may be concurrent employment are to the sum of—
  - (i) the annual rate of that remuneration; and
  - (ii) the amount (if any) by which, immediately before the first day of the new employment, that remuneration would have been increased if it had been the rate of an official pension (within the meaning of the Pensions (Increase) Act 1971(2)) beginning on and payable from the day after the last day of the former or, as the case may be, the concurrent employment; and
- (b) “the potential receipts during the new employment” means the sum of—
  - (i) the annual rate of remuneration of the new employment;
  - (ii) the reduced rate of the retirement pension; and
  - (iii) the amount (if any) by which that reduced rate would, immediately before the first day of the new employment, have been increased under that Act, if it had then been the rate of the retirement pension (assuming that pension had by then qualified for increases under that Act).

5.—(1) For the purposes of this Part of this Schedule, subject to sub-paragraph (2), the annual rate of remuneration of an employment is—

- (a) if it is a former employment in respect of which the person is entitled to a retirement pension under these regulations, the 1974 regulations or the 1986 regulations—
  - (i) in the case of fixed-rate emoluments, the rate of any such emoluments on the last day of the period which is the relevant period for the purposes of regulation D1; and
  - (ii) in the case of fees, the average rate of any fees during the period by reference to which pensionable remuneration fell to be calculated under paragraph 9 of Schedule D1;
- (b) if it is a former employment in respect of which the person is entitled to a retirement pension otherwise than as mentioned in paragraph (a)—
  - (i) in the case of fixed-rate emoluments, the rate of any such emoluments on the last day of employment; and
  - (ii) in the case of fees, the average rate of any fees during the period, within the last three years of employment, during which fees were receivable;
- (c) in the case of the new employment—
  - (i) in the case of fixed-rate emoluments, the annual rate of such emoluments on the first day of employment;
  - (ii) in the case where fees are receivable but were not receivable in the former employment, a rate agreed by the person and the body employing him or, in default of agreement, a rate determined by the Secretary of State;
  - (iii) in the case where fees are receivable and were receivable in the former employment, subject to sub-paragraph (3), the annual rate of those fees, ascertained in accordance with paragraphs (a)(ii) and (b)(ii).

(2) For the purposes of sub-paragraph (1)(a) and (b), where—

- (a) the person’s remuneration in the former employment was at any material time reduced or discontinued by reason of his absence from duty; and

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(2) 1971 c. 56.

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- (b) the absence was due to illness or injury or he made contributions or payments under section 6(5) of the Act of 1937 or regulation C3 or C4 of the 1986 regulations or regulation C5, C6 or C7 of these regulations,

then—

- (i) any reduction or discontinuance of fixed-rate emoluments is to be disregarded, and
  - (ii) any fees are to be averaged over a period of the same length as the period mentioned in paragraph (1)(a) or (b), but ending immediately before the reduction or discontinuance.
- (3) If the annual rate of remuneration of the new employment ascertained in accordance with this paragraph is less than that of the former employment, the annual rate of any fees ascertained in accordance with paragraph (1)(c)(iii) is to be reduced proportionately.

#### *Alteration of terms in new employment*

6. If—

- (a) the person's contractual hours in a new employment are altered; or
- (b) he is transferred to another post under the same employing body at a different remuneration,

this Part of this Schedule applies as if he had again entered a new employment.

#### *Proportional reduction in cases of two or more pensions*

7. If this Part of this Schedule applies to two or more retirement pensions, each is reduced in proportion to its amount.

#### *Duty to inform employers of application of Part I*

8. A person who has become entitled to a retirement pension shall—

- (a) inform any LGPS employer with whom he proposes to accept a new employment that he is so entitled; and
- (b) immediately he enters a new employment notify the body from whom he has become entitled to receive the pension in writing that he is doing so.

#### *Modification of Part I for old cases*

9. Where the new employment commenced before 6th January 1986, paragraph 2 has effect with the substitution for paragraph (b) of the following—

- “(b) otherwise, by the amount by which the indexed annual rate of remuneration of the former employment exceeds the annual rate of remuneration of the new employment”.

## PART II

### COMBINED BENEFITS

#### *Election for application of Part II*

10.—(1) Subject to sub-paragraph (1) and paragraphs 11 and 15, where—

- (a) a person has become entitled to a retirement pension (“the first pension”),

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- (b) after becoming so entitled he entered further employment which was or became local government employment, and
- (c) he has ceased to hold the further employment and has become entitled in relation to it to a retirement pension (“the second pension”),

he may, by notice in writing to the authority which is the appropriate administering authority in relation to the second pension, given within three months after the date on which he became entitled to the second pension, elect that this Part of this Schedule is to apply to him.

(2) Sub-paragraph (1) does not apply if the first pension is a pension—

- (a) to which the person became entitled under regulation D19, or
- (b) which is reduced under regulation D13.

(3) In this Part of this Schedule “retirement pension” includes an annual pension under the former regulations and a retirement pension under the 1974 regulations or the 1986 regulations.

#### *New entitlement to single pension*

**11.**—(1) Subject to paragraphs 12 to 14, a person to whom this Part of this Schedule applies is to be treated as having, on the date on which the second pension became or becomes payable—

- (a) ceased to be entitled to the first pension and the second pension; and
- (b) become instead entitled to payment of an annual retirement pension (“the annual pension”) and a lump sum payment (“the lump sum”) each calculated by reference to both his total period of membership in the further employment and the total period of membership taken into account in calculating the first pension.

(2) In sub-paragraph (1) “total period of membership” includes any period by reference to which an additional benefit has been granted under regulation E13 of the 1986 regulations or under regulation 13 of the Benefits regulations (both of which concern additional benefits for certain female nursing staff).

**12.** If in conjunction with the first pension the person was entitled to a retirement grant—

- (a) in calculating the lump sum no account is to be taken of any additional period excluded in accordance with regulation D2(2)(ii) from the calculation of the retirement grant,
- (b) if he has not received the grant before becoming entitled as mentioned in paragraph 11(1) (b), he ceases to be entitled to it,
- (c) if he has received the retirement grant—
  - (i) he is only entitled to payment of the excess, if any, of the lump sum over the retirement grant, and
  - (ii) if the retirement grant exceeds the lump sum, he is only entitled to the annual pension if, within three months after giving notice under paragraph 10, he pays an amount equal to the excess to the appropriate administering authority.

**13.** If—

- (a) the first pension was, and
- (b) the second pension would not have been,

subject to reduction under Part F of the 1974 regulations or regulation H2, the annual pension is subject to reduction by the same amount as the first pension.

**14.** If part of the first pension was surrendered under regulation D14—

- (a) the annual pension is to be treated as having been surrendered to the same extent, and

- (b) any resulting pension becoming payable on the person's death is to be paid by the authority by whom the annual pension is payable.

**15.** In relation to a person who—

- (a) before 1st April 1972—
  - (i) became entitled to a superannuation allowance under Part I of the Act of 1937 or to an annual pension under the former regulations, and
  - (ii) again became a contributory employee, and
- (b) has not since he again became a contributory employee had a disqualifying break of service,

this Part has effect as if references to the first retirement pension were references to that superannuation allowance or annual pension and references to a retirement grant were references to a retirement grant under the former regulations.

## PART III SEPARATE BENEFITS

### *Application of Part III*

**16.—(1)** This Part of this Schedule applies to a person who—

- (a) has become entitled to a retirement pension (a “previous pension”),
- (b) after becoming so entitled entered further local government employment,
- (c) has ceased to hold the further employment and has become entitled in relation to it to a retirement pension (an “additional pension”), and
- (d) has not become entitled to the annual pension mentioned in Part II of this Schedule.

**(2)** In this Part “retirement pension” includes—

- (a) a retirement pension under the 1974 regulations or the 1986 regulations,
- (b) a superannuation allowance under Part I of the Act of 1937,
- (c) an annual pension under the former regulations,
- (d) a pension under a local Act scheme, and
- (e) a short service grant under regulation 9 of the Benefits regulations.

### *Modifications to usual benefit rules*

**17.—(1)** If—

- (a) on the person's ceasing to hold an employment in relation to which he became entitled to a previous pension (a “previous employment”) regulation D7 applied, and
- (b) he gave notice under paragraph 4 of Schedule 9 of the 1986 regulations,

regulation D7(2) does not apply on his ceasing to hold any further employment.

(2) If regulation D7 did not apply on the person's ceasing to hold a previous employment, but does apply on his ceasing to hold a further employment, paragraph 2(1) of Schedule D3 applies with the substitution for paragraphs (a) and (b) of the words “ $6^{243}/_{365}$  years”.

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*Benefits on and after death*

**18.**—(1) Subject to sub-paragraph (2), if when the person dies regulation E3(2) applies, it applies with the omission of the words from “the greater of” to the end of paragraph (a).

- (2) If the person who dies became entitled to a previous pension or to an additional pension—
- (a) by virtue of regulation D9, in a case where there was no entitlement under any previous regulation of Part D,
  - (b) by virtue of regulation D11, or
  - (c) by virtue of regulation E2(1)(c) or (d) of the 1986 regulations,

then—

- (i) if his previous and additional pension benefits equal or exceed his relevant previous or additional pensionable remuneration, there is no entitlement under Part E to a death grant in relation to the further employment, and
- (ii) otherwise, the amount of the death grant (as calculated in accordance with that Part) is reduced by the amount, if any, by which it exceeds the difference between the amount of those benefits and that remuneration.

(3) For the purposes of paragraph (2)—

- (a) a person’s “previous and additional pension benefits” are the total of—
  - (i) every death grant payable in relation to any previous employment, calculated in accordance with Part E,
  - (ii) payments made in respect of every previous pension,
  - (iii) every retirement grant to which the person became entitled in conjunction with any previous pension,
  - (iv) any payments made in respect of the additional pension, and
  - (v) any retirement grant to which the person became entitled in conjunction with the additional pension,

including in each case any increase under the Pensions (Increase) Act 1971<sup>(3)</sup> and the Pensions (Increase) Act 1974<sup>(4)</sup>, and

- (b) a person’s “relevant previous or additional pensionable remuneration” is the greater of—
  - (i) the aggregate obtained by taking for each previous pension the amount of the pensionable remuneration by reference to which it was calculated and the amount by which that amount would have been increased if it had been the rate of an official pension (within the meaning of the Pensions (Increase) Act 1971) beginning on and payable from the day after the last day of the relevant previous employment, and
  - (ii) the amount of the pensionable remuneration by reference to which the additional pension was calculated.

## PART IV

### SURVIVING SPOUSES' AND CHILDREN'S BENEFITS

**19.**—(1) This paragraph applies where—

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<sup>(3)</sup> 1971 c. 56.

<sup>(4)</sup> 1974 c. 9.

- (a) a person was entitled to a retirement pension (other than one which was reduced under regulation D13),
  - (b) after becoming so entitled he entered further local government employment,
  - (c) he dies in the further employment, and
  - (d) if he had then ceased to be employed (otherwise than by reason of his death) he would have been entitled to give notice under paragraph 10.
- (2) Where this paragraph applies—
- (a) any benefits payable in respect of the person (except any surviving spouse's or children's short-term pension) are to be calculated, and
  - (b) any surrender of part of a retirement pension has effect,

as if immediately before his death he had become entitled to benefits under Part II of this Schedule or, if it is more favourable to the person entitled to receive the benefits in question, Part III of this Schedule.

**20.** Where—

- (a) a person was entitled to a superannuation allowance under Part I of the Act of 1937 or an annual pension under the former regulations or a pension under a local Act scheme, or a retirement pension under the 1974 regulations, the 1986 regulations or these regulations,
- (b) after becoming so entitled he entered further local government employment,
- (c) the pension or allowance was on that account reduced or suspended, and
- (d) he dies in the further employment,

any benefits payable in respect of him (except any surviving spouse's or children's short-term pension) are to be calculated as if immediately before his death he had become entitled to benefits under Part III of this Schedule.

**21.—(1)** Where—

- (a) a surviving spouse is entitled to a spouse's short-term pension under regulation F1,
- (b) if the deceased had ceased to hold his employment on the date of his death (otherwise than by reason of death), he would have been entitled to a retirement pension under Part D (whether or not payable immediately), and
- (c) the deceased's local government employment was new employment for the purposes of Part I,

then the annual rate of the short-term pension is a rate equal—

- (i) if the retirement pension was not reduced under Part I, to the total of the spouse's pensionable remuneration in the new employment and the annual rate of the retirement pension, or
- (ii) if the retirement pension was so reduced, to the total of the spouse's pensionable remuneration in the new employment and the annual rate, if any, at which the retirement pension was payable.

(2) So far as it is attributable to remuneration in the new employment, that spouse's short-term pension is payable by the new administering authority, and, so far as it is not so attributable, by the former administering authority (if different).

**21.—(1)** Where—

- (a) a surviving spouse is entitled to a spouse's long-term pension under regulation F2, and
- (b) the deceased's local government employment was a new employment for the purposes of Part I,

then the annual rate of the long-term pension is the greater of—

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- (i) the aggregate of—
    - (I) half the annual rate of the member’s retirement pension, and
    - (II) half the annual rate of the retirement pension to which the member would have been entitled in respect of the new employment if on the date of death the member had become entitled under regulation D7, and
  - (ii) half the annual rate of the retirement pension to which the member would have been entitled if—
    - (I) on the date of death the spouse had become entitled under that regulation, and
    - (II) notice had been given under paragraph 10.
  - (2) That spouse’s long-term pension is payable—
    - (a) in the case mentioned in paragraph (i)—
      - (i) so far as it is attributable to remuneration in the new employment, by the new administering authority, and
      - (ii) so far as it is not so attributable, by the former administering authority (if different), and
    - (b) in the case mentioned in paragraph (ii), as if it were a pension under Part II.
  - (3) For the purposes of sub-paragraph (1)—
    - (a) any increase in the deceased’s retirement pension under regulation D2(2), and
    - (b) any reduction in that pension under regulation H2(1), or by virtue of a surrender under regulation D14,
- shall be disregarded.