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STATUTORY INSTRUMENTS

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**1988 No. 1618 (S.157)**

**EDUCATION, SCOTLAND**

**The Teachers' Superannuation (Scotland)  
Amendment Regulations 1988**

*Made* - - - - *12th September 1988*  
*Laid before Parliament* *30th September 1988*  
*Coming into force* - - *21st October 1988*

The Secretary of state, in exercise of the powers conferred on him by sections 9 and 12 of the Superannuation Act 1972<sup>(1)</sup> and section 35(7) of the Social Security Pensions Act 1975<sup>(2)</sup> as read with regulation 33A of the Occupational Pensions Schemes (Contracting-out) Regulations 1984<sup>(3)</sup>, and of all other powers enabling him in that behalf, after consulting with representatives of local education authorities and of teachers with such representatives of other persons likely to be affected by these Regulations as appear to him to be appropriate, in accordance with section 9(5) of the Superannuation Act 1972, and with the consent of the Treasury<sup>(4)</sup>, hereby makes the following Regulations:

**PART I**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Teachers' Superannuation (Scotland) Amendment Regulations 1988, and may be cited together with the Teachers' Superannuation (Scotland) Regulations 1977 to 1984 as the Teachers' Superannuation (Scotland) Regulations 1977 to 1988.

(2) These Regulations shall come into force on 21st October 1988, and Part III of these Regulations shall have effect from 6th April 1988.

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(1) 1972 c. 11

(2) 1975 c. 60; section 35(7) was amended by the Social Security Act 1979 (c. 18), Schedule 3, paragraph 18(b), and by the Social Security Act 1985 (c. 53), Schedule 3, paragraph 2; see section 66(1) of the 1975 Act for definitions of “occupational pension scheme” and “public service pension scheme” relevant to the exercise of the statutory powers under which these Regulations are made.

(3) S.I.1984/380; the relevant amending instruments are S.I. 1985/1930 and 1986/1716

(4) The function was transferred to the Treasury by S.I. 1981/1670

## **Interpretation**

2. In these Regulations, a reference to “the principal Regulations” is a reference to the Teachers' Superannuation (Scotland) Regulations 1977(5).

## **PART II**

### **Definitions**

3. In regulation 3 of the principal Regulations, for the definition of “part-time service”, there shall be substituted—

““part-time service” means service as a teacher under a contract which provides for regular service of less than full-time service and which subsists for at least a period of 6 consecutive weeks but does not include service of a person who is, or is deemed to be, a pensionable employee within the meaning of the Local Government Superannuation (Scotland) Regulations 1987(6).”.

### **Reckonable service**

4. At the end of regulation 4(2)(c) of the principal Regulations, the word “;or” shall be substituted for the dash and there shall be inserted the following sub-paragraph:—

“(d) in employment which is in continuation of employment of the kind described in sub-paragraph (c).”.

### **Part-time service**

5. In regulation 5 of the principal Regulations, for paragraph (3), there shall be substituted the following paragraphs:—

“(3) Where a teacher makes an election under paragraph (1) within one month of entering that part-time employment, that election shall have effect from the date of commencement of that part-time employment.

(3A) An election under paragraph (1) shall apply to contracts for part-time employment with the same employer entered into after the date of that election.”.

### **Purchase of past added years**

6. In regulation 21(2) of the principal Regulations—

(a) the word “and” shall be inserted at the end of sub-paragraphs (a) and (c); and

(b) the following sub-paragraph shall be inserted after sub-paragraph (c):—

“(d) unless he elects—

(i) no earlier than the date on which he applies for allowances, to pay contributions by method B, or

(ii) to pay contributions by method D,

of not less than 30 days.”.

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(5) S.I. 1977/1360, as amended by S.I. 1977/1808, 1978/1507, 1980/344, 1983/639 and 1431, and 1984/2028

(6) S.I. 1987/1850

### **Purchase of current added years**

7. In regulation 27 of the principal Regulations—

(a) there shall be added the following paragraphs after paragraph (3):—

“(3A) For the purposes only of this regulation, a teacher’s employment in reckonable service is not discontinued while he is absent from duty during and in consequence of a trade dispute.

(3B) Paragraph (3A) applies—

(a) even if the person was not participating in or financing or otherwise directly interested in the trade dispute, and

(b) even if his employer was not a party to the trade dispute.

(3C) In this regulation “trade dispute” has the meaning given by section 29 of the Trade Union and Labour Relations Act 1974((7)).”

(b) paragraph (6) is hereby revoked.

### **Limited returns to pensioners**

8. In regulation 45 of the principal Regulations paragraph (2) is hereby revoked.

### **Revaluation of guaranteed minimum in certain cases**

9. After regulation 45A of the principal Regulations there shall be inserted the following regulation:—

#### **“Revaluation of guaranteed minimum in certain cases**

**45B.**—(1) This regulation applies where a teacher—

(a) has ceased to be employed in reckonable service, and

(b) has acquired a right to a transfer value under regulation 72, and

(c) has taken that right by exercising the option conferred by paragraph 13(2) of Schedule 1A to the Pensions Act(8) in the way specified in sub-paragraph (b) of that paragraph and where his guaranteed minimum, and where appropriate that of his widow, are appropriately secured within the meaning of section 52C(4) of that Act(9).

(2) Where this regulation applies—

(a) for the purposes of section 35(2) of the Pensions Act(10) (amount of guaranteed minimum), the teacher’s earnings factors shall be determined without reference to any order that comes into force under section 21 of that Act after the relevant year in which his service was terminated, and

(b) thereafter the weekly equivalent mentioned in section 35(2) of that Act shall be increased—

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(7) 1974 c. 52; section 29 was amended by the Trade Union and Labour Relations (Amendment) Act 1976 (c. 7), section 1(d), by the Criminal Law Act 1977 (c. 45), Schedule 13 and by the Employment Act 1982 (c. 46), section 18.

(8) The Social Security Pensions Act 1975 (c. 60); Schedule 1A was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 3, and amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraphs 29 and 30; paragraph 13 of Schedule 1A was further amended by S.I. 1987/1116, Schedule 6.

(9) Section 52C was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 2, and was amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraph 26.

(10) Section 35(2) was amended by the Social Security Act 1986, Schedule 8, paragraph 8.

- (i) in accordance with any additional requirements for the time being prescribed for the purposes of section 45(1)(b) of that Act, or
  - (ii) by the minimum rate of increase provided for in section 35(7) of that Act, whichever provides the greater increase.
- (3) In this regulation “relevant year” and “final relevant year” have the meanings given in section 35(9) of the Pensions Act”.

### **Allocation of annual pension**

10. In regulation 53(1)(b) of the principal Regulations, for the words “to him and his wife for their joint lives”, there shall be substituted the words “payable for him for the joint lives of himself and his wife”.

### **Employment at reduced salary**

11. There shall be inserted after regulation 55 of the principal Regulations the following new regulation:—

#### **“Employment at reduced salary**

55A.—(1) This regulation shall apply whenever, after 21st October 1988, a teacher suffers a reduction in the rate of his salary while remaining in the employment of the same employer and that employer certifies, by written notice to the Secretary of State given within thirteen weeks of the relevant date, that the continued employment of the teacher at such lower rate of salary is in the interests of the efficient discharge of the employer’s functions, but shall not apply—

- (a) if the period between the last day of service at the previous rate of salary and the relevant date exceeds six months;
- (b) in relation to a teacher who elects under regulation 12(2) to pay contributions after the relevant date by reference to his previous salary; or
- (c) unless the result of its application shall be an increase in the benefits otherwise payable under these Regulations to or in respect of the teacher on his retirement or death after taking account of any increase payable by virtue of any Pensions Increase (Review) Order.

(2) Whenever this regulation applies the teacher shall, for the purposes of these Regulations (but subject to paragraph (7)), be treated as having served two or more separate periods of reckonable service, each qualifying for separate benefits under these Regulations, the first period terminating on the last day of reckonable service before the reduction in salary takes effect and the second or subsequent period commencing on the relevant date and terminating on cessation of reckonable service or, where such service continues at a further reduced rate of salary, on the last day of such service before that further reduction takes effect.

(3) So long as the teacher’s periods of reckonable service, when aggregated, are not less than any minimum period of reckonable service required by regulation 46 or any other provision of these Regulations in order to qualify for benefit, nothing in regulation 46 or 64(3), or in any other regulation, shall have effect so as to prevent the payment of benefit in respect of each such period of reckonable service.

(4) Regulation 49(2)(d) (which limits the amount of reckonable service which may be taken into account for the purpose of calculating any benefit under this Part) shall have effect in relation to the aggregate amount of a teacher’s reckonable service; and any period

required by that provision to be left out of account shall be deducted from the teacher's last period or periods of reckonable service.

(5) For the purpose of calculating pensionable salary pursuant to regulation 8, "terminal service" shall be taken to mean the last three years of any period of reckonable service which qualifies as a separate period for the purpose of this regulation (ending on the last day of that period) or, where the separate period is less than three years, that period.

(6) Where an annual allowance or a lump sum becomes payable to a teacher after the relevant date by virtue of regulation 47(1) on incapacity before attaining the age of 60, the amount of any retiring allowance payable to him under regulations 52(1) and 54(1), by virtue of regulation 51, shall be calculated as follows:—

- (a) the provisions of regulation 51 (which extend the period of his reckonable service) shall be applied to the total period of his reckonable service both before and after the relevant date;
- (b) the period by which his reckonable service is to be extended as a result of that calculation shall be added—
  - (i) where the allowance becomes payable within three years from the relevant date, to his period of reckonable service which terminated on his last day of reckonable service before the relevant date; and
  - (ii) where the allowance becomes payable thereafter, to his period of reckonable service commencing on the relevant date;
- (c)  $\frac{1}{80}$ th of his pensionable salary, calculated separately in relation to his period of reckonable service before the relevant date and his period of reckonable service commencing on that date (taking account of any increase in either of those periods by virtue of sub-paragraph (b) above), shall be multiplied by the number of years of his reckonable service in each period (as so increased);

and the reference in paragraph 2(i) of Schedule 9 (Service counting for benefit) to "any period which (disregarding any past added years which he elected to purchase) was or could have been added to his reckonable service by virtue of regulation 51" shall be construed accordingly.

- (a) (7) Any additional period of reckonable service acquired by the purchase of past added years pursuant to regulation 21 or any previous provision to the like effect shall, subject to paragraph (b), be deemed to have been added to the period of reckonable service before the relevant date (whether or not the teacher has, at the relevant date, completed the payment of all additional contributions payable under that regulation) unless the additional period of reckonable service was so acquired—
  - (i) by virtue of a first or further election (as defined in regulation 21(3)) to pay contributions by method A, B or C made on or after the relevant date, or
  - (ii) by virtue of a further election to pay contributions by method D where the previous election was to pay contributions by method A, reserving the right to make a further election, but that previous election was made on or after the relevant date;
- (b) on the relevant date any election to pay contributions by method A or C made after the commencement of the period of twelve months ending on the last day of service at the previous salary shall cease to have effect and any contributions paid pursuant thereto shall thereupon be refunded to the teacher;
- (c) where a first or further election (as defined in regulation 21(3)) to pay contributions by method B is made on or after the relevant date, paragraph 3

of Part II of Schedule 2A (which provides for the calculation of the lump sum contribution in certain cases where a teacher's salary has been reduced) shall not apply.

(8) Where a death gratuity under regulation 57 or a deficiency payment under regulation 58 is payable in respect of a teacher, it shall be calculated—

(a) by taking as his pensionable salary for the purposes of regulations 57(1)(a) and 58(1)—

(i) where the gratuity becomes payable within three years from the relevant date, the amount of his pensionable salary for the period up to the relevant date, and

(ii) where the gratuity become payable thereafter, the amount of his pensionable salary for the period since the relevant date;

(b) by taking as the lump sum referred to in regulations 57(1)(b) and (2) the aggregate amount of the lump sum which would have been payable to him under regulation 54 (if he had become incapacitated on the date of his death or had otherwise become entitled to an allowance in accordance with that regulation) in respect of his periods of reckonable service up to the relevant date and commencing on that date, any enhancement being calculated pursuant to paragraph (7) of this regulation;

(c) by taking as the annual pension referred to in regulation 58(2) the aggregate amount of the annual pension paid to him under regulation 52.

(9) For the purposes of this regulation—

(a) a “Pensions Increase (Review) Order” means an Order made under section 2 of the Pensions (Increase) Act 1971<sup>(11)</sup> or under section 59 of the Pensions Act;

(b) the “relevant date” means the first day of reckonable service at a reduced rate of salary;

(c) where a teacher is employed part-time, the rate of his salary shall be deemed to be that which he would receive if he were employed full-time in the same post.”.

### **Death gratuities**

**12.** In regulation 57(1) of the principal Regulations there shall be inserted, after the words “paid to the spouse”, the words “or spouses, who shall be entitled to an equal share”.

### **Benefits after further service**

**13.** In regulation 59 of the principal Regulations—

(a) there shall be inserted in paragraph (4), after the words “there shall”, the words “,subject to paragraph (5),”;

(b) there shall be substituted, for paragraph (5), the following paragraph:—

“(5) Where the further service of a teacher is discontinued before he attains the age of 60 otherwise than by reason of—

(i) his incapacity, or

(ii) his redundancy, or

(iii) the efficient exercise of his employer's functions,

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<sup>(11)</sup> 1971 c. 56; section 2 was repealed (with saving for existing orders) by the Social Security Pensions Act 1975 (c. 60), Schedule 5.

the allowance payable by virtue of paragraph (4) shall not be paid until he attains the age of 60.”; and

(c) there shall be substituted for paragraph (6) the following paragraph:—

“(6) In the application of paragraph (4) to any teacher, in respect of whom under regulation 51(1) his reckonable service for the purpose of calculating previous retiring allowances was restricted to the number of years the teacher would have accrued if he had remained in service until attaining the ages mentioned in that regulation, the reference in paragraph (4) to the age of 60 shall be read as a reference to the age of 65.”.

### **Long-term pensions**

14. After regulation 64(8) of the principal Regulations there shall be inserted the following:—

“(8A) Paragraph (8) shall not apply where the widow was her husband’s wife at some time while he was employed in reckonable service after 31st March 1972 and before the date on which he became entitled to the retiring allowance.”.

### **Polygamous marriages**

15. After regulation 64(9) of the principal Regulations there shall be added the following:—

“(10) Where there is more than one widow, they shall be entitled to an equal share of any benefits payable under regulation 63 and this regulation, as read with Schedules 7 and 8 respectively; and where the death of one or more widows occur, the survivor shall be entitled in full to any benefits awarded by these provisions or, in the case of survivors, they shall be entitled to an equal share.”.

### **Extension of time**

16. In regulation 88 of the principal Regulations there shall be deleted the words “Subject to regulation 27(6).”.

### **Purchase of past added years-current provisions**

17. In Part II of Schedule 2A to the principal Regulations (Purchase of past added years-current provisions-Method B), there shall be inserted at the beginning of paragraph 3(1) the words “Subject to regulation 55A(7)(c).”.

### **Teachers' superannuation account**

18. For the form of account in Part 1 of Schedule 11 to the principal Regulations there shall be substituted the form of account in Schedule 1 to these Regulations.

### **Right to opt out**

19. No provision of this Part of these Regulations shall apply to any person to whom at any time before 21st October 1988 any benefit including a return of contributions was or may become payable if—

- (a) he is placed by that provision in a worse position than he would have been in if it had not applied in relation to that benefit; and
- (b) that provision relates to a benefit paid or payable in respect of a person who—
  - (i) ceased before 21st October 1988 to be in reckonable service; or
  - (ii) died before that date while employed in reckonable service; and

- (c) the person first mentioned in this regulation elects, by giving notice in writing to the Secretary of State within 6 months after 21st October 1988, that the provision shall not apply to him.

## PART III

### Definitions

**20.**—(1) In regulation 3(1) of the principal Regulations—

- (a) after the definition of “agreed” there shall be inserted the following definition:—

““appropriate policy” means a policy of insurance or annuity contract which provides an annuity which satisfies requirements prescribed under paragraph 13(2) (b) of Schedule 1A to the Pensions Act.”;

- (b) after the definition of “pensionable salary” there shall be inserted the following definition:—

““Pensions Act” means the Social Security Pensions Act 1975”;

- (c) after the definition of “state pension age” there shall be inserted the following definition;—

““superannuation scheme” means an occupational pension scheme within the meaning of section 66(1) of the Pensions Act.”.

(2) In regulation 3(2) of the principal Regulations there shall be substituted, for the words “regulation 86”, the words “regulation 72, 82 and 86”.

### Repayment of contributions on cessation of employment

**21.** In regulation 39(1) of the principal Regulations there shall be substituted, for the words preceding sub-paragraph (a), the following words:—

“A teacher who has ceased or ceases to be employed in reckonable service shall, if the following conditions are satisfied, be entitled, on the expiry of the period specified in sub-paragraph (c) or on attaining the age of 70, if earlier, to be repaid the balance of his contributions, calculated in accordance with regulation 42 as at the date of repayment or as at the date on which he attained the age of 70, if earlier, reduced by a sum equal to the tax chargeable on that repayment pursuant to section 598 of the Income and Corporation Taxes Act 1988(12) (charge to tax on repayment of employee’s contributions):—”.

### Return of contributions at 70

**22.** Regulation 40 of the principal Regulations is hereby revoked.

### Return of members' contributions

**23.** In regulation 43 of the principal Regulations—

- (a) sub-paragraph (b) of paragraph (1) shall be deleted; and  
 (b) at the end of paragraph (2) there shall be added the words “or the date on which he attained the age of 70, if earlier”.

### **Entitlement to retiring allowances**

**24.** In regulation 46(1)(dd) of the principal Regulations there shall be deleted the words “or 40(2)(a)(ii)”

### **Reckonable service for entitlement and for benefit**

**25.** In regulation 49(2) of the principal Regulations—

- (a) in sub-paragraph (c)(iii), the words “or 40(2)” shall be deleted;
- (b) sub-paragraph (d)(iii) is hereby revoked.

### **Enhancement of reckonable service**

**26.** In regulation 51 of the principal Regulations—

- (a) for paragraph (1) there shall be substituted—

“(1) If while he is employed in reckonable service a teacher becomes incapacitated, his reckonable service shall, for the purposes of calculating the retiring allowance under regulation 47, be treated as being—

- (a) if he has completed less than 10 years reckonable service, twice the number of years of such service or the number of years he would have completed in such service if he had remained in it until he attained the age of 65, whichever is the lesser;
- (b) if he has completed 10 years or more than 10 years reckonable service, whichever is the greater of—
  - (i) the number of years not exceeding 40 which he would have completed in such service if he had been employed for an additional 6 years and 243 days or if he had remained in such service until he attained the age of 60, whichever is the lesser; or
  - (ii) the number of years not exceeding 20 which he would have completed if he had remained in reckonable service until he attained the age of 65.”; and
- (b) in paragraph (2), for the words “The table below applies”, there shall be substituted the words “Paragraph (1) shall apply” and the table is revoked.

### **Superannuation schemes**

**27.** In regulation 71 of the principal Regulations—

- (a) in paragraph (1), for the words ““superannuation scheme””, there shall be substituted the words ““statutory scheme””;
- (b) in paragraph (1)(a)(iv) the words “(“a statutory scheme”)” shall be deleted;
- (c) at the end of paragraph (1)(a)(v) a full-stop shall replace “; or”; and
- (d) paragraph (1)(b) shall be revoked.

### **Payment of transfer values**

**28.** For regulation 72 of the principal Regulations there shall be substituted the following:—

“72.—(1) Subject to paragraphs (3) and (4), where a teacher has ceased to be employed in reckonable service (hereafter referred to as his “old employment”), then if—

- (a) his old employment terminated before he attained the age of 60 years, or where paragraph (2) applies the age of 59 years;
  - (b) he is a person—
    - (i) who has completed 2 or more years' reckonable service, or
    - (ii) who after leaving his old employment has taken up employment in which he participates in a superannuation scheme and he has, within 6 months after taking up that new employment, made an application such as is mentioned in sub-paragraph (d) for payment of a transfer value;
  - (c) no benefit under these Regulations has been paid to him in relation to his old employment other than—
    - (i) a benefit consisting of a return of contributions in respect of part only of his reckonable service in his old employment (whether or not repaid to the Secretary of State), or
    - (ii) a benefit consisting of a return of contributions in respect of all of his reckonable service in his old employment paid to him by the Secretary of State under regulation 45(1) or under any other provision before 1st June 1973 where he has subsequently repaid to the Secretary of State an amount equal to the sum received by him;
  - (d) he has, before—
    - (i) attaining the age of 60 years, or
    - (ii) where paragraph (2) applies, attaining the age of 59 years, or 6 months after the date when his old employment terminated, whichever is later,
 made an application in writing to the Secretary of State for payment of a transfer value and has not subsequently withdrawn it in accordance with paragraph (5) (a); and
  - (e) where paragraph (2) applies, he has completed 2 or more years' service,
- the Secretary of State shall, in respect of that person pay a transfer value, calculated in accordance with Part 1 of Schedule 10, to be used in accordance with paragraph 13 of Schedule 1A to the Pensions Act at the teacher's option in one or more of the ways set out in sub-paragraph (2) of that paragraph.
- (2) This paragraph applies where a person opts to have payment of his transfer value, or any portion of it, made to one or more insurance companies to purchase an appropriate policy.
- (3) Subject to paragraph (4) the Secretary of State shall, if an application under paragraph (1)(d) is received by him, pay a transfer value by whichever is the earlier of the following:—
- (a) the date 12 months from the date on which the application is received by him; or
  - (b) the date on which the person in respect of whom the transfer value is paid attains the age of 60 where—
    - (i) he ceased to be employed in reckonable service on a date prior to his attaining the age of 59 years, and
    - (ii) he made his application for payment of a transfer value within 6 months of that date.
- (4) Where proceedings before a court have been commenced against a teacher at any time before the expiry of the period of 12 months beginning with the date on which his reckonable service terminates and it appears to the Secretary of State that the proceedings

may lead to any retiring allowance or gratuity payable under these Regulations to or in respect of the teacher being reduced or withheld under regulation 87, the date by which the Secretary of State shall pay a transfer value shall be—

- (a) the date before which he would be required to do so under paragraph (3), or
- (b) the end of the period of three months after the conclusion of the court proceedings (including any proceedings on appeal),

whichever is the later.

- (a) (5) An application for payment of a transfer value may be withdrawn by a person by giving notice in writing to the Secretary of State, but such a notice will be of no effect if prior to the date of receiving it the Secretary of State has entered into an agreement with a third party to use the whole or any part of the person's transfer value in one of the ways set out in paragraph 13 of Schedule 1A to the Pensions Act;
- (b) a person who withdraws an application may make another."

### **Receipt of transfer values**

**29.** For regulation 73 of the principal Regulations there shall be substituted the following:—

**“73.—(1)** Where a teacher who enters reckonable service has, in consequence of service in previous employment, accrued rights to benefit under a superannuation scheme (whether or not his rights are preserved in that scheme or have been transferred to and are held under one or more such schemes or are appropriately secured for the purposes of section 52C of the Pensions Act by one or more appropriate policies), the teacher may, within 12 months of entering reckonable service, give written notice to the Secretary of State that he wishes the Secretary of State to accept a payment in respect of those accrued rights, or any part of them, from—

- (a) the trustees or managers of the superannuation scheme in which his accrued rights are preserved (in this regulation referred to as “the previous scheme”), or
- (b) the trustees or managers of the superannuation scheme, or the insurance company, to which a payment in respect of his accrued rights or any part thereof has been made.

(2) Subject to paragraph (3), where notice is given and payment is made to the Secretary of State in accordance with paragraph (1)—

- (a) an additional period of reckonable service will be credited to the teacher in respect of the payment calculated in accordance with Part 2 of Schedule 10, and
- (b) the period of service in respect of which the payment is made, as certified by the trustees or managers of the previous scheme, shall be taken into account in determining whether any benefit is payable to or in respect of the teacher under these Regulations.

(3) The Secretary of State shall not be required to accept a payment in accordance with paragraph (1) if it does not exceed the annual amount of the guaranteed minimum pension for which the Secretary of State would have been liable as a result of accepting it multiplied by the factor appropriate to that person, as set out in column 2 of the following table opposite his age, as at the date when the Secretary of State is requested to accept the payment, as set out in column 1—

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<i>Age</i>	<i>Appropriate Factor</i>
29 or under	8

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<i>Age</i>	<i>Appropriate Factor</i>
30 to 39	9
40 to 49	10
50 or over	12.”.

### **Modifications relating to teachers in comparable British service**

**30.** For regulation 74 of the principal Regulations there shall be substituted the following:—

“**74.**—(1) In its application to teachers in comparable British service regulation 72 shall have effect with the substitution for paragraph (1)(b)(ii) of the following:—

“(ii) who after leaving his old employment has taken up employment in comparable British service and has made an application such as is mentioned in subparagraph (d) for payment of a transfer value;”.

(2) In its application to teachers formerly in comparable British service regulation 73 shall have effect with the deletion in paragraph (1) of the words “, within 12 months of entering reckonable service,”.”.

### **Schedule 10 (Transfer values)**

**31.** For Schedule 10 and Appendices thereto to the principal Regulations there shall be substituted the Schedule set out in Schedule 2 to these Regulations.

### **Application of Regulations**

**32.**—(1) Regulations 28 and 31 of these Regulations shall not have effect—

(a) in relation to any person who has completed 5 or more years service as a teacher and whose employment in reckonable service terminated before 1 January 1986 (or who ceased to be subject to the principal Regulations before that date), so as to allow him to exercise an option under regulation 72 of the principal Regulations which would not have been available to him had these Regulations not been made; or

(b) in relation—

(i) to payments of transfer values made by the Secretary of State to statutory schemes, or schemes which fall to be treated by him as statutory schemes for the purposes of Schedule 10 to the principal Regulations, where an application was received by him before 6th April 1988; or

(ii) to payments of transfer values made by such schemes to the Secretary of State before that date.

(2) Where the whole, or any part of, a transfer value paid in respect of a teacher—

(a) falls to be calculated by reference to service rendered by him before the coming into force of these Regulations; and

(b) is to be used by the Secretary of State, at that person’s option, to acquire transfer credits in an occupational pension scheme which is not a statutory scheme; and

the amendments made to the principal Regulations by regulations 28 and 31 of these Regulations would result in the amount or value of those transfer credits being reduced, that transfer value, or that part of it, shall be calculated as if regulations 28 and 31 of these Regulations had not been made.

St Andrew's House,  
Edinburgh  
8th August 1988

*Michael B Forsyth*  
Parliamentary Under Secretary of State, Scottish  
Office

We consent,

12th September 1988

*Alan Howarth*  
*Kenneth Carlisle*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Regulation 18

TEACHERS' SUPERANNUATION ACCOUNT

Part I Form of Account

**ACCOUNT UNDER REGULATION 76 OF THE TEACHERS' SUPERANNUATION (SCOTLAND) REGULATIONS 1977-88 FOR THE YEAR ENDED 31 MARCH 19**

**HEAD**

Notional balance at 1 April 19

**ADD RECEIPTS**

- AI Contributions**
  - i. Employees .....
  - ii. Employers .....
- II Transfer Payments**
  - i. Actual .....
  - ii. Notional .....
- III Contributions equivalent premiums (Note 2) .....**
- IV Miscellaneous receipts .....**
- V Interest on notional investments .....**

**DEDUCT PAYMENTS**

- BI Benefits (Note 3)**
  - i. Annual pensions .....
  - ii. Lump sums .....
  - iii. Death gratuities .....
  - iv. Widows' pensions .....
  - v. Children's pensions .....
  - vi. Other beneficiaries' pensions .....
  - vii. Short term pensions .....
- II Refunds of contributions .....**
- III Transfer Payments**
  - i. Actual .....
  - ii. Notional .....
- IV Contributions equivalent premiums to the State Pension Scheme**

Notional balance at 31 March 19

**NOTES:**

**1.** This account is valued periodically by the Government Actuary to determine the contribution rates required in respect of benefits provided and repayments of contributions made under the Regulations. The latest quinquennial valuation (House of Commons paper ..... ) covers the period from ..... to .....

**2.** Head AIII includes contributions equivalent premiums (within the meaning of section 42 of the Social Security Pensions Act 1975) refunded by the State Pension Scheme and also certified amounts of contributions equivalent premiums recovered (under section 47 of the Act) from repayments of contributions.

**3.** Payments under the Pensions (Increase) Acts amounting to £ ..... are not included in this account.

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~~4. The sum of £ ..... spent on benefits attributable to service before the beginning of June 1922 has been defrayed out of monies provided by Parliament and excluded from this account. The sum includes benefits paid and contributions repaid in respect of poor law service and benefits paid in respect of service as educational organisers.~~

SCHEDULE 2

Regulation 31

SCHEDULE SUBSTITUTED FOR SCHEDULE 10 OF THE PRINCIPAL REGULATIONS

“SCHEDULE 10

Regulation 72(1) and 73(2)

THE CALCULATION OF TRANSFER VALUES AND OF SERVICE TO BE CREDITED  
IN RESPECT OF TRANSFER VALUES MADE TO THE SECRETARY OF STATE

PART I

—CALCULATION OF TRANSFER VALUE

1. Subject to the provisions of paragraphs 2, 3, 5 and 6, a transfer value to be paid in accordance with the provisions of regulation 72 in respect of a person shall be—

- (a) the capitalised value of his accrued rights under these Regulations at the material date, and any associated rights under the Pensions (Increase) Act 1971 and the Pensions (Increase) Act 1974(13), less a sum, if any, in respect of any state scheme premium which the Secretary of State has paid and not recovered in respect of a period of service included in the valuation of those rights; together with
- (b) where the transfer value is without reasonable cause or excuse not paid within 6 months of the material date and it is not to be made to a statutory scheme (or a scheme being treated by the Secretary of State as a statutory scheme for the purposes of this Schedule)—
  - (i) interest, if any, calculated on a daily basis over the period from the material date to the date on which the transfer value is paid, at the rate set out in regulation 4(4)(a) of the Occupational Pension Schemes (Transfer Values) Regulations 1985(14); or, if it is greater,
  - (ii) the amount by which the transfer value falls short of what it would have been if the material date had been the date on which the transfer value was paid.

2. Where, prior to the last date on which he is required to pay a transfer value under these Regulations, the Secretary of State has determined under regulation 87 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.

3. Where a person requests that a transfer value be paid to a superannuation scheme—

- (a) which is not contracted out within the meaning of section 32 of the Pensions Act(15); and

(13) 1974 c. 9

(14) S.I. 1985/1931, to which there are amendments not relevant to these Regulations.

(15) Section 32 was amended by the Social Security and Housing Benefits Act 1982 (c. 24), Schedule 4, and by the Social Security Act 1986 (c. 50), section 9 and Schedules 2, 10 and 11.

- (b) the trustees or managers of that scheme are able or willing to have transferred to it only the liability for a member's accrued rights other than his and his widow's rights to guaranteed minimum pensions; and
- (c) he does not require the Secretary of State to use that portion of his transfer value that represents his guaranteed minimum pensions in one of the ways specified in paragraph 13(2) of Schedule 1A to the Pensions Act,

then his transfer value shall be reduced by the amount of a state scheme premium sufficient for the Secretary of State for Social Services to meet his liability in respect of that person's and his widow's guaranteed minimum pensions.

**4.** In this part of the Schedule—

- (a) "accrued rights" means the rights which have accrued in respect of a person under these Regulations at the material date, or which would have accrued in respect of him if the period of service necessary to satisfy the requirements of regulation 46 had been the period which he had completed at that date;
- (b) "capitalised value" means the capitalised value at the material date as determined by the Secretary of State, having regard to investment conditions and the contingencies on which benefits are, or are to be, payable under these Regulations;
- (c) "material date" means the date on which the person ceased to be employed in reckonable service or, if it is later, the date of his application for payment of a transfer value which he has not subsequently withdrawn;
- (d) "state scheme premium" means a state scheme premium or a transfer premium under Part III of the Pensions Act.

**5.** Where one or more transfer values have been paid to the Secretary of State in respect of a member, any transfer value paid by him shall be at least equal to the aggregate of those transfer values and any contributions made by that person under regulation 11, 21 or 27, except where it falls to be made to a statutory scheme (or a scheme being treated by the Secretary of State as a statutory scheme for the purposes of this Schedule).

**6.** A transfer value paid under this Schedule shall be at least equal in amount to the cash equivalent, if any, to which a person would otherwise be entitled under Part II of Schedule 1A to the Pensions Act.

## PART II

### —CALCULATION OF CREDITED SERVICE

**7.** Where a transfer value has been paid to, and accepted by, the Secretary of State, 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 8.

**8.** For the purposes of paragraph 7—

- (a) where the transfer value—
  - (i) is paid by the trustees or managers of a statutory scheme, or any other scheme which is at the appropriate date treated by the Secretary of State as a statutory scheme for the purposes of this Schedule;
  - (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 Secretary of State in determining the amount of transfer

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values to be paid to schemes which are, or which fall to be treated as, statutory 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 a superannuation scheme which is, or which falls to be treated as, a statutory scheme under Part I of this Schedule, would produce an amount equal to the transfer value received by the Secretary of State, 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 Secretary of State 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 Secretary of State in determining the amount of transfer values to be paid to superannuation 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.

9. In this Part of this Schedule "appropriate date" means the date on which the person in respect of whom the transfer value is paid became employed in reckonable service, or if the transfer value is received more than 12 months after that date, the date on which it is received."

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## EXPLANATORY NOTE

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

These Regulations further amend the Teachers' Superannuation (Scotland) Regulations 1977.

The Regulations make the following changes in respect of part-time service:—

- (a) the definition of "part-time service" in regulation 3 of the 1977 Regulations is amended and simplified to apply to regular part-time contracts which extend for at least the minimum period specified (regulation 3);
- (b) additional provisions are inserted in regulation 5 of the 1977 Regulations to facilitate a teacher being able to count the period from the date of commencement of his part-time service towards his reckonable service and to provide that the election shall have effect for subsequent periods of part-time employment with the same employer (regulation 5).

Regulation 4 of the 1977 Regulations is amended by adding to the periods during which a teacher is employed in reckonable service for the purposes of these Regulations any time when he is in employment which is in continuation of the employment of the kind described in regulation 4(2)(c)-i.e. employment which is itself in continuation of employment which was treated as reckonable service under previous provisions (regulation 4).

Regulation 21 of the 1977 Regulations is amended to provide, except in certain circumstances, for a minimum period of service which may be purchased to cover absences disallowed for pension purposes (regulation 6).

Regulation 27 of the 1977 Regulations is amended to clarify that absence arising during or in consequence of a trade dispute does not constitute a discontinuance of employment in reckonable

service for the purpose of purchasing added years. In addition the time limits within which elections to purchase must be made may now be extended at the discretion of the Secretary of State (regulations 7 and 16).

Regulation 45(2) of the 1977 Regulations, under which certain service was precluded from aggregation, thus giving rise to a repayment of contributions, is revoked (regulation 8).

Provision is made for the method of revaluation of a teacher's guaranteed minimum, and where appropriate that of his widow, to be altered where a teacher has acquired a right to a cash equivalent of his accrued benefits on ceasing employment and has elected to use the cash equivalent to purchase an annuity which meets certain requirements (regulation 9).

Regulation 53 of the 1977 Regulations which enables a teacher to allocate a portion of the annual allowance payment on his retirement to provide benefits for his widow or other dependant, is amended to make it clear that an annuity under this provision is payable to the husband during the joint lives of himself and his wife (regulation 10).

Provision is made, where a teacher, in the interests of the education service, accepts a position with the same employer at a lower rate of salary, for the allowances payable to the teacher under the 1977 Regulations to be calculated on a two-fold basis. The first part will be calculated on the assumption that he had retired on the date on which he ceased to be employed at the higher salary and will be payable when he retires (or dies in service). It will be subject to increases payable by virtue of orders under the Pensions (Increase) Act 1971 during the intervening period. The second part will be based on his reckonable service from the first day of employment at the reduced rate of salary (the "relevant date"). Special provision is made for cases where enhanced benefits are payable on premature retirement through incapacity or death in service (regulations 11 and 17).

Regulation 57 of the 1977 Regulations is amended to permit a death gratuity to be shared equally where more than one legal spouse exists (regulation 12).

Regulation 59(4) of the 1977 Regulations provides for the recalculation of an incapacity allowance following a period of further employment in reckonable service. The restriction in regulation 59(5) whereby that regulation applies only if that employment is again terminated because of incapacity is removed. The recalculated allowance shall now be paid only when the teacher attains the age of 60, unless the cessation of his further employment before that age was due to incapacity, redundancy or was in the interests of the efficient discharge of the employer's functions (regulation 13(a) and (b)).

Regulation 59(6) of the 1977 Regulations is amended being consequential upon regulation 26 (regulation 13(c)).

Regulation 64 is amended (a) to provide that, where a man was married on or after 31st March 1972, was divorced before or after retirement and subsequently remarries the same woman, a widow's pension based on total service will be payable on his death, and (b) to allow the spouses of polygamous marriages to be entitled to a pension (equivalent to that payable to a single widow) which is to be shared equally between them (regulations 14 and 15).

A new simpler form of superannuation account is inserted in Part 1 of Schedule 11 to the 1977 Regulations. The account has been revised in accordance with advice from the National Audit Office to conform with up-to-date practice (regulation 18 and Schedule 1).

Regulation 19 permits a person to opt out if placed in a worse position by any of the regulations contained in Part II of these Regulations.

Regulations 39 and 40 of the 1977 Regulations provide for the repayment of contributions, with interest, to teachers who leave teaching below the age of 60 without having qualified for retirement benefits under the Regulations, subject to certain conditions, some of which cease to apply when the teacher attains age 70. Regulation 39 is amended to provide that refunds of contributions are payable to every person including those who reach 70 if these conditions are satisfied. Regulation 40 is revoked as there is no requirement to provide specifically for repayment at age 70. In practice most repayments are effected before teachers reach 60 and, for those teachers who have not sought

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repayment of contributions, contact is made with them once they have attained age 60 to make the repayment (regulations 21 and 22 and consequential amendments in regulations 23, 24 and 25).

For the purposes of clarification and uniformity regulation 51 of the 1977 Regulations is amended to conform with the corresponding provision contained in the England and Wales Regulations (regulation 26).

Regulations 72-74 of the 1977 Regulations are amended to introduce revised arrangements and conditions relating to (a) payment to occupational pension schemes and insurance companies of transfer values representing the cash equivalent of accrued pension benefits, and (b) the calculation of the amount of reckonable service to be credited upon receipt of a transfer value (regulations 28-31 and Schedule 2).

Regulation 32 allows for the calculation of transfer values in respect of reckonable service undertaken before 6th April 1988 to be made under previous provisions where this proves to be more favourable.

The remaining regulations in Part III of these Regulations are consequential.

Part III has effect from 6th April 1988. This retrospective effect is authorised by section 12(1) of the Superannuation Act 1972.