STATUTORY INSTRUMENTS

1992 No. 2649 (S. 232)

EDUCATION, SCOTLAND

The Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1992

Made - - - -	*23rd October 1992*
Laid before Parliament	*9th November 1992*
Coming into force - -	*30th November 1992*

The Secretary of State, in exercise of the powers conferred on him by sections 9 and 12 of the Superannuation Act 1972(**1**) and of all other powers enabling him in that behalf, after consulting with representatives of education authorities and of teachers and 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 that Act, and with the consent of the Treasury(**2**), hereby makes the following Regulations:—

Citation and commencement

1.—(1) These Regulations may be cited as the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1992.

(2) These Regulations shall come into force on 30th November 1992 and shall have effect from 1st April 1989.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is to be construed as a reference to the regulation which bears that number in 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.

(2) In these Regulations references to the Taxes Act are references to the Income and Corporation Taxes Act 1988(**3**) and, subject to paragraph (5), references to the 1992 Regulations are references to the Teachers' Superannuation (Scotland) Regulations 1992(**4**).

(**1**) 1972 c. 11; section 9 was amended by sections 4, 8 and 11 of, and section 12 was amended by section 10 of, the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
(**2**) The function was transferred to the Treasury by S.I.1981/1670.
(**3**) 1988 c. 1.
(**4**) S.I.1992/280 as amended by S.I. 1992/1025 and 1992/1597.

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

"actuarial" has the meaning assigned to it by Schedule 1 to the 1992 Regulations;

"approved scheme" means a retirement benefits scheme approved under Chapter I of Part XIV of the Taxes Act;

"authorised provider" has the meaning assigned to it by section 9(6) of the Superannuation Act 1972;

"cash equivalent" means a cash equivalent mentioned in paragraph 12(1) of Schedule 1A to the Social Security Pensions Act 1975(**5**);

"contributor" is to be construed in accordance with regulation 8;

"dependant" in relation to either a participator or a contributor means—

(a) any surviving spouse,

(b) any person who is a child of the participator or contributor, "child" being construed in accordance with regulation E21 of the 1992 Regulations, and

(c) any person in respect of whom at the time of death of the participator or the contributor a nomination under regulation E22 of the 1992 Regulations has effect;

"free-standing additional voluntary contributions scheme" means an approved scheme which falls within section 591(2)(h) of the Taxes Act;

"the Index" means the index of retail prices published by the Department of Employment;

"lump sum death benefit" means a lump sum which will become payable in the event of a person dying while paying periodical contributions to provide for it;

"participator" means a contributor who has elected to provide benefits under regulation 12 or a person who has ceased to be a contributor but has not exercised any right to take a cash equivalent or to be paid a lump sum under regulation 15;

"pension element" has the meaning given by regulation 5(2);

"pensionable employment" shall be construed in accordance with Part B of the 1992 Regulations;

"periodical contributions" means regular contributions which a person has elected to pay under regulation 4(1);

"personal pension scheme" means a scheme approved under Chapter IV of Part XIV of the Taxes Act;

"reckonable service" shall be construed in accordance with Part D of the 1992 Regulations;

"retire" means become entitled under regulation E5 of the 1992 Regulations to payment of retiring allowances; and cognate expressions are to be construed accordingly;

"retirement benefits scheme" has the meaning given in section 611 of the Taxes Act;

"retirement pension" has the meaning given by regulation 12(2);

"salary" means—

(a) in relation to pensionable employment, the salary calculated in accordance with regulation C1 of the 1992 Regulations, and

(b) in relation to contributions payable under regulation C8 of the 1992 Regulations, the salary determined in accordance with the provisions of that regulation for the purposes of calculating the said contributions;

"tax year" means the 12 months beginning with 6th April in any year.

(**5**) 1975 c. 60; Schedule 1A was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 3, and paragraph 12(1) amended by the Social Security Act 1990 (c. 27), Schedule 4, paragraph 5(4)(c)(iii) and Schedule 7.

(4) Subject to the provisions of this regulation and except where the context otherwise requires, other expressions in these Regulations have the same meaning as in the 1992 Regulations.

(5) In the application of these Regulations to any time before 31st March 1992, unless the context otherwise requires, any reference to the 1992 Regulations or to any provision of them shall be construed as a reference to the Teachers' Superannuation (Scotland) Regulations 1977([6]) or to the corresponding provision of those Regulations.

Making and acceptance of elections

3.—(1) Any election under these Regulations—

(a) is to be made by giving written notice to the Secretary of State, and

(b) shall, subject to paragraphs (2) and (3), be accepted by him.

(2) No election under these Regulations shall be accepted if—

(a) the minima imposed by regulation 4(2)(d) or 7(2) are not met, or

(b) any limit imposed by regulation 7(4) or 14 would be exceeded.

(3) An election falling within regulation 17(2) shall not be accepted if any information required by that regulation is not given.

Election to pay additional voluntary contributions

4.—(1) A person in pensionable employment may at any time elect to pay periodical contributions under these Regulations—

(a) for investment under regulation 9, or

(b) to provide for a lump sum death benefit.

(2) The notice of such an election shall specify—

(a) whether the election relates to paragraph (1)(a) or (b), or both;

(b) the amount of each periodical contribution or, if expressed as a percentage of salary, that percentage;

(c) in relation to periodical contributions for the purpose of investment under regulation 9, the fund or funds in which the contributions are to be invested; and

(d) subject to regulation 7(5), in relation to the provision of a lump sum death benefit, the amount to be secured which must not be less than £5,000.

Provision for lump sum death benefit

5.—(1) This regulation shall apply where a person elects under regulation 4(1) to pay periodical contributions to provide for a lump sum death benefit.

(2) A person who elects to pay periodical contributions to provide for a lump sum death benefit may at the same time, or at any time while paying those contributions, elect that if the lump sum becomes payable, the whole or part of it (the pension element) shall be applied by the Secretary of State for the purchase from an authorised provider specified by the person of a pension or pensions for one or more dependants.

(3) The notice of an election under paragraph (2) shall specify—

(a) for whom a pension is, or pensions are, to be provided,

(**6**) S.I. 1977/1360, amended by S.I. 1977/1808, 1978/1507, 1980/344, 1983/639 and 1431, 1984/2028, 1988/1618, 1989/666, 1990/383.

(b) if more than one pension is to be provided, the proportion of the pension element that is to be applied to the purchase of each of them, and

(c) in respect of every pension to be provided, whether the annual rate of the pension—

(i) is to be fixed, or

(ii) is to vary in accordance with the Index, or

(iii) is to increase yearly by a specified percentage or, if lower than that percentage, by any increase in the Index for the year in question.

(4) Subject to regulation 7(5), a person who has continued to pay periodical contributions up to his 60th birthday but does not then retire may elect to pay further periodical contributions to his 61st birthday to provide for a lump sum death benefit; and so long as he has not retired further elections may be made annually in respect of years commencing on his 61st and subsequent birthdays.

(5) Any election made by a person under paragraph (4) shall lapse if the person retires or ceases to be in pensionable employment during the year in question.

(6) An election under regulation 4(1) to provide a lump sum death benefit or an election under paragraph (4) shall have effect for the purpose of entitlement to benefit from the date when the election is accepted by the Secretary of State.

Variation and cancellation of elections

6.—(1) A contributor who has elected under regulation 4(1) to pay periodical contributions for the purpose of investment under regulation 9(1) may at any time by giving written notice to the Secretary of State—

(a) alter the amount of the periodical contributions,

(b) require them to be invested in future, under regulation 9(1), in a different way, or

(c) cancel the election under regulation 4(1).

(2) A contributor who has elected under regulation 4(1) to pay periodical contributions to provide a lump sum death benefit may at any time by giving written notice to the Secretary of State—

(a) subject to regulation 7(5), elect that a specified larger sum is to be secured and the periodical contributions increased accordingly, or

(b) if the contributor has made an election under regulation 5(2), cancel it or alter in any specified way the manner in which the pension element is to be applied, or

(c) cancel the election under regulation 4(1).

(3) A contributor who has elected under regulation 4(1) to pay periodical contributions for the purpose of investment under regulation 9(1) may at any time by giving written notice to the Secretary of State require the Secretary of State to realise any investments and to reinvest the proceeds in a different fund to be specified by the contributor.

(4) A person paying further periodical contributions under regulation 5(4) may at any time make an election under regulation 5(2) or do anything authorised by paragraph (2) above.

(5) The Secretary of State shall give effect as soon as is reasonably practicable to the terms of any notice given under this regulation.

Payment and amount of additional voluntary contributions

7.—(1) Periodical contributions shall be paid to the Secretary of State at intervals of one month.

(2) Where a contributor has elected to pay periodical contributions for the purpose of investment under regulation 9(1) in relation to investment in a unit-linked fund, the minimum periodical contribution payable shall be £20 per month.

(3) Payment of periodical contributions under paragraph (1) shall be effected by deduction by the contributor's employer of the appropriate amounts from the contributor's salary and such deductions shall commence to be made from the salary in respect of the first whole pay period falling after the date the employer receives authorisation to make these deductions which shall be remitted to the Secretary of State as soon as reasonably practicable after their deduction.

(4) Subject to paragraph (5), in any tax year the total of the periodical contributions payable by the contributor must not exceed the lesser of (A minus B minus C) and D, where

A is 15 per cent of the person's salary for that year,

B is the total of any contributions paid by the contributor in the year to another approved scheme,

C is the total of the contributions paid by the contributor in the year under the 1992 Regulations, and

D is the amount which would be likely to provide benefits of the largest amounts allowed by regulation 14.

(5) Notwithstanding the provisions of paragraph (4), where a person elects under regulation 4(1)(b) to provide for a lump sum death benefit, the periodical contribution payable by virtue of that election, or any election under regulation 5(4) or 6(2)(a), must not, at the date on which the Secretary of State accepts the election, be of such an amount as to provide for a lump sum death benefit in excess of the permitted amount calculated in accordance with paragraph 13(4) and (5) of the Schedule to these Regulations.

Contributor

8.—(1) Subject to paragraph (2), a person is a contributor while an election under regulation 4(1) has effect.

(2) A person who—

(a) receives retiring allowances under the 1992 Regulations; or

(b) has, under regulation 6(1)(c) or 6(2)(c), cancelled the election or elections to pay periodical contributions; or

(c) subject to paragraph (3), has ceased to be in pensionable employment and is not paying contributions under regulation C8 of the 1992 Regulations (contributions for current added years); or

(d) is in employment which is not pensionable employment by virtue of an election under regulation B6 of the 1992 Regulations,

ceases to be a contributor.

(3) For the purpose of this regulation a person who—

(a) has ceased to be in pensionable employment; and

(b) has re-entered pensionable employment within 3 months,

is to be treated as having continued to be in pensionable employment.

Investment of contributions

9.—(1) Any periodical contributions paid by a contributor for investment under this regulation shall be invested by the Secretary of State, in accordance with any notice under regulation 4(2) or 6(1), in one or more of the funds authorised by him for the purposes of these Regulations managed by an insurance company selected by him.

(2) Periodical contributions to provide for a lump sum death benefit shall be invested by the Secretary of State with an insurance company selected by him so as to secure the payment of a lump sum death benefit of the amount required by any notice under regulation 4(2) and 6(2).

(3) In this regulation "insurance company" means a body authorised under section 3 or 4 of the Insurance Companies Act 1982(**7**) to carry on long-term business.

Inward transfers

10.—(1) Where a person who enters pensionable employment has during previous employment paid contributions to—

(a) a free-standing additional voluntary contributions scheme, or

(b) an approved scheme which only provides additional benefits through additional voluntary contributions paid by that person but does not fall within section 591(2)(h) of the Taxes Act,

that person, whether or not he becomes a contributor within the meaning of these Regulations, may, within 12 months of entering pensionable employment give written notice to the Secretary of State that he wishes the Secretary of State to accept from the trustees or managers of such a scheme a transfer value representing the value of the investments from his contributions.

(2) Where a transfer value is accepted by the Secretary of State it shall be invested by him, in accordance with the wishes of the person entering pensionable employment, in one or more of the funds authorised by the Secretary of State for the purposes of these Regulations managed by an insurance company selected by him.

Outward transfers

11.—(1) Subject to paragraph (2), the Secretary of State shall, on application by a person who has ceased to be a contributor in accordance with regulation 8(2)(c) or (d), pay a transfer value representing the value of investments made under regulation 9(1) or 10(2) to one of the following schemes in which the person may be participating:—

(a) an approved scheme which provides additional benefits but does not fall within section 591(2)(h) of the Taxes Act; or

(b) a personal pension scheme; or

(c) a retirement benefits scheme, provided the trustees or managers certify that the transfer value shall not be used to purchase benefits in the form of a tax-free lump sum.

(2) A transfer value shall not be payable under paragraph (1) unless one is payable in respect of that person under regulation F1 of the 1992 Regulations.

(3) Where a transfer value is payable under paragraph (1), the Secretary of State shall make payment 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 applicant attains the age of 60 years where—

(i) he ceased to be a contributor in accordance with regulation 8(2)(c) or (d) 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.

(**7**) 1982 c. 50.

Retirement and dependants' pensions

12.—(1) The benefits that may be provided on retirement in accordance with this regulation under a pension policy purchased as described in paragraph (7) are a retirement pension and one or more dependants' pensions.

(2) A retirement pension is a pension commencing not earlier than the date of retirement and is payable to the participator for life.

(3) A dependant's pension is a pension which would become payable to a dependant on the death of the participator after his retirement and is payable for life, except that, in the case of a dependant who is a child as defined in the 1992 Regulations, it shall cease to be payable when that person ceases to be a child within the meaning of those Regulations.

(4) A pension policy purchased as described in paragraph (7) shall not provide for any retirement pension or dependant's pension to be capable in whole or in part of surrender, commutation or assignment.

(5) Not earlier than one month before retirement, a participator, by giving written notice to the Secretary of State, shall make a benefits election which shall specify—

(a) whether a retirement pension is to be provided;

(b) for whom, if anyone, dependants' pensions are to be provided;

(c) if more than one pension is to be provided, either—

(i) the proportion of the amount secured by the investments made under regulation 9(1) or 10(2) that is to be applied to the purchase of each of them; or

(ii) the dependants' pensions to be provided expressed as a percentage of the retirement pension;

(d) in respect of every pension to be provided, whether the annual rate of the pension—

(i) is to be fixed, or

(ii) is to vary in accordance with the Index, or

(iii) is to increase yearly by a specified percentage or, if lower than that percentage, by any increase in the Index for the year in question; and

(e) the authorised provider who is to provide each pension.

(6) In the case of a retirement pension, the notice may also specify that if the participator dies within the period of 5 years beginning when the retirement pension commences the balance that would have been payable during the remainder of that period if the pension had continued at the rate in force at the time of the participator's death is to be paid as a lump sum.

(7) Subject to paragraphs (8) and (9), upon receipt of the notice of election the Secretary of State shall, as soon as reasonably practicable, realise the investments made under regulation 9(1) or 10(2) and apply the amount obtained to the purchase of a pension policy from an authorised provider chosen by the participator to provide the benefits specified in the notice of election.

(8) If the participator dies before retirement, or after retirement but before a policy such as is mentioned in paragraph (7) is entered into, the investments made under regulation 9(1) or 10(2) shall be realised and become payable as a lump sum, subject to any limit imposed by regulation 14 and paragraph 13 of the Schedule to these Regulations.

(9) In the case of a retirement pension, where there are exceptional circumstances of serious ill-health affecting the participator, the Secretary of State may realise the investments without purchasing any pension and in that event the amount becomes payable as a lump sum.

(10) If the benefits provided by the pension policy, purchased in accordance with paragraph (7), when aggregated with the benefits payable under the 1992 Regulations arising from the participator's service, do not exceed the annual amounts specified in regulation H7 of the 1992 Regulations, the

authorised provider may discharge the liability for payment of the benefits under the said pension policy by payment of a lump sum representing their capital value.

Lump sum death benefits

13.—(1) If a contributor who is paying periodical contributions to provide a lump sum death benefit dies when no election under regulation 5(2) has effect, the lump sum secured by these contributions shall become payable.

(2) If on the death of a contributor an election under regulation 5(2) has effect—

(a) the Secretary of State shall apply the pension element in accordance with the election, and

(b) any balance of lump sum secured shall become payable.

(3) If at the time of the death of the contributor any person named in a notification given under regulation 5(3) had died or ceased to be a dependant, the proportion of the lump sum death benefit that was to have been applied to the purchase of a pension for that person shall not be used for that purpose, but shall be added to the balance becoming payable under paragraph (2)(b).

Benefit limits

14.—(1) The Schedule shall have effect for limiting the benefits that may be paid under these Regulations.

(2) The maximum annual rate of a retirement pension or dependant's pension ascertained from the Schedule may be increased—

(a) by 3 per cent for each complete year that has elapsed, or

(b) if a greater increase results, in proportion to the increase in the Index that has occurred,

since the date on which the pension became payable.

Repayment of investments in certain cases

15.—(1) In the case of a person who—

(a) ceases to be in pensionable employment; and

(b) is entitled to receive a return of contributions under regulation C10 of the 1992 Regulations; and

(c) has applied for and received such a return of contributions,

the Secretary of State shall make arrangements for that person to receive a lump sum representing the total realisable value of the investments made by the Secretary of State in respect of that person under regulation 9(1) or 10(2).

(2) There shall be deducted from any lump sum payable under paragraph (1) the amount of tax chargeable under section 598 of the Taxes Act.

Payment by Secretary of State

16.—(1) Where pursuant to an election under Regulation 5(2) or 12(5) the Secretary of State purchases on or after 30th November 1992 a pension policy from an authorised provider specified by the elector other than the insurance company referred to in regulation 9, the Secretary of State shall not be liable for payment of any pension under that policy.

(2) Where pursuant to an election under Regulation 5(2) or 12(5) the Secretary of State purchases a pension policy from the insurance company referred to in regulation 9, or before 30th November 1992 purchases a pension policy from any other authorised provider, the Secretary of State shall be

liable to make to the person entitled to it any payment of pension under the policy which has not been made by the insurance company or other authorised provider.

(3) Lump sums payable—

(a) as mentioned in regulation 12(6); or

(b) under regulation 12(8) or 13(1) or 13(2)(b),

shall be paid by the Secretary of State to the deceased's spouse or, if there is no spouse, to the deceased's legal personal representatives.

(4) Lump sums payable under regulation 12(9), 12(10) or 15 shall be paid by the Secretary of State to the former contributor.

(5) Subject to paragraph (6), if when a participator dies a lump sum would have been payable under regulation 12(8), but the whole or part of that sum cannot be paid under regulation 12(8) by reason of regulation 14 and paragraph 13 of the Schedule to these Regulations, the Secretary of State shall pay to the participator's legal personal representatives the amount which cannot be paid under Regulation 12(8), so far as it does not exceed the prescribed amount, but subject to any deduction of tax under paragraph (10).

(6) In the circumstances specified in paragraph (5), instead of making payment under that paragraph the Secretary of State may, after taking into account any wishes expressed in writing of the deceased participator and with the consent of that participator's legal personal representatives, apply the amount which cannot be paid under Regulation 12(8), or any part of it, for the purchase from an authorised provider of one or more dependants' pensions, as defined in Regulation 12(3), and these Regulations (including Regulation 14 and the Schedule) shall apply to such dependants' pensions as they apply to dependants' pensions purchased under Regulation 12(7).

(7) Where after purchase of dependants' pensions under paragraph (6) any part remains of the amount which cannot be paid under Regulation 12(8), the Secretary of State shall pay to the participator's legal personal representatives that part, so far as it does not exceed the prescribed amount, but subject to any deduction of tax under paragraph (10).

(8) Subject to paragraph (10), if by reason of regulation 14 and the Schedule to these Regulations a pension provided under regulation 12 is not payable in full, the Secretary of State shall pay to the participator an amount, or aggregate of amounts, not exceeding the prescribed amount, out of the investments realised by virtue of regulation 12(7) which would otherwise have been applicable to the purchase of the pension.

(9) In paragraphs (5) and (8) the reference to a prescribed amount is to an amount calculated in accordance with the method for the time being specified in regulations made for the purposes of section 591 of the Taxes Act as the method to be used for calculating the amount of any surplus funds.

(10) The amount of any tax chargeable under the Taxes Act on payments made under these regulations shall be deducted by the Secretary of State before payment.

Information

17.—(1) Persons making elections under these Regulations, and their employers, shall give the Secretary of State such information as he may reasonably require for the purposes of his functions under these Regulations.

(2) A person making—

(a) an election under regulation 4(1) or 5(4) to provide a lump sum death benefit, or

(b) an election under regulation 6(2)(a), or

(c) an election under regulation 6(4) corresponding to one that could have been made under regulation 6(2)(a), shall, in particular, give the Secretary of State such information about the person's health as the Secretary of State may reasonably require.

Payments in respect of deceased persons

18.—(1) This regulation applies where a person dies and the total of—

(a) any sums that were due to him or her under these Regulations, and

(b) any sums payable under these Regulations to his or her personal representatives ("the amount due")—

does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965(**8**) and applying in relation to the death.

(2) Where this regulation applies the Secretary of State may, without requiring the production of confirmation or other proof of title, pay the amount due—

(a) to the deceased's legal personal representatives, or

(b) to the person, or to or among any one or more of any persons, appearing to him to be beneficially entitled to the estate.

Determination of questions

19. All questions arising under these Regulations shall be determined by the Secretary of State and a determination by him shall be final.

Anticipatory payments

20.—(1) Subject to paragraph (3), any sum paid to the Secretary of State in anticipation of these Regulations by a teacher in pensionable employment shall be treated as if it had been paid under these Regulations.

(2) A sum is one paid in anticipation of these Regulations if—

(a) it was paid after 2nd February 1989 and before 1st April 1989 on the understanding that if these Regulations providing for additional voluntary contributions were made it would be treated as such a contribution; and

(b) it would not, if these Regulations had been in force throughout the tax year ending with 5th April 1989, have exceeded the limit imposed by regulation 7(4).

(3) Nothing in this regulation shall be taken to have imposed on the Secretary of State any obligation to make any investment before 1st April 1989, but—

(a) any investment so made shall be treated as having been made under these Regulations; and

(b) if any investment was so made and an event on which a benefit would have been payable occurred before 1st April 1989, the benefit shall be paid.

St. Andrew's House,
Edinburgh
14th October 1992

Fraser of Carmyllie
Minister of State, Scottish Office

(**8**) 1965 c. 32; the amount specified in S.I. 1984/539 is £5,000.

We consent,

Nicholas Baker
T.J.R. Wood
Two of the Lords Commissioners of Her Majesty's Treasury

23rd October 1992

SCHEDULE

Regulation 14

BENEFIT LIMITS

PART I

INTERPRETATION

1. Paragraphs 2 to 5 have effect for defining expressions used in this Schedule.

2. "Total retirement benefits" means the total of so much of—

(a) the annual rate of the participator's retirement pension under these Regulations;

(b) the annual rate of any retirement pension under the 1992 Regulations;

(c) the actuarial equivalent as an annual pension of any retirement lump sum under the 1992 Regulations;

(d) the annual rate of any pension payable to the participator under any approved scheme; and

(e) the actuarial equivalent as an annual pension of any retirement lump sum under any approved scheme—

as is attributable to contributions paid while in pensionable employment.

3.—(1) Subject to subparagraph (3) and to paragraph 4, "Final remuneration" means the greater of A and B, where—

A is the participator's highest year's adjusted salary in respect of pensionable employment , or salary in respect of a period of contributions under regulation C8 of the 1992 Regulations, during the period of 5 years ending on the material date, and

B is the average of the participator's salary for any period of 3 or more consecutive years ending no earlier than 10 years before the material date,

but, in respect of any year other than the one ending on the material date, the salary shall be taken to have been increased in proportion to any increase in the Index from the end of the year up to the material date.

(2) In this paragraph "adjusted salary" means

$C + D$.

where—

C is the participator's total taxable salary for the year in question less any bonus payments and payments for overtime ("fluctuating emoluments"), and

D is the average, for a period ending with the year in question, of any fluctuating emoluments; the period is one of at least 3 years or, if shorter, the period during which the fluctuating emoluments have been payable,

and "the material date" means the earliest of—

(a) the retirement date;

(b) the date on which the retirement pension under these Regulations commenced; and

(c) the date on which the participator ceased to be in pensionable employment or, as the case may be, to contribute under regulation C8 of the 1992 Regulations.

(3) In respect of the year 1987/88 and following years, "final remuneration" shall not include any sums chargeable to tax under section 148 of the Taxes Act or chargeable under Schedule E to Part I of the Taxes Act and arising from the acquisition or disposal of shares, or an interest in shares,

or from a right to acquire shares except where the shares or rights etc which give rise on or after 17 March 1987 to a Schedule E tax liability had been acquired before that date.

4. Where the participator entered pensionable employment on or after 1st June 1989 and the final remuneration, calculated under paragraph 3, exceeds the permitted maximum in terms of section 590C of the Taxes Act(**9**), no account shall be taken of the excess over that amount unless the participator is a person to whom regulation C1(6) or (7) of the 1992 Regulations would apply.

5.—(1) "Retained benefits" means the total of any pensions payable to the participator—

(a) in respect of employment before the participator entered pensionable employment, under a retirement benefits scheme or under an annuity contract falling within section 431(4)(d) of the Taxes Act; or

(b) under a retirement annuity contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act; or

(c) under a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act.

(2) In this paragraph "pension" includes the actuarial equivalent as an annual pension of any lump sum.

PART II

RETIREMENT PENSIONS

6. The annual rate of a participator's retirement pension under these Regulations must not be such as to cause the participator's total retirement benefits to exceed the permitted amount.

7.—(1) If the participator retires on his 60th birthday, except where paragraph 9 applies, the permitted amount is the greater of E and F, where—

E is 1/60th of the participator's final remuneration for each of up to 40 years of reckonable service, and

F is the lesser of G and H.

(2) In sub-paragraph (1)—

(a) G is—

(i) in relation to a participator who entered pensionable employment before 17 March 1987, the fraction of final remuneration ascertained by reference to the number of years of reckonable service at age 60, from the Table below:—

TABLE

Reckonable service at age 60	Fraction
not more than 5	1/60th for each year
6	8/60ths
7	16/60ths
8	24/60ths
9	32/60ths
10 or more	40/60ths and

(**9**) Section 590C was inserted by the Finance Act 1989 (c. 26), Schedule 6, paragraph 4.

and

(ii) in any other case, 1/30th of the participator's final remuneration for each of up to 20 years of reckonable service, and

(b) H is 2/3rds of the participator's final remuneration less any retained benefits.

8. If the participator retires on a date later than his 60th birthday, the permitted amount is—

(a) where the participator first entered pensionable employment before 1st June 1989, the greater of J, K and, where applicable, L, where—

J is an amount calculated in accordance with paragraph 7 as at that date,

K is an amount calculated in accordance with paragraph 7 as at the participator's 60th birthday increased, up to the date of his retirement, in proportion to any increase in the Index during that period, and

L is, in the case of a participator with more than 40 years of reckonable service, 1/60th of the participator's final remuneration for each of up to a maximum of 45 years of reckonable service, excluding any years before the participator's 60th birthday in excess of 40, and

(b) in any other case, the lesser of the amounts calculated in accordance with paragraph 7(2)(a)(ii) and (2)(b).

9.—(1) If the participator retires on his 60th birthday, having at a date before that birthday ceased to be in pensionable employment—

(a) where the participator first entered pensionable employment before 1st June 1989, the permitted amount is the greater of

$$(M + R) \text{ and } \left(\frac{N \times Q}{P} + R\right)$$

where—

M is 1/60th of the participator's final remuneration for each of up to 40 years of reckonable service,

N is the number of years on which M is calculated,

P is the number of years on which M would have been calculated if the participator had continued in pensionable employment up to his 60th birthday,

Q is the maximum amount calculated in accordance with paragraph 7 if the participator had continued in pensionable employment until age 60,

R is the appropriate increase, and

(b) where the participator first entered pensionable employment after 31st May 1989, the permitted amount is the lesser of the amounts calculated in accordance with paragraph 7(2)(a)(ii) and (2)(b).

(2) For the purposes of sub-paragraph (1) the appropriate increase is an increase in the amount in question in proportion to any increase in the Index from the cessation of pensionable employment to the date of payment of retiring allowances.

10. If the participator retires by reason that his pensionable employment was terminated on the grounds of redundancy or in the interests of the efficient exercise of the employer's functions and the participator immediately became entitled to payment of retiring allowances under the 1992 Regulations, the permitted amount is—

(a) where the participator first entered pensionable employment before 1st June 1989, the greater of S and

$$\left(\frac{N \times Q}{P}\right)$$

and

(b) in any other case, T, where—

N, P and Q have the same meaning as in paragraph 9,

S is 1/60th of the participator's final remuneration for each of his years of reckonable service up to a maximum of 40, and

T is the lesser of the amounts calculated in accordance with paragraph 7(2)(a)(ii) and (2)(b).

11. If the participator retires by reason that his pensionable employment was terminated due to incapacity and the participator immediately became entitled to payment of retiring allowances under the 1992 regulations, whether or not these were enhanced, the permitted amount is that fraction of the participator's final remuneration which he could have received had he remained in pensionable employment until his 60th birthday in accordance with paragraph 7 of this Schedule.

PART III

DEPENDANTS' PENSIONS

12.—(1) The annual rate of a dependant's pension under these Regulations, or where more than one such pension is payable the total of their annual rates, must not be such as to cause the total of the annual rates of the relevant benefits to exceed the permitted amount.

(2) Where only one dependant's pension is payable, the relevant benefits are—

(a) that pension;

(b) any similar pension payable to the dependant under the 1992 Regulations or under a free-standing additional voluntary contributions scheme to which contributions were paid while the participator was in pensionable employment; and

(c) any retained benefits,

and the permitted amount is 2/3rds of the maximum retirement pension.

(3) Where two or more dependants' pensions are payable, the relevant benefits are—

(a) those pensions;

(b) any similar pensions payable as mentioned in sub-paragraph (2)(b); and

(c) any retained benefits,

and the permitted amount is the annual rate of the maximum retirement pension;

Provided that for each dependant's pension the relevant benefits shall not exceed the permitted amount specified in sub-paragraph (2).

(4) In sub-paragraphs (2) and (3) "retained benefits" means pensions payable to a dependant as such which, if they had been pensions payable to the participator, would have fallen within paragraph 5.

(5) Subject to sub-paragraph (6), the maximum retirement pension is the participator's permitted amount calculated in accordance with paragraphs 7 to 11 but disregarding any retained benefits.

(6) In calculating the maximum retirement pension—

(a) if the participator died in pensionable employment and had not attained the age of 60, it is to be assumed that he continued in pensionable employment at the same salary up to, and retired on, his 60th birthday, and

(b) if the participator died in pensionable employment and had attained the age of 60, it is to be assumed that he retired on the day before death.

PART IV

LUMP SUMS ON DEATH

13.—(1) The lump sum payable under regulation 12(8) must not be such as to cause the total lump sums payable on death to exceed the permitted amount.

(2) The total lump sums payable on death are the total of—

(a) any lump sum death benefit which the person has elected to provide for under regulation 4(1)(b), 5(4) or 6(2)(a);

(b) any lump sum payable under regulation 12(8); and

(c) any benefits similar to lump sum death benefit totalling £1,000 or more that are payable under relevant schemes.

(3) The relevant schemes are—

(a) approved schemes;

(b) schemes approved under Chapter IV of Part XIV of the Taxes Act;

(c) free-standing additional voluntary contributions schemes;

(d) retirement annuity contracts approved under Chapter III of Part XIV of the Taxes Act,; and

(e) the scheme constituted by the 1992 Regulations.

(4) The permitted amount is £5,000 or, if greater, 4 times the participator's remuneration.

(5) The participator's remuneration is the greatest of U, V and W, where—

U is what the participator's final remuneration would have been if the date of death had been the material date,

V is the participator's highest year's adjusted salary for the purpose of calculating U, and

W is the participator's total taxable earnings during any period of 12 months ending not more than 3 years before the date of death, increased as mentioned in paragraph 3(1).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the payment of additional voluntary contributions by teachers who are members of the Superannuation Scheme as constituted by the Teachers' Superannuation (Scotland) Regulations 1992, as amended, in order to secure additional benefits financed by investment of those contributions. The Regulations take effect from 1st April 1989. Section 12 of the Superannuation Act 1972 confers power to make Regulations retrospective in effect.

The Regulations provide for the making of elections of various kinds. Regulation 3 contains general provisions as to their making and acceptance; regulation 4 provides for elections to pay periodical contributions so as to secure additional retirement and dependants' pensions and further provides for elections to pay periodical contributions so as to secure a lump sum death benefit in the event of death while paying such contributions; regulation 5 permits teachers who have elected to provide a lump sum death benefit to apply that sum, either in whole or in part, to the purchase of dependants' pensions; regulation 6 allows elections made under regulation 4 to be varied or cancelled.

Regulation 7 deals with the payment of contributions and imposes a limit on their total amount.

While an election has effect and the person concerned is in employment which is, or is treated as being, pensionable under the 1992 Regulations, he or she remains a contributor for the purposes of these Regulations (regulation 8).

Regulation 9(1) requires the Secretary of State to invest periodical contributions with the selected insurance company in one or more of the specified funds in accordance with any wishes expressed by the contributor. Regulation 9(2), referring to an election to provide a lump sum death benefit, requires contributions to be invested so as to secure payment of the amount specified. Regulation 10 requires a transfer value accepted from another additional voluntary contributions scheme also to be invested as appropriate, while regulation 11 sets out the provisions regarding payment of a transfer value (representing the value of the investments) to an insurance company or a superannuation scheme.

On retirement, investments (except those providing for a lump sum death benefit) are to be realised and retirement or dependants' pensions, or both, are to be purchased with the proceeds from an authorised provider chosen by the participator to provide the benefits specified in the notice of election. Such pensions are payable for life, and are not able to be commuted or assigned, but provision is made to allow the proceeds of the realisation of investments to be paid as a lump sum in some circumstances (regulation 12).

Regulation 13 provides for the payment of lump sum death benefits secured by contributions under regulation 4.

Regulation 14, with the Schedule, imposes limits on benefits payable under the Regulations; where benefits exceed the prescribed limits the investments applicable to the purchase of the excess shall not be used for that purpose and shall be returned to the teacher after deduction of tax (regulation 16).

Regulation 15 provides for the realisable value of investments to be repaid where contributions under the 1992 Regulations are repaid.

Under regulation 16, the Secretary of State makes any lump sum payments due. He is not responsible for payments under a pension policy purchased from an authorised provider except in the circumstances specified in regulation 16(2). Regulation 17 requires him to be given information needed for the purposes of his functions under the Regulations. Regulation 18 provides for any payments, up to a prescribed maximum (currently £5,000), payable to the personal representatives of deceased persons, to be made without confirmation or proof of title. Regulation 19 provides for questions to be determined by the Secretary of State.

Regulation 20 provides for payments made by employees after 2 February 1989 in anticipation of these Regulations to be treated as contributions, and for benefits to be payable where such payments are invested and a relevant event occurred before the Regulations took effect. Although Regulation 20 refers to events before the Regulations took effect, it only creates rights and duties after the Regulations took effect.