STATUTORY INSTRUMENTS

1994 No. 2924

EDUCATION, ENGLAND AND WALES

The Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994

Made - - - -	*17th November 1994*
Laid before Parliament	*21st November 1994*
Coming into force - -	*12th December 1994*

The Secretary of State, in exercise of the powers conferred by sections 9 and 12 of the Superannuation Act 1972(**1**) and Schedule 3 thereto, after consulting with representatives of the local education authorities, teachers and other persons likely to be affected in accordance with section 9(5) of the said Act, and with the consent of the Treasury(**2**), hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 and shall come into force on 12th December 1994.

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**), references to the 1988 Regulations are references to the Teachers' Superannuation (Consolidation) Regulations 1988(**4**) and references to the 1989 Regulations are references to the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1989(**5**).

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

(**1**) 1972 c. 11; Section 9 has been amended by sections 4(1), 8(3) and (4) and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) and section 12 has been amended by section 10 of that Act.
(**2**) See S.I. 1981/1670.
(**3**) 1988 c. 1.
(**4**) S.I. 1988/1652; amended by S.I. 1989/378 and 811, 1993/114, 1994/1058, 1994/2774 and 1994/2876.
(**5**) S.I. 1989/946.

"approved scheme" means a retirement benefits scheme approved under Chapter 1 of Part XIV of the Taxes Act;

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

"contributor" is to be construed in accordance with regulation 7;

"dependant" in relation to 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 1988 Regulations; and

(c) any person in respect of whom at the time of death of the participator or contributor a nomination under regulation E22 of the 1988 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 Central Statistical Office of the Chancellor of the Exchequer;

"insurance company" means a body authorised under section 3 or 4 of the Insurance Companies Act 1982(**6**) to carry on long term business;

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

"participator" means—

(a) a contributor who has made a benefits election under regulation 12(5),

(b) a person who has ceased to be a contributor not being a person in respect of whom the Secretary of State has paid a transfer value under regulation 11, or

(c) a person in respect of whom a transfer value has been accepted under regulation 10;

"pension element" is to be construed in accordance with regulation 5(2);

"pensionable employment" is to be construed in accordance with Part B of the 1988 Regulations;

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

"reckonable service" is to be construed in accordance with Part D of the 1988 Regulations;

"regular contributions" means contributions, paid pursuant to an election under regulation 4(1)(a) or (c);

"retire" means become entitled under regulation E4 of the 1988 Regulations to payment of retirement benefits, and cognate expressions are to be construed accordingly;

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

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

"salary" means—

(a) in relation to pensionable employment the salary calculated in accordance with regulation C1 of the 1988 Regulations, and

(b) in relation to contributions payable under regulation C8 or C8A(**7**) of the 1988 Regulations, the salary determined in accordance with the provisions of those regulations for the purposes of calculating the said contributions;

(**6**) 1982 c. 50.
(**7**) Regulation C8A was inserted by S.I. 1993/114.

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

(4) For the purposes of these Regulations the annual equivalent of any lump sum is that lump sum divided by 12.

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 amount paid in contributions in any tax year pursuant to that election would be such as to cause the total of contributions paid in that tax year pursuant to these Regulations to exceed the limit imposed by regulation 8(3); or

(b) the benefits to be paid as a result of the contributions paid pursuant to the election would be likely to exceed the amount allowed by regulation 14 and the Schedule; or

(c) in the case of an election under regulation 4(1)(c), the amount specified in the election as the amount to be secured is less than the amount specified in regulation 4(2)(d).

(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 regular and lump sum contributions

4.—(1) A person in pensionable employment may at any time elect to pay—

(a) regular contributions for investment under regulation 9(1);

(b) a lump sum contribution for investment under regulation 9(1); or

(c) regular contributions to provide for a lump sum death benefit under these Regulations.

(2) The notice of such an election is to specify—

(a) in the case of an election under paragraph (1)(a) or (c), the amount of each regular contribution or, if expressed as a percentage of salary, that percentage;

(b) in the case of an election under paragraph (1)(b) the amount of the contribution;

(c) in the case of an election under paragraph (1)(a) or (b) the fund or funds in which contributions are to be invested; and

(d) in the case of an election under paragraph 1(c) 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)(c) to pay regular contributions to provide for a lump sum death benefit.

(2) A person who elects to pay regular 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 of a pension policy from an authorised provider to provide 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,

(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 8(3), a person who has continued to pay regular contributions up to his 60th birthday but does not then retire may elect to pay further regular 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) An 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)(c) or an election under paragraph (4) shall have effect for the purpose of the 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)(a) to pay regular contributions may at any time by giving written notice to the Secretary of State—

(a) subject to regulation 8(3), alter the amount of the regular contributions,

(b) require any contributions payable pursuant to the election to be invested in future under regulation 9 in a different way,

(c) require the Secretary of State to realise any investment and to reinvest the proceeds under regulation 9 in a different way, or

(d) cancel his election under regulation 4(1)(a).

(2) A contributor who has elected under regulation 4(1)(b) to pay a lump sum contribution may at any time by giving written notice to the Secretary of State require the Secretary of State to realise any investment and to reinvest the proceeds under regulation 9 in a different way.

(3) A contributor who has elected to pay regular contributions under regulation 4(1)(c) may at any time by giving written notice to the Secretary of State—

(a) subject to regulation 8(3), elect that a specified larger lump sum is to be secured and the regular 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 his election under regulation 4(1)(c).

(4) A person paying further regular contributions pursuant to an election under regulation 5(4) may at any time make an election under regulation 5(2) or do anything authorised by paragraph (3).

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

Contributor

7.—(1) Subject to paragraph (2), a person is a contributor while an election under regulation 4(1)(a) or (c) has effect or if he has paid a lump sum pursuant to an election under regulation 4(1)(b).

(2) A person who—

(a) has become entitled to retirement benefits under Part E of the 1988 Regulations,

(b) has, under regulation 6(1)(d) or 6(3)(c), cancelled the election to pay regular contributions, or

(c) subject to paragraph (3), has ceased to be in pensionable employment and is not paying contributions under regulation C8 or C8A of the 1988 Regulations (additional contributions for current period),

ceases to be a contributor.

(3) For the purposes 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.

Payment of contributions and amount of regular contributions

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

(2) Payment of regular 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 on which the employer receives authorisation to make these deductions and be remitted to the Secretary of State within 7 days after their deduction.

(3) The total of contributions paid in any tax year must not exceed the lesser of (A-B-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 him in the year to another approved scheme,

(C) is the total of the contributions paid by him in the year under the 1988 Regulations, except contributions paid pursuant to a demand under regulation C16(2) of the 1988 Regulations, and

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

Investment of contributions

9.—(1) Any 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) or (2) 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) Regular 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) or 6(3):

Inward transfers

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

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

(b) an approved scheme which 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 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 by virtue of regulation 7(2)(c), 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) any other approved 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 1988 Regulations.

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 dependants' 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 1988 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 dependants' pension capable in whole or in part of surrender, commutation or assignment (except as provided by paragraphs (9) and (10)).

(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 (9) and (10), upon receipt of the notice of election the Secretary of State shall, as soon as is 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) Subject to paragraphs (9) and (10), if no benefits election under paragraph (5) has been made six months after retirement the Secretary of State may realise the investments made under regulation 9(1) or 10(2) and apply the amount obtained to the purchase of a pension policy from the insurance company referred to in regulation 9 to provide such benefits as appear to him to be suitable.

(9) 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.

(10) 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.

(11) If the annual rate of the retirement pension purchased in accordance with paragraph (7) or (8), when aggregated with the annual rate of any pensions payable and the annual equivalent of any lump sums payable to the participator under the 1988 Regulations arising from the participator's service, does not exceed any amount prescribed by regulations for the time being in force under section 21(1) of the Pension Schemes Act 1993(**8**), the authorised provider may discharge the liability for payment of the benefits under the pension policy by payment of a lump sum representing their capital value.

Lump sum death benefit

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

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

(a) the Secretary of State shall apply the pension element by purchasing a pension policy from the authorised provider determined in accordance with paragraph (3) or (4) to provide the pension or pensions specified in the notice of election; and

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

(3) Any dependant for whom a pension is to be provided pursuant to paragraph (2) who has attained the age of 18 years at the date of death of the contributor may within six months of the date of death of the contributor make an election specifying the authorised provider by whom the pension is to be provided and where such an election is made the pension policy shall be purchased from that authorised provider.

(4) Where no election has been made pursuant to paragraph (3) the pension policy shall be purchased from the insurance company referred to in regulation 9.

(**8**) 1993 c. 48.

(5) If at the time of the death of the contributor any person specified in a notice of election 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 applied for that purpose, but shall be added to the balance becoming payable under paragraph (2)(b).

Benefit limits

14.—(1) The Schedule has 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 C13 of the 1988 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 12(5) or 13(3) the Secretary of State purchases 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, except in the circumstances described in paragraph (2)(b), be liable for payment of any pension under that policy.

(2) Where—

(a) pursuant to an election under regulation 5(2) or 12(5) or pursuant to regulation 12(8) or 13(4) the Secretary of State purchases a pension policy from the insurance company referred to in regulation 9; or

(b) pursuant to—

(i) an election under regulation 5(3) or 11(5) of the 1989 Regulations; or

(ii) an election under regulation 5(2) or 12(5) made by a person who was employed in pensionable employment but ceased to be so employed before 12th December 1994,

the Secretary of State purchases a policy from a company listed in Schedule 1 to the 1989 regulations,

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 company from which the policy was purchased.

(3) Lump sums payable—

(a) as mentioned in regulation 12(6); or 12(9); or

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

shall (subject to the following provisions of this regulation) be paid by the Secretary of State to the person or persons to whom any death grant is payable under regulation E19(7)(**9**) of the 1988 Regulations.

(4) If when a participator dies a lump sum would have been payable under regulation 13 but the whole or part of that sum cannot be paid under regulation 13 by reason of regulation 14 and paragraph 14 of the Schedule the Secretary of State shall pay to the participator's personal representatives the amount which cannot be paid under regulation 13, so far as it does not exceed the prescribed amount, but subject to any deduction of tax under paragraph (7).

(5) If by reason of regulation 14 and the Schedule 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 but subject to any deduction of tax under paragraph (7).

(6) In paragraphs (4) and (5) the reference to the 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.

(7) 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)(c) or 5(4) to provide a lump sum death benefit, or

(b) an election under regulation 6(3)(a), or

(c) an election under regulation 6(4) corresponding to one that could have been made under regulation 6(3)(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 the person under these Regulations, and

(b) any sums payable under these Regulations to the person's personal representatives

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(**10**) and applying in relation to the death.

(2) Where this regulation applies the Secretary of State may, without requiring the production of proof of title, pay the amount due under paragraph (1)(a) and (b)—

(a) to the deceased's 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

(**9**) Regulation E19(7) was amended by S.I. 1989/378, 1993/114 and 1994/1058.
(**10**) 1965 c. 32; the amount specified in S.I. 1984/539 in £5,000.

and any person to whom such a payment is made, and not the Secretary of State, shall thereafter be liable to account for any amount so paid.

Determination of questions

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

Revocation and transitional provisions

20.—(1) The 1989 Regulations are hereby revoked.

(2) Anything done under or for the purposes of a provision of the 1989 Regulations has effect, if it could have been done under or for the purposes of the corresponding provision of these regulations, as if done under or for the purpose of that provision.

(3) Without prejudice to the generality of paragraph (2)—

(a) any election made pursuant to the provision of the 1989 Regulations specified in the left hand column of the table below shall have effect as if made pursuant to the corresponding provision of these Regulations specified in the right hand column:

TABLE

Provision of 1989 Regulations	Provision of these Regulations
Regulation 4(1)	Regulation 4(1)(a)
Regulation 5(1)	Regulation 4(1)(c)
Regulation 5(3)	Regulation 5(2)
Regulation 11(5)	Regulation 12(5)

(b) any notification given under regulation 5(4) of the 1989 Regulations shall be treated as included in a notice of election under regulation 5(2);

(c) contributions paid pursuant to an election under regulation 4 of the 1989 Regulations shall be treated, for the purpose of these Regulations as paid for investment under regulation 9(1);

(d) a contributor who has paid a lump sum contribution pursuant to regulation 4 of the 1989 Regulation shall be treated, for the purposes of these Regulations as having made an election under regulation 4(1)(b) to pay that lump sum contribution;

(e) contributions paid pursuant to an election under regulation 5(1) of the 1989 Regulations shall be treated, for the purposes of these Regulations as paid to provide for a lump sum death benefit;

(f) investments of contributions made pursuant to regulation 9 or 10 of the 1989 Regulations shall be treated as having been made pursuant to regulation 9 and 10.

(4) Without prejudice to the provisions of section 16 of the Interpretation Act 1978(**11**) the revocation of the 1989 Regulations shall not affect any obligation of the Secretary of State to pay any pension pursuant to the 1989 Regulations to or in respect of a person who retired or died before 12th December 1994.

(5) In relation to any pension payable to a dependant pursuant to any provision of these Regulations in respect of a participator who was employed in pensionable employment but ceased to be so employed or died before 12th December 1994 the expression "child" in these Regulations shall

(**11**) 1978 c. 30.

be construed as if regulation E21 of the 1988 Regulations had not been amended by regulation 16 of the Teachers Superannuation (Amendment) Regulations 1994(**12**).

(**12**) S.I. 1994/1058.

SCHEDULE

Regulation 14

BENEFIT LIMITS

PART I—

INTERPRETATION

1. Paragraphs 2 to 6 have effect for defining expressions used in this Schedule.

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

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

(b) the annual rate of any retirement pension under the 1988 Regulations; and

(c) the annual equivalent of any retirement lump sum under the 1988 Regulations;

together with the total of so much of—

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

(e) the annual equivalent of any retirement lump sum under any approved scheme—

as is attributable to contributions paid while in pensionable employment.

3. "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 or C8A of the 1988 Regulations.

4.—(1) Subject to sub-paragraph (3) and paragraph 5 "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 regulations C8 or C8A of the 1988 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.

(3) In respect of the tax year 1987/88 and following tax 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 1 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 interest in shares or right to acquire shares which gave rise on or after 17th March 1987 to a Schedule E tax liability had been acquired before that date.

5.—(1) Where the participator entered pensionable employment on or after 1st June 1989 and the final remuneration, calculated under paragraph 4, exceeds the permitted maximum in terms of section 590C of the Taxes Act(**13**), no account shall be taken of the excess over that amount.

(2) Subparagraph (1) shall not apply—to a participator to whom regulation C1 (13) or C1(14) and (15)(**14**) of the 1988 Regulations applies.

6.—(1) "Retained benefits" means the total of any pensions, including the annual equivalent of any lump sum, 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.

PART II

RETIREMENT PENSIONS

7. 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.

8.—(1) If the participator retires on his 60th birthday, except where paragraph 10 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 17th 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

(**13**) Section 590C was inserted by the Finance Act 1989 (c. 26), Schedule 6, paragraph 4.
(**14**) Regulation C1(13) to (15) was inserted by S.I. 1993/114.

(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.

9. 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 8 as at that date,

K is an amount calculated in accordance with paragraph 8 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 8(2)(a)(ii) and (2)(b).

10.—(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) 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 8 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 8(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 retirement benefits.

11.—(1) If the participator retires and is entitled to receive retirement benefits by virtue of regulation E4(7) of the 1988 Regulations, the permitted amount is—

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

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

(b) in any other case, T, where—

N, P and Q have the same meaning as in paragraph 10,

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

T is the lesser of the amounts calculated in accordance with paragraph 8(2)(a)(ii) and (2)(b).

12.—(1) If the participator retires and is entitled to receive retirement benefits by virtue of regulation E4(6) of the 1988 Regulations, whether or not those benefits were enhanced under regulation E8 of the 1988 Regulations, 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 8 of this Schedule.

PART III

DEPENDANTS' PENSIONS

13.—(1) Where only one dependant's pension is payable the annual rate of that pension under these Regulations must not be such as to cause the total of the annual rates of the relevant benefits to exceed the permitted amount.

(2) For the purposes of sub-paragraph (1) the relevant benefits are—

(a) the dependant's pension; and

(b) any similar pension payable to the dependant under the 1988 Regulations or under a free-standing additional voluntary contributions scheme to which contributions were paid while the participator was in pensionable employment,

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

(3) Where two or more dependants' pensions are payable—

(a) the annual rate of each such pension must not be such as to cause the annual rates of the relevant benefits payable to the dependant in question to exceed the permitted amount referred to in sub-paragraph (2); and

(b) the total of the annual rates of such pensions must not be such as to cause the total of the annual rates of the relevant benefits to exceed the permitted amount.

(4) For the purposes of sub-paragraph (3) the relevant benefits are—

(a) the dependants' pensions; and

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

and for the purposes of paragraph (3)(b) the permitted amount is the annual rate of the maximum retirement pension.

(5) Subject to sub-paragraph (6), the maximum retirement pension is the participator's permitted amount calculated in accordance with paragraphs 8 to 12 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 the date of his death.

PART IV

LUMP SUM DEATH BENEFIT

14.—(1) The lump sum death benefit under regulation 13 must not be such as to cause the total of that lump sum and any death benefits totalling £2,500 or more that are payable under relevant schemes to exceed the permitted amount.

(2) 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 1988 Regulations.

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

(4) 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 4(1).

Gillian Shephard
Secretary of State for Education

9th November 1994

We consent

Tim Kirkhope
Timothy Wood
Two of the Lords Commissioners of Her Majesty's Treasury

17th November 1994

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 (Consolidation) Regulations 1988, in order to secure additional benefits financed by investment of those contributions. They revoke and re-enact the Teachers Superannuation (Additional Voluntary Contributions) Regulations 1989 ("the 1989 Regulations") with amendments.

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 lump sum and 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.

When an election has effect a person is a contributor for the purpose of these Regulations but, generally, ceases to be a contributor if he is no longer in pensionable employment (regulation 7).

Regulation 8 deals with the payment of contributions and imposes a limit on their total amount.

Regulation 9(1) requires the Secretary of State to invest 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 15).

Regulation 15 provides for the realisable value of investments to be repaid where contributions under the 1988 regulations are repaid.

Regulation 16, provides that the Secretary of State is not responsible for payments under a pension policy purchased from an authorised provider except in the circumstances specified in regulation 16(2) and makes provision for the payment of lump sums. 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 revokes the 1989 Regulations and makes transitional provisions.

In addition to minor and drafting amendments these Regulations make the following changes of substance from the 1989 Regulations:—

(a) the definition of "contributor" has been altered (regulation 7);

(b) provisions for payment of a transfer value has been included (regulation 11);

(c) the authorised provider who is to provide retirement or dependants' pensions is selected by the participator (regulation 12(7)); where the authorised provider is not the insurance company referred to in regulation 9 the Secretary of State is not responsible for payment;

(d) the benefit limits in the Schedule have been altered.