

SCHEDULE D1

Regulation D1.

FURTHER PROVISIONS ABOUT PENSIONABLE REMUNERATION

Increase of pensionable remuneration where not all relevant period is a period of membership

1.—(1) Where a person is entitled to count as a period of membership in relation to the employment which he ceases to hold only part of the year specified in regulation D1(2)(a), his pensionable remuneration is his remuneration during that part multiplied by 365 and divided by the number of days in that part.

(2) For the purposes of regulation D1 and sub-paragraph (1), where a person —

- (a) was not employed in the employment which he ceases to hold for part of the year specified in paragraph (2)(a) of that regulation,
- (b) was employed during the whole or some of that part of that year in another employment in respect of which he was a member, and
- (c) regulation K20 applied as respects that other employment when he became employed in the employment he ceases to hold (or would have done so apart from regulation K22),

then he shall be treated as being entitled to count as a period of membership in relation to the employment he ceases to hold any period such as is mentioned in regulation K20(1)(c).

Optional alternative relevant periods

2.—(1) Where the circumstances mentioned in any of paragraphs 3 to 5 apply, then if—

- (a) the member or former member so elects, or
- (b) in the event of his death, the appropriate administering authority so determine,

for the purposes of regulation D1 the relevant period is the period mentioned in that paragraph.

(2) An election under sub-paragraph (1) shall be made by a notice in writing given by the member or former member to the appropriate administering authority not later than one month after he is notified under regulation J4 of his entitlement to a benefit.

(3) Where a person dies while still in local government employment or without having made an election under sub-paragraph (1), the appropriate administering authority may give a determination in respect of any matter as to which an election under sub-paragraph (1) may have been made by him.

3. Subject to paragraphs 4 and 5, where a person is not entitled to count the whole of the period which would otherwise be the relevant period under regulation D1(2)(a) as a period of membership because he has been absent from duty (otherwise than by reason of illness or injury), the relevant period is the last 365 days which he is entitled to count as a period of membership.

4.—(1) Where a reduction in a member's remuneration is certified as material under this paragraph, then the relevant period is—

- (a) such one of the last 5 of the 13 years ending with the day on which he ceases to be a member, or
- (b) such consecutive 3 of those 13 years,

as he may elect (or, in a case within paragraph 2(3), as may be determined by the employing authority).

(2) Where by virtue of this paragraph the relevant period is a period of three consecutive years, the member's pensionable remuneration is the aggregate of his remuneration during that period divided by three.

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(3) Subject to sub-paragraph (7), where a member suffers a material reduction in remuneration he is entitled to be issued with a certificate to that effect by the employing authority.

(4) A member suffers a reduction in remuneration if—

- (a) the remuneration of an employment which he continues to hold is reduced,
- (b) he is transferred to another employment under the same LGPS employer at a reduced remuneration, or
- (c) by reason or in consequence—

(i) of an order made under section 17 of the Local Government Act 1992⁽¹⁾, or

(ii) of any provision made by or under the Local Government (Wales) Act 1994⁽²⁾

within the relevant period he is transferred to another employment under, or his employment is transferred to, a different LGPS employer at a reduced remuneration; and in paragraph (c) “the relevant period” means—

(I) in the case of a transfer involving a LGPS employer whose area is in England, the period beginning with the day on which the order mentioned in paragraph (c)(i) is made and ending with the expiry of the period of eighteen months beginning with the day on which the changes in structure or area provided for by that order have effect, and

(II) in the case of a transfer involving a LGPS employer whose area is in Wales, the period beginning with 1st January 1996 and ending with 31st March 1997.

(5) Subject to sub-paragraph (6), a reduction in remuneration is only material if it is such that the member’s pensionable remuneration would be likely to be less if the relevant period were the period applicable under regulation D1(2)(a) than if it were the period applicable under sub-paragraph (1).

(6) A reduction in remuneration is not material if—

- (a) it did not result from circumstances beyond the member’s control, or
- (b) it was temporary, or
- (c) it consisted in the termination of, or a reduction in, a temporary increase in remuneration.

(7) The employing authority may issue a certificate without an application from the member, but need not issue a certificate if he does not apply for one within 12 months after the date of reduction.

(8) A certificate issued under this paragraph is to specify the date of the material reduction and the authority are to keep, for 10 years from that date, a record of the certificate including such information as would be necessary for applying sub-paragraph (1).

5. Where the member’s pensionable remuneration would be higher if either of the two years immediately preceding the period applicable under regulation D1(2)(a) were the relevant period instead of that period, the relevant period is whichever of those years yields the highest amount.

Periods of absence

6. If during the 13 years ending with the day mentioned in regulation D1(2)(a) the member’s remuneration was reduced or suspended during absence from duty—

- (a) if the reduction or discontinuance was by reason of illness or injury, or
- (b) if it was otherwise than by reason of illness or injury and he—
 - (i) made contributions under regulation C5 (leave of absence), C6 (maternity absence) or a payment under regulation C7 (absence due to trade dispute), or

(1) 1992 c. 19.

(2) 1994 c. 19.

- (ii) contributed under section 6(5) of the Act of 1937 (leave of absence etc.) he is for the purposes of regulation D1 and this Schedule to be treated as having received the remuneration which he would have received but for the reduction or discontinuance.

Part-timers

7. Subject to regulations E7 and F1(3) and paragraph 10(2) of Schedule M4, for the purposes of regulation D1 and this Schedule, a member is, in respect of any period of part-time local government employment, to be treated as having received the remuneration which would have been paid in respect of a single comparable whole-time employment.

Multiple employments

8. Where—

- (a) a person was at any time employed in a single local government employment (“the first employment”),
- (b) he becomes entitled to a benefit in relation to one of two or more concurrent local government employments (“the second employment”), and
- (c) his remuneration in the first employment becomes material for the purpose of calculating that benefit,

that remuneration shall for that purpose be reduced to such amount as bears the same relation to it as the annual rate of remuneration of the second employment at the date when he ceased to hold that employment bears to the total of the annual rates of remuneration of all the concurrent employments at that date.

Fee earners

9. Where the whole or a part of the member’s remuneration consists of fees, his pensionable remuneration in respect of them is the annual average of the fees earned by him—

- (a) during the period of three years ending with the last day of the period which is the relevant period for the purposes of regulation D1,
- (b) during such more favourable period, of more than three but not more than five years, as his last employing authority may allow, or
- (c) if he was entitled to receive fees during part only of the period mentioned in paragraph (a), during that part of the period.

Employees with notional remuneration

10.—(1) Where—

- (a) any of a member’s remuneration during the period which is the relevant period for the purposes of regulation D1 was determined in accordance with an agreement under paragraph 8 of Schedule C2 (notional remuneration),
- (b) his average weekly earnings from his local government employment in that period (other than payments for overtime and payments by way of bonus) are within the relevant limits, and
- (c) his pensionable remuneration would be greater if determined by reference to those earnings,

his pensionable remuneration is to be determined by reference to those earnings.

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- (2) For the purposes of sub-paragraph (1) earnings are within the relevant limits if they—
 - (a) exceed by more than 50 per cent. the lower earnings limit at the end of the relevant period, and
 - (b) do not exceed the upper earnings limit at the end of that period.
- (3) In this paragraph “lower earnings limit” and “upper earnings limit” have the same meaning as in the Pension Schemes Act 1993⁽³⁾

⁽³⁾ 1993 c. 48.