

SCHEDULE 9

Regulations E12, E25, J1 and J3

MODIFIED APPLICATION IN CERTAIN CASES

PART I

NATIONAL INSURANCE MODIFICATION OF PENSIONS

Interpretation

1. In this Part, unless the context otherwise requires—

“the Act” means the National Insurance Act 1965⁽¹⁾;

“national insurance modifications” means the modifications made to these Regulations and to previous provisions whereby the superannuation benefits provided thereunder are modified in relation to insured persons for the purposes of the Act;

“non-participating employment” has the meaning assigned to it by section 56(1) of the Act;

“participating employment” means employment other than non-participating employment; and

“retired teacher” means a teacher who has ceased to be in pensionable employment and has attained state pensionable age.

Classification of teachers

2.—(1) For the purposes of this Part—

(a) “existing teacher” means—

(i) a teacher who was employed in pensionable employment at any time before 1st July 1948 whether or not his or her contributions in respect of that employment were returned to him or her; or

(ii) a teacher who before 1st March 1948 had completed a course approved for the purposes of this Part by the Scottish Ministers (“an approved course”) or was engaged on an approved course, or had been accepted or provisionally accepted for an approved course, or had applied to be accepted for and had as a result of that application subsequently become engaged on an approved course and had entered pensionable employment within 6 months of completing the said approved course;

(b) “new entrant teacher” means either—

(i) a teacher who enters pensionable employment for the first time on or after 1st July 1948; or

(ii) a teacher to whom sub-paragraph (a) applies and who makes an election under sub-paragraph (3).

(2) An existing teacher shall be unmodified, that is to say, shall be a teacher to whom the national insurance modifications do not apply; and a new entrant teacher shall be modified, that is to say, shall be a teacher to whom the national insurance modifications apply.

(3) An existing teacher in pensionable employment on 1st July 1948 shall remain unmodified unless he or she elected on or before 30th September 1948 to be modified or, if he or she is not in pensionable employment on 1st July 1948, so elects within 3 months after the date on which he or she first enters or re-enters pensionable employment; notice so given is irrevocable.

(1) 1965 c. 51.

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(4) Where a teacher was employed in comparable British service, or in other employment in respect of which a transfer value has been received, he or she shall on entering pensionable employment retain the classification which in the opinion of the Scottish Ministers corresponds to his or her classification in his or her former pension or superannuation scheme, and where his or her classification has not been so determined the provisions of sub paragraph (3) shall apply to him or her so they apply to a teacher who was not in pensionable employment on 1st July 1948.

Reduction of retirement pension

3.—(1) A retirement pension payable under these Regulations to a retired teacher to whom paragraph 2(1)(b)(i) or 2(4) applied shall be reduced by whichever is the lesser of £67.75 and the amount calculated by multiplying £1.70 for each completed year, and by a proportionate amount in respect of part of a year, of reckonable service after 1st July 1948 and before 1st April 1980.

(2) In the case of a retired teacher—

- (a) who was last in pensionable employment before 1st April 1980; and
- (b) whose retirement pension is one to which he or she became entitled by virtue of regulation E6(1)(c),

any additional period of reckonable service taken into account under regulation E10(3) shall be deemed for the purposes of sub paragraph (1) to be such service as is there mentioned.

(3) Where the retired teacher before 1st April 1980 elected for the purposes of regulation 21 of the 1977 Regulations⁽²⁾ to purchase past added years, these added years shall be deemed for the purposes of sub paragraph (1) to be such reckonable service as is there mentioned.

(4) Sub paragraph (1) applies not only in the case of such a retired teacher as is there mentioned, but also in the case of a teacher who became entitled to retirement benefits before 1st April 1980 to whom paragraph 3 of Schedule 12 to the 1977 Regulations did not apply, if the Scottish Ministers are satisfied that the contributions paid by him or her before 1st April 1980 were modified on the assumption that the said paragraph 3 did apply in his or her case.

4.—(1) A retirement pension payable under these Regulations to a teacher, who became entitled to payment of retirement benefits before 1st April 1980 and who is modified by virtue of an election made in terms of paragraph 2(3), shall be reduced for each completed year, and proportionately for part of a year, of reckonable service after the date of modification by the sum specified in either column (2) or column (3), whichever is appropriate, of the Table in the Appendix to this Part which appears against his or her age at the date of modification specified in column (1).

(2) In the case of a teacher who became entitled to payment of retirement benefits before 1st April 1980 and who is modified by virtue of an election made in terms of paragraph 2(3), the date of modification shall be, for the purposes of this paragraph, 1st July 1948 where notice has been given before the said date and the first day of the month following the date of the election in any other case.

(3) In the case of a teacher—

- (a) who became entitled to retirement benefits before 1st April 1980; and
- (b) whose retirement pension is one to which he or she became entitled by virtue of regulation E6(1)(c),

any additional period of reckonable service taken into account under regulation E10(3) is deemed for the purposes of sub-paragraph (1) to be such service as is there mentioned.

5. For the purposes of paragraphs 3 and 4, the reckonable service of a teacher who became entitled to payment of retirement benefits before 1st April 1980 is his or her effective reckonable service.

(2) [S.I. 1977/1360](#) (“the 1977 Regulations”). Regulation 21 was substituted by [S.I. 1983/1431](#) and amended by [S.I. 1998/1618](#). The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

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6. If, in calculating the amount of a retirement pension payable to a retired teacher under these Regulations, there is taken into account any period of employment after 2nd April 1961 and before 6th April 1975 which is participating employment, the retirement pension shall, except as provided in paragraphs 8 and 9, be reduced for each year of such period, and proportionately for part of a year, by the appropriate amount specified in the Table below.

TABLE

<i>Annual rate of salary during period</i>	<i>Reduction in retirement pension for each whole year of period</i>			
	<i>From 3rd April 1961 to 5th January 1964</i>		<i>From 6th January 1964 to 5th April 1975</i>	
	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>
	<i>£</i>	<i>£</i>	<i>£</i>	<i>£</i>
Not exceeding £468	nil	nil	nil	nil
Over £468 but not exceeding £520	.19	.16	.19	.16
Over £520 but not exceeding £572	.58	.48	.58	.48
Over £572 but not exceeding £624	.96	.80	.96	.80
Over £624 but not exceeding £676	1.35	1.12	1.35	1.12
Over £676 but not exceeding £728	1.73	1.44	1.73	1.44
Over £728 but not exceeding £780	2.12	1.76	2.12	1.76
Over £780 but not exceeding £832	2.31	1.92	2.51	2.09
Over £832 but not exceeding £884	2.31	1.92	2.90	2.42
Over £884 but not exceeding £936	2.31	1.92	3.29	2.74
Over £936	2.31	1.92	3.48	2.90

7. If, in calculating the amount of a retirement pension, there is taken into account any period of employment after 2nd April 1961 and before 6th April 1975 in respect of which a payment in lieu of contributions has been made under the Act, the retirement pension shall, except as provided in paragraphs 8 and 9, be reduced—

- (a) by £2.31 in the case of a man and by £1.92 in the case of a woman for each year, and proportionately for part of a year, of any period from 3rd April 1961 to 5th January 1964; and
- (b) by £3.48 in the case of a man and by £2.90 in the case of a woman for each year, and proportionately for part of a year, of any period from 6th January 1964 to 5th April 1975.

8. Where—

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- (a) a period of employment of a retired teacher which was participating employment or in respect of which a payment in lieu of contributions had been made is treated as reckonable service by virtue of receipt of a transfer value from his or her former pension or superannuation scheme; and
- (b) the Scottish Ministers are informed of the amount by which the pension of a retired teacher under his or her former pension or superannuation scheme would have been reduced in respect of that period by reason of graduated retirement benefit payable under the Act or the method of calculating such reduction,

the retirement pension in respect of that period shall be reduced by that amount or by an amount calculated in accordance with that method, as the case may be, and no reduction shall be made under paragraph 6 or 7 in respect of that period.

9. No reduction in the amount of the retirement pension shall be made under paragraph 6 or 7 in respect of any period which is reckonable service by virtue of regulation D3 or D4 or of regulations under section 1 of the Superannuation (Miscellaneous Provisions) Act 1948⁽³⁾.

Equivalent pension benefits

10. A retirement pension payable to a teacher shall, so far as attributable to any teaching service which is non-participating employment (exclusive of any period of such employment in respect of which a payment in lieu has been made under the Act), be not less than the amount required to constitute the benefits in respect of that service equivalent pension benefits for the purposes of that Act.

11. Any person who was employed in non-participating employment and attains state pensionable age shall be paid by way of equivalent pension benefits a sum equal to the actuarial value of a retirement pension at the following rate for each year of reckonable service:—

	<i>Man</i>	<i>Woman</i>
During the period from 3rd April 1961 to 5th January 1964	£2.31	£1.92
During the period from 6th January 1964 to 5th April 1975	£3.48	£2.90

but excluding any period of such employment in respect of which—

- (a) a payment in lieu of contributions has been made; or
- (b) any retirement benefits are payable under regulation E6.

TABLE

<i>Age at date of modification</i> (1)	<i>Men</i> (2) £	<i>Women</i> (3) £
20 or under	1.70	1.70
21	1.65	1.60
22	1.60	1.53

(3) 1948 c. 33. Section 1 is amended by the Justices of the Peace Act 1949 (c. 101), section 23(9) and Schedule 2, the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65), section 41(2) and (3) and the Local Government and Miscellaneous Financial Provisions (Scotland) Act 1958 (c. 64), Schedule 4 and 6.

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<i>Age at date of modification</i> <i>(1)</i>	<i>Men</i> <i>(2)</i> £	<i>Women</i> <i>(3)</i> £
23	1.55	1.45
24	1.50	1.37
25	1.47	1.30
26	1.45	1.23
27	1.43	1.17
28	1.40	1.13
29	1.35	1.07
30	1.33	1.03
31	1.30	0.97
32	1.27	0.95
33	1.25	0.93
34	1.23	0.90
35	1.20	0.87
36	1.17	0.85
37	1.15	0.83
38	1.13	0.80
39	1.10	0.77
40	1.07	0.75
41	1.07	0.73
42	1.05	0.73
43	1.03	0.70
44	1.00	0.70
45	0.97	0.67
50 and over	0.93	0.60

PART II

EMPLOYMENT AT REDUCED SALARY

12. Subject to paragraphs 13 to 17, these Regulations apply as if the teacher had been one person in relation to pensionable employment (“the earlier employment”) up to the end of his or her employment at the previous rate and a separate person in relation to pensionable employment (“new employment”) from the start of his or her employment at the reduced rate, and accordingly apply separately in relation to each of those employments.

13. For the purposes of regulation E5, periods counting towards a qualifying period in relation to one of the employments shall count also in relation to the other.

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14.—(1) For the purposes of regulation E35(2), periods counting as reckonable service in relation to one of the employments shall count also in relation to the other.

(2) Any period excluded by regulation E35(2) shall be excluded in relation to new employment only.

15.—(1) A period for which the person has, before the first day of new employment, elected to pay additional contributions under regulation C5 shall not count as reckonable service in relation to new employment but shall, subject to sub paragraph (2), count in relation to the earlier employment.

(2) An election to pay such contributions by Method A or C which was made less than 12 months before the first day of new employment ceases to have effect on that day, and any contributions paid in pursuance of it are to be refunded.

(3) If an election to pay such contributions is made on or after the first day of new employment—

(a) the period to which it relates shall count as reckonable service in relation to new employment but shall not count in relation to the earlier employment; and

(b) if the contributions are to be paid by Method B, paragraph 11 of Schedule 4 (calculation of lump sum where salary reduced) does not apply.

16.—(1) This paragraph applies if the teacher becomes entitled to payment of retirement benefits by virtue of regulation E6(1)(c).

(2) For the purposes of regulation E10, the appropriate period shall be calculated by reference to the aggregate of the period counting as reckonable service in relation to the earlier employment and the period so counting in relation to new employment, and—

(a) if he or she becomes entitled to payment of the benefits within 3 years after the start of new employment, the period counting as reckonable service in relation to the earlier employment; or

(b) in any other case, the period so counting in relation to new employment, shall be increased by the appropriate period so calculated.

17.—(1) For the purpose of calculating any death grant under regulation E24 or deficiency grant under regulation E25 that may become payable in respect of the teacher—

(a) the pensionable salary mentioned in regulations E24(2) and E25(2)—

(i) if either grant becomes payable within 3 years after the start of new employment, shall be the pensionable salary in respect of the earlier employment; and

(ii) in any other case, shall be the pensionable salary in respect of new employment;

(b) the retirement lump sum mentioned in regulation E24(2) shall be the aggregate of the lump sums that would have become payable as there mentioned in respect of each of the employments, enhanced in accordance with paragraph 16; and

(c) the retirement pension mentioned in E25(3) shall be the aggregate of the retirement pensions paid in respect of each of the employments.

(2) Only one of either kind of grant shall be paid.

PART III

POLICY SCHEMES

18. In this Part “excluded service” means the employment in respect of which the insurance policies were fully maintained as is mentioned in regulation 6A of the 1977 Regulations⁽⁴⁾.

19. For the purposes of regulation C5(1), if the teacher’s excluded service began before he or she first became employed in pensionable employment he or she is to be treated as having first become so employed when his or her excluded service began.

20. For the purposes of regulation E5, paragraph 1 of Schedule 8 has effect as if his or her excluded service had been pensionable employment beginning after 5th April 1988.

PART IV

SPECIFIED COUNTRY SERVICE

21. Regulations E6, E8, E16(3) and E19 have effect with the substitution for references (whether direct or not) to the age of 60 of references to the age obtained by deducting from 60 years a period of 3 months in respect of each complete year of up to 20 years of specified country service.

22. Subject to paragraph 23–

- (a) for the purpose of calculating retirement benefits , and grants under regulations E21, E24 and E25; and
- (b) for the purposes of regulation E35(2),

specified country service counts as reckonable service at 1.5 times its actual length.

23. For the purposes of regulation E10, in calculating relevant service specified country service counts as reckonable service at its actual length.

PART V

PERSONS FORMERLY MEMBERS OF THE NATIONAL HEALTH SERVICE PENSION SCHEME

24. In this Part–

- (a) “the 1995 Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995⁽⁵⁾; and
- (b) the expression “member” and “scheme” shall be construed in accordance with the 1995 Regulations.

25. This Part applies to persons who–

- (a) immediately before they were in pensionable employment (for the purposes of these Regulations) were employed by a health board in a college of nursing or midwifery and were in pensionable employment within the meaning of the 1995 Regulations; and
- (b) whose employment ceased to be pensionable within the meaning of the 1995 Regulations on 1st September 1996 or, in the case of the Robert Gordon University, 1st December 1996 and became pensionable for the purpose of these Regulations by virtue of a relevant

(4) [S.I. 1977/1360](#). Regulation 6A was inserted by [S.I. 1977/1808](#).

(5) [S.I. 1995/365](#), to which there are amendments not relevant to these Regulations.

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transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 1981(6).

26.—(1) If a person to whom this Part applies—

- (a) chose, while he or she was a member of the scheme to increase his or her right to benefits under the scheme by buying additional service under regulation Q1 of the 1995 Regulations by making regular additional contributions;
- (b) at the time of the relevant transfer referred to in paragraph 25 had not completed the payment of the additional contributions; and
- (c) a transfer value has been accepted by the Scottish Ministers,

he or she may complete the payment of such contributions as if Part Q of the 1995 Regulations applied to him or her and shall accordingly be entitled to count as reckonable service the additional service which would have been bought under Part Q of the 1995 Regulations by the payment of such contributions.

(2) Regulation C15 shall apply to the contributions referred to in this paragraph as if such contributions were paid under regulation C6.

(3) For the purposes of any provision in these Regulations which imposes a maximum on the contributions which a person can make, the contributions referred to in this paragraph shall be treated as paid under Part C.

27. Where a person to whom this Part applies

- (a) was immediately before the relevant transfer referred to in paragraph 25 a person to whom regulation R2 or R3 of the 1995 Regulations applied; and
- (b) has continued to be such a person after the said transfer save only for the fact that his or her employer is not an employing authority within the meaning of the 1995 Regulations,

regulation E6 shall apply in relation to that person as if the references to the age of 60 were references to the age of 55.

28. Where a transfer value has been accepted in respect of a person to whom this Part applies the person is entitled to count as reckonable service the period which, at the time of relevant transfer referred to in paragraph 25, he or she was entitled to count as pensionable service for the purposes of the 1995 Regulations.

(6) [S.I. 1981/1794](#) to which there are amendments not relevant to these Regulations.