

# TERMS AND CONDITIONS OF EMPLOYMENT OF EDUCATORS

G.N. 1743 of 1995 published in *Government Gazette* No. 16814 dated 13 November 1995

## as amended by

G.N. 1153 of 1997 published in *Government Gazette* No. 18245 dated 1 September 1997

G.N. 1498 of 1997 published in *Government Gazette* No. 18416 dated 11 November 1997

G.N. 594 of 1998 published in *Government Gazette* No. 18841 dated 17 April 1998

G.N. 626 of 1998 published in *Government Gazette* No. 18861 dated 24 April 1998

G.N. 1638 of 1998 published in *Government Gazette* No. 19592 dated 9 December 1998

G.N. 1400 of 2001 published in *Government Gazette* No. 22961 dated 19 December 2001

## REGULATIONS REGARDING THE TERMS AND CONDITIONS OF EMPLOYMENT OF EDUCATION

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, hereby make regulations in terms of section 28, read with sections 1, 4(1), 5(1) and 9 of the Educators Employment Act, 1994, as set out in the Schedule.

**S.M.E. BENGU**  
Minister of Education

## SCHEDULE

### Chapter 1 APPLICATION OF REGULATIONS

#### Definitions

1. In these Regulations a word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned to it and, unless the context otherwise indicates –

“**abroad**” means any country outside the borders of the Republic of South Africa;

“**opposite training**” means training recognised by the Minister;

“**approved qualification**” means a degree, a diploma, a certificate or another qualification recognised by the Minister as a qualification for appointment as an educator;

“**calendar month**” means a period ranging from the first day up to and including the last day of any of the 12 months of a year;

“**calendar year**” means a period ranging from the first day of January of a year up to the last day of December of the same year;

“**cycle**” in relation to sick leave, means a period of three years calculated from 1 January 1980 and each succeeding period of three years: Provided that, in the case of an educator appointed after 1 January 1980 whose date of appointment does not coincide with the commencement date of a cycle, the period of his or her service from the date of his or her appointment to the date of commencement of the following cycle shall for the purpose of these regulations be regarded as a full cycle;

“**day of rest**” means a Saturday, a Sunday or a public holiday;

“**employer contribution**” means the monthly amount referred to in regulation 64;

“**employing department**” means a department as defined in section 1(1) of the Public Service Act, 1994, in which the educator concerned is employed;

“**head of education**” means the head of the department responsible for education within a province;

**“household”** means –

- (a) an educator’s spouse; and
- (b) an educator or his or her spouse’s necessarily dependent child who is *bona fide* resident with such educator: Provided that if such a child studies at an institution for post-school education, whether intramurally or extramurally, he or she may be deemed to be a member of the household, but only –
  - (i) if he or she did not take up any permanent full-time employment (including any type of vocational training to which remuneration is attached) after leaving school, excluding compulsory military service which he or she had to undergo after leaving school or work during vacations or temporary full-time employment which he or she had taken up between –
    - (aa) leaving school and the commencement of the academic year; or
    - (bb) leaving school and the commencement of such military service; or
    - (cc) the completion of such military service and the commencement of the academic year, and had commenced his or her studies at such an institution at the commencement of the academic year following the completion of his or her schooling or military service; and
  - (ii) until –
    - (aa) he or she attains the minimum post-school qualification (or minimum combination of post-school qualifications) which will enable him or her to take up employment in the field of study for which he or she originally intended to qualify himself or herself; or
    - (bb) the normal duration of the course, as prescribed by the institution concerned, plus one academic year, expires, if it takes him or her longer than such prescribed period to attain the relevant qualification as a result of poor academic performance; or
    - (cc) he or she discontinues the relevant course of study; or
    - (dd) he or she changes his or her course of study, whichever of the said four events occurs first; and
- (c) a relative of an educator who is permanently resident with and necessarily dependent on him or her and whose income, from any source, does not exceed the sum of –
  - (i) the appropriate maximum basic social pension; plus
  - (ii) the maximum allowance for a war veteran to whom a social pension has been awarded; plus
  - (iii) the maximum allowance paid to a person as a result of a late application for a social pension,and if the relative concerned is a social pensioner, then any allowances other than those mentioned in subparagraphs (ii) and (iii) above, which he or she may receive in terms of the relevant regulations referred to above, eg an attendant’s allowance, should be ignored for the purposes of this paragraph: Provided that where two relatives so reside with him or her and are dependent on him or her and where the one relative would normally have been a dependent of the other relative, for instance a father and a mother, both such relatives may be regarded as members of his or her household only if half of their joint income, from any source, does not exceed the sum of the maximum basic social pension in question and the allowances contemplated in subparagraphs (i) to (iii) above; and

**“married housing”** means state housing designated for an educator with a household that normally lives with him or her;

**“maximum rand amount”** means an amount equal to 4/6 of the maximum membership fee as determined by the Minister for subsidy purposes;

**“medical scheme”** means a medical scheme which is registered in terms of an Act that governs the business of medical schemes;

**“member contribution”** means an amount equal to the subscription minus the monthly employer contribution;

**“membership fee”** means the full membership fee levied by a medical scheme;

**“month”** means a period extending from a day in a month up to the day preceding the day corresponding numerically to that day in the following month, both days inclusive;

**“office”** means a state educational institution excluding a school;

**“providing department”** means the department in the province concerned responsible for the buying or erection of state housing and other related matters;

**“province”** means any one of the nine provinces established under section 124 of the Constitution of the Republic of South Africa, 1993;

**“recognisable experience”** means experience recognised in terms of regulation 11;

**“salary band”** means the range of salaries applicable to an educator in accordance with such educator’s post level and qualifications;

[Definition of "salary band" inserted by GN. No. 1153 of 1997 dated 1 September 1997.]

**"salary increment"** . . . . .;

[Definition of "salary increment" deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

**"salary incremental date"** . . . . .;

[Definition of "salary incremental date" deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

**"salary incremental period"** . . . . .;

[Definition of "salary incremental period" deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

**"salary range"** means the salaries applicable to a specific level within the salary grading system of the Public Service;

[Definition of "salary range" inserted by GN. No. 1153 of 1997 dated 1 September 1997.]

**"school"** means any educational institution or that part of such an institution at which education and training, including pre-primary education, is provided and which is maintained, managed and controlled or subsidised by a provincial education department, excluding a university and technikon;

**"school day"** means a day in a school term on which tuition is scheduled to take place at a school, to pupils enrolled at such school;

**"school holiday"** means a period between any two consecutive school terms during which tuition is suspended;

**"school term"** means any one of the periods into which a particular school year is divided for tuition purposes and fixed as such by the head of education for a particular school;

**"service"** means, for purposes of regulation 67, service with an employer under the Act, as well as service in a department of State in terms of an Act other than the Act including service in an institution established or being established by an Act of Parliament and which obtains or has obtained its funds in whole or in part from the State Revenue Fund;

**"single housing"** means state housing designated for an educator who does not have a household that normally lives with him or her;

**"standard, non-standard and voetstoets housing"** means housing as determined by the providing department;

**"state housing"** means housing, contemplated in regulation 68(2) of which the State is the owner or tenant;

**"stationed"** means the transfer and settlement of an educator abroad and includes an educator seconded to another Government or institution abroad, except in the case where a secondment agreement contains specific stipulations regarding medical assistance;

**"subscription"** means the amount that a person must pay monthly in order to obtain membership of a registered medical scheme;

[Definition of "subscription" substituted by GN. No. 1153 of 1997 dated 1 September 1997.]

**"the Act"** means the Educators' Employment Act, 1994;

**"transfer"** means –

- (a) the moving of an employee and his or her household from one headquarters to another in the Republic or in a foreign country;
- (b) the temporary or permanent evacuation of an official quarters at the headquarters of an educator in order to occupy other accommodation; and
- (c) the evacuation by an educator of accommodation in order to occupy official quarters at his or her headquarters;

**"year"** means a period of 12 months extending from a day in a year to the day preceding the day corresponding numerically to that day in the following year, both days inclusive.

## **Chapter 2 GENERAL CONDITIONS OF SERVICE AND SALARIES APPOINTMENT, PROMOTION, TRANSFER AND TERMINATION OF SERVICE**

### **Qualifications for appointment and promotion of educators**

2. (1) No person shall be appointed as an educator either in a permanent, or temporary capacity, or on special contract, or be promoted, unless he or she complies with the experience requirements determined by the Minister and is in possession of an approved qualification and is able to submit satisfactory evidence thereof: Provided that an employer may appoint a person who is not in possession of an approved qualification as an educator in a temporary capacity for a specified period if the employer deems such appointment necessary and in the interest of education.

(2) . . . . .

[Reg. 2(2) repealed by G.N. No. 626 of 1998 dated 24 April 1998.]

### **Appointment on probation**

3. (1) (a) An educator shall be appointed on probation for a period of at least 12 months, which period may be extended, on good cause shown, for a further period not exceeding 12 months.
- (b) An employer may approve the transfer or promotion of an educator during his or her period of probation: Provided that such transfer or promotion will be on probation and such probation may be for a period of less than 12 months if such period together with the probation served in the former post, shall total at least 12 months.
- (c) The employer may, if it is deemed necessary, require that the promotion of an educator employed in a permanent capacity, be on probation: provided that the conditions in paragraphs (a) and (b) shall apply.
- (2) The probation period of an educator shall be extended by the number of days leave of whatever nature taken by him or her during a probation period or any extension thereof: Provided that a school holiday shall not be considered as leave for the purposes of this subregulation.
- (3) If the head of the relevant institution or office certifies that during his or her probation period or extended probation period, such educator has been diligent and his or her conduct uniformly satisfactory and that he or she is in all respects suitable for the post which he or she holds, the employer may confirm the permanent appointment, transfer or promotion if the educator has complied with all the conditions to which his or her appointment, transfer or promotion was subject.
- (4) For the purposes of subregulation (1) an appointment on probation shall, notwithstanding the fact that the period during which it was in force has expired and notwithstanding anything to the contrary contained in that subregulation, be deemed to continue until the educator concerned is notified in writing by the employer that his or her probationary appointment –
- (a) has been confirmed; or
- (b) has not been confirmed; or
- (c) has been extended for a further period:
- Provided that a notification contemplated in paragraphs (a), (b) and (c) shall be directed to the educator not later than six months after the expiry of the period of his or her probationary appointment, and that when the period of probationary appointment is extended for a further period, that further period shall be computed from the date of which the first-mentioned period would have expired by effluxion of time in terms of subregulation (1).

### **Reappointment of educators who have retired or who have been retired on pension prematurely**

4. The reappointment of an educator, whether in a full-time or a part-time capacity in a post referred to in section 3(1) of the Act, who has retired or has been retired on pension before reaching his or her retirement age shall be approved by the employer: Provided that such reappointment shall be subject to the conditions as determined by the Minister.

### **Filling of vacant posts by educators**

5. . . . .

[Reg. 5 deleted by G.N. No. 594 of 1998 dated 17 April 1998.]

### **Date on which salary commences and terminates**

6. (1) Subject to the provisions of subregulations (2), (3), (4), (5), (6), (7) and (8) an educator shall be paid a salary with effect from the date on which he or she assumes duty up to and including the date on which his or her service terminates.
- (2) An educator who renders service at an office from the first working day up to and including the last working day of a month shall be paid a salary with effect from the first day of the month in question up to and including the last day of such month.
- (3) Subject to the provisions of subregulations (4) and (5) an educator employed at a school who is appointed during any school term and who renders service for a continuous period of at least 30 days during such school term shall be paid a salary –
- (a) if such service begins on the first working day of the school term, from the first day of the month in which he or she assumes duty up to and including the last day he or she is so in service; or
- (b) if such service terminates on the last working day of the school term, from the day such service begins up to and including the last day of the month concerned; or
- (c) if such service does not begin on the first working day of the school term and also does not terminate on the last working day of the school term, from the day such service begins up to and including the last day he or she is so in service.

- (4) If a school term commences within the same month in which the preceding school term ends, salary shall be paid under the circumstances referred to in subregulation (3)(a) –
  - (a) with effect from the first day following the closing date of the preceding school term; or
  - (b) with effect from the day following the date on which the services of the educator concerned terminated under any other education department if he or she so served as an educator at a school for a continuous period of at least 30 days, including the last working day of the preceding school term.
- (5) If a school term ends within the same month in which the following school term commences, salary shall, under the circumstances referred to in subregulation (3)(b), be paid up to and including the last working day of the school term in which the service of the educator concerned terminates at a school.
- (6) An educator employed at a school who is appointed during any school term and who renders service for a period of less than 30 days during such school term shall be paid a salary from the day on which such service begins up to and including the last day the educator is so in service, irrespective of whether such service begins on the first working day of the school term or terminates on the last working day of the school term: Provided that, if he or she renders service up to and including the last working day of the said school term and renders service as from the first working day of the following school term for a continuous period of at least 30 days, he or she shall be paid a salary for the intervening holiday period.
- (7) An educator employed at a school who is appointed during any school term and who renders service for a continuous period of at least 30 days, if such service terminates on the last working day of the last school term of the year, concerned, shall be paid a salary up to and including the last day of such year.
- (8) An educator whose resignation takes effect during any school holiday or on the first school day for educators following upon such school holiday, shall, in the application of this regulation be deemed to have terminated his or her service on the last day of the calendar month in which the previous school term ended.
- (9) An educator whose services terminate on any date by reason of his or her having reached the retiring age as determined in regulation 15, shall receive salary up to and including the day preceding such date, unless the services of such educator are retained beyond such date, in which event he shall receive salary up to and including the last day on which he remains in service, subject to the provisions of regulation 6.
- (10) Notwithstanding the provisions of subregulation (3)(a) a person who has been appointed as an educator at a school in a permanent capacity and who, immediately after the completion of his or her course of training or instruction as an educator is called up for his or her initial period of compulsory military service and is therefore unable to assume duty on the first working day of a school term and to whom leave could have been granted in terms of regulation 49(1) had he or she already assumed duty, shall be paid a salary as if he or she had assumed duty on the first working day of the school term.

#### **Remuneration during school holiday**

7. An educator whose services are terminated on the last day of a school term and who is reappointed and assumes duty within the first four school days for educators of the following school term and has rendered service for a continuous period of at least 30 days after assumption of duty, shall, notwithstanding the provisions of regulation 6, be entitled to receive salary in respect of the intervening school holiday for which he or she has not already received salary: Provided that if such an educator does not assume duty within the said first four school days and he or she has been granted leave with pay for a period including such four days, he or she shall be deemed to have assumed duty within such first four school days.

#### **Salary increments**

8. . . . .

[Reg. 8 deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

9. . . . .

[Reg. 9 deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

#### **Evaluation of qualifications**

10. The Minister may determine measures for the evaluation of qualifications for employment in education.

[Reg. 10 substituted by GN. No. 1153 of 1997 dated 1 September 1997.]

#### **Experience**

11. (1) The types of experience and the extent of recognition of such experience on the appointment of an educator shall be as follows:
  - (a) Actual educator's experience shall include all experience gained while the person held an educator's post: Provided that the period of initial compulsory military service shall be deemed to be actual educator's experience;
  - (b) appropriate experience shall include working experience which, in the opinion of the Minister, develops the candidate, directly and appositely, in all respects regarding knowledge, skill and attitude, for holding an educator's post;

- (c) other experience shall include experience other than actual educator's experience and appropriate experience recognised by the Minister.
- (2) The different types of experience referred to in subregulation (1) shall be recognised to the following extent:
  - (a) Actual educator's experience – full recognition.
  - (b) Appropriate experience – full recognition.
  - (c) Other experience – one year's recognition for every two years experience (that is, the number of years, months and days of experience is divided by two and parts of days fall away).
- (3) All experience recognised in terms of subregulation (2) shall be deemed to be experience gained after a candidate has been placed in a qualification category.

#### **Achievement recognition**

12. The Minister may determine measures for the recognition of achievement of educators.

[Reg. 12 substituted by GN. No. 1153 of 1997 dated 1 September 1997.]

#### **Wrongly granted remuneration**

13. (1) If an incorrect salary on appointment, transfer or promotion or an incorrect advancement of salary was awarded or granted to an educator, or if the correct salary was awarded or granted but at a time when or in circumstances under which it should not have been awarded or granted to him or her, the employer shall correct the educator's salary with effect from the date on which the incorrect salary or salary advancement commenced, notwithstanding the fact that the educator concerned was unaware that an error had been made in the case where the correction amounts to a reduction of his or her salary.
- (2) If an educator referred to in subregulation (1) has in respect of his or her salary, including any portion of any allowance or other remuneration or any other benefit calculated on his or her basic salary, or awarded to him or her by reason of his or her basic salary –
- (a) been underpaid, an amount equal to the amount of the underpayment shall be paid to him or her, and that other benefit which he or she did not receive, shall be awarded to him or her as from a current date; or
  - (b) been overpaid or received any such other benefit not due to him or her –
    - (i) an amount equal to the amount of the overpayment shall be recovered from him or her by way of the deduction from his or her salary in instalments as may be determined by the employer, with due regard to the applicable Treasury Instructions by way of legal proceedings, or partly in the former manner and partly in the latter manner; and
    - (ii) that other benefit shall be discontinued or withdrawn as from a current date, but the educator concerned shall have the right to be compensated by the employer for any patrimonial loss which he or she has suffered or will suffer as a result of that discontinuation or withdrawal.
- (3) With the approval of the Treasury the amount of an overpayment to be recovered in terms of subregulation (2)(b) may be remitted in whole or in part.

[Reg. 13 amended by GN. No. 1153 of 1997 dated 1 September 1997.]

#### **Unauthorised remuneration**

14. (1) (a) If any remuneration, allowance or other reward is received by an educator in connection with the performance of his or her work with the employer other than in accordance with the provisions of the Act or these regulations, or is received contrary to the provisions of section 24(1)(b) of the Act, that educator shall pay into the relevant Provincial Revenue Fund an amount equal to the amount of such remuneration, allowance or other reward, or, where it does not consist of money, the value thereof as determined by the employer, and if he or she does not do so, it shall be recovered from him or her by the employer by way of legal proceedings or in such manner as the Treasury may approve, and be paid into the relevant Provincial Revenue Fund.
- (b) The Educator concerned may appeal against such a determination by the employer to the Member of the Executive Council who may make such order as he or she may think fit: Provided that the educator may declare a dispute on grounds of such order in terms of the provisions of the Education Labour Relations Act, 1993.
- (c) The employer may with the consent of the Department of State Expenditure determine that the educator concerned may retain the whole or a portion of the remuneration, allowance or reward.
- (2) If in the opinion of the employer an educator has received any remuneration, allowance or other reward referred to in subregulation (1)(a) and it is still in his or her possession or under his or her control or in the possession or under the control of any other person on his or her behalf, or, if it is money, has been deposited in any deposit-taking financial institution in his or her name or in the name of any other person on his or her behalf, the employer may in writing require that educator or that person or that financial institution not to dispose thereof, or, if it is money, not to dispose of a corresponding sum of money, as the case may be, pending the outcome of any legal steps for the recovery of that remuneration, allowance or reward or the value thereof.

- (3) (a) Subject to the provisions of paragraph (b), any salary, allowance, fee, bonus or honorarium which may be payable in respect of the services of an educator who has been made available to a national or provincial department or a council, institution, body or person contemplated in section 7 of the Act, shall be paid into the Provincial Revenue Fund.
- (b) In circumstances regarded by the employer as exceptional, he may recommend to the Treasury the payment out of the Provincial Revenue Fund to the educator concerned of an amount equal to that salary, allowance, fee, bonus or honorarium, or a portion thereof.

#### **Retirement on pension**

15. . . . .

[Reg. 15 repealed by G.N. 1638 of 1998 dated 9 December 1998.]

#### **Discharge of an educator on account of the abolition of his or her post or a reduction, reorganisation or re-adjustment of staff**

16. Subject to the provisions of regulation 5(2), the employer shall, if he or she intends to discharge an educator from service in terms of section 8(1)(b) of the Act, give such an educator three calendar months' written notice of such discharge.

### **REMUNERATIVE PAYMENTS OVER AND ABOVE SALARIES**

#### **Differentiated allowances**

17. The Minister may determine measures for the payment of differentiated allowances to educators appointed at certain education institutions or appointed to certain posts.

[Reg. 17 substituted by G.N. No. 1153 of 1997 dated 1 September 1997.]

#### **Acting allowance**

18. . . . .

[Reg. 18 repealed by G.N. 1638 of 1998 dated 9 December 1998.]

#### **Allowance to educators who perform supervisory duties at hostels**

19. If an educator performs control or supervisory duties and functions at a hostel attached to a state educational institution such educator shall receive, subject to such conditions as the Minister may determine, a non-pensionable allowance, which allowance shall be based on the control or supervisory duties and functions of such educator as well as the number of pupils accommodated at the hostel concerned.

#### **Compensation for examination-related work**

20. An educator, appointed by the employer to perform work related to public examinations, may be remunerated according to tariffs determined by the Minister.

[Reg 20 substituted by G.N. No. 1153 of 1997 dated 1 September 1997.]

#### **Exemption from payment for instruction by educational institutions**

21. An educator who, in his or her capacity as a student, must pay for instruction, or any other service resulting from such instruction, which he or she follows in accordance with one or other instructional programme approved by the employer and which is offered by a department of education responsible for education or an educational institution instituted, registered or administered in terms of a law, may on a basis approved by the employer, be compensated partly or in full in a direct or indirect manner for such expenditure.

#### **Department-specific awards**

22. A non-pensionable allowance determined by the employer and according to a system determined by the Minister may be paid to an educator –

- (a) who, in the opinion of the employer is unusually competent or who possesses unusual qualifications or who has rendered excellent service;
- (b) in order to promote the recruitment and retention of staff;
- (c) for the execution of specific assignments; or
- (d) because the employer is of the opinion that specific circumstances exist.

#### **Official duty**

23. (1) An educator shall be on official duty –

- (a) in the case of an educator at a school –

- (i) during the service periods laid down in the school timetable which reflects the curriculum or the times approved by the employer for the school; and
  - (ii) during the times in which such other activities, which do not constitute part of the school timetable, but are related to school affairs, take place; and
- (b) in the case of an educator at an institution, other than a school during the times approved by the employer.
- (2) An educator shall, during his or her official duty, give his or her full attention to the duties entrusted to him or her and shall not without the consent of the head of the relevant institution or office be absent from his or her school or institution during his or her hours of official duty.

#### **Attendance registers**

24. The employer may determine that an attendance register be kept in which an educator shall record the time of his or her arrival at and departure from his or her place of duty.

#### **Official channels of communication**

25. (1) A request or communication from an educator in connection with a matter falling within the scope of the employer's power or duties shall be directed to the employer via the head of the relevant institution or office.
- (2) Notwithstanding subregulation (1), matters regarding the appointment, termination of service and leave privileges and enquiries about the remuneration of an educator shall be referred to the head of education by the principal of the school concerned.

#### **Replying to questions**

26. An educator shall reply explicitly to a question concerning his or her duties and powers put to him by a person who is competent to put such question: Provided that an educator shall not be obliged to furnish a reply which may incriminate him or her.

#### **Lawful instructions**

27. (1) Subject to the provisions of subregulation (2), an educator shall carry out a lawful instruction given to him or her, in writing or verbally, by an authorised person.
- (2) An educator may, at the time of a verbal instruction, request that such instruction be confirmed in writing and he or she may submit any complaint he or she may have in connection therewith to the employer for a decision.

#### **Residential addresses and telephone numbers**

28. An educator shall notify the employer of his or her residential address and telephone number, if any, and of any change thereof and the employer or a person authorised by him or her shall keep a record thereof in a register which shall be kept for that purpose.

#### **Full-time study courses**

29. An employer may, on the terms and conditions he may determine, authorise an educator to follow a full-time study course approved by the employer and while such educator follows such course he or she shall be deemed to be on duty in an educator's post.

#### **Proof of marriage or change of marital status**

30. An educator shall, within 30 days after entering into matrimony or after his or her marital status has changed, submit a certified copy of the marriage certificate, decree of divorce or death certificate, as the case may be, to the employer: Provided that the employer may in his or her discretion demand the submission of the original certificate or decree.

#### **Reports on educators and adverse remarks**

31. (1) A report, on a form determined by the Minister, shall be drawn up and submitted to the employer by the head of the relevant institution or office in respect of any educator as often as the employer may require.
- (2) Subject to the provisions of subregulation (3), an educator on whom a report has been drawn up in terms of subregulation (1) shall not have access to such report.
- (3) Any adverse remark contained in a report referred to in subregulation (1) shall be brought to the notice of the educator concerned in writing and in its full context by the person who compiled the report.
- (4) The educator referred to in subregulation (3) shall sign the said report and return it to the compiler thereof together with such representations, in writing, as he may desire to submit in respect thereof.
- (5) The provisions of subregulations (1) to (4) shall also apply to adverse remarks made in respect of an educator in a written communication, except that such remarks shall be brought to the educator's attention by the head of the relevant institution or office.

- (6) If it comes to the attention of the employer that an adverse remark is unjustified, the employer may at any time, if he or she deems fit, declare any adverse remark in connection with an educator which has been brought to the attention of the educator in terms of subregulation (3) null and void and in such a case the educator shall be notified in writing of the nullification thereof.

#### **Management bodies on which educators serve**

32. An educator who serves on the management of an association or body which designates members of the governing body of a state educational institution where the educator is employed, shall declare his interests withdraw from the specific discussion.

#### **Part-time temporary educators**

33 . . . . .

[Reg 33 to 63 repealed by G.N. No. 1400 of 19 December 2001.]

### **Chapter 3 LEAVE OF ABSENCE**

[Chapter 3 (regs 34–63) repealed by GN 1400 of 19 December 2001.]

### **Chapter 4 MEDICAL ASSISTANCE, STATE HOUSING, SUBSISTENCE ALLOWANCE, OFFICIAL JOURNEYS AND TRANSPORT, HOUSE OWNER ALLOWANCE, SERVICE BONUS, LONG SERVICE RECOGNITION AND RESETTLEMENT EXPENDITURE**

#### ***Medical assistance***

#### **Employer contribution**

64. (1) The monthly contribution by the employer in respect of the subscriptions payable to a medical scheme on a monthly basis is calculated in accordance with a basis determined by the Minister and shall be paid to the different medical schemes of which educators are members.
- (2) (a) In order to qualify for an employer contribution, an educator shall provide the employer with written proof of membership of the medical scheme of which he or she is a member, as well as of the monthly subscriptions applicable to him or her.
- (b) An educator shall notify the employer of any changes in membership of a medical scheme, as well as any change in subscriptions.
- (c) Notwithstanding the provisions of paragraphs (a) and (b), employers may in consultation with a medical scheme, make suitable arrangements regarding the particulars of educators who are members of such medical scheme including subscription of such educators.
- (3) A member contribution shall be deducted every month from an educator's salary by stop-order and paid to the medical scheme of which he or she is a member.
- (4) (a) Subject to the provisions of this Chapter, an employer contribution is payable to the medical scheme on every salary pay date: Provided that if an educator obtains membership of a scheme that requires subscriptions to be paid in advance, the educator may make a double payment of subscriptions in one month in which case the employer contribution may be doubled.
- (b) The payment of the employer contribution shall be suspended with effect from the date on which an educator no longer qualifies for an employer contribution in terms of this Chapter.
- (5) If an educator is absent from duty without pay, during which subscriptions cannot be deducted from his or her salary, the employer may on application by an educator, continue with the payment of the employer contribution.

#### **Medical assistance to educators, who are stationed abroad or who are on official visits abroad**

65. (1) The provisions of this regulation shall be –
- (a) applicable to an educator, as well as his or her dependants, who are stationed abroad and who receive medical treatment there or during visits to the Republic;
- (b) *mutatis mutandis* applicable to the husband and children of a married female educator who accompany her abroad;
- (c) subject to subregulation (3), *mutatis mutandis* applicable to the dependant children of educators stationed abroad who live in the Republic or who visit their parents abroad;
- (d) applicable to an educator who is on an official visit abroad.
- (2) (a) An educator stationed abroad –
- (i) may be compensated by the Department of Foreign Affairs for the difference between the cost of a medical or related service abroad in respect of which an educator's medical scheme grants benefits and the actual benefits paid out by the medical scheme concerned in terms of its rules:

Provided that the employers' contribution with regard to the services referred to in subregulation (8) shall be limited to an amount determined by the Minister;

- (ii) and his or her dependants may be compensated by the employer for subsistence and travelling expenses necessarily and inevitably incurred in order to acquire specific medical and related services elsewhere than at his or her station: Provided that the benefit is subject thereto that a particular service is not available at the educator's station or that it is of an unacceptably low standard; and
  - (iii) may, notwithstanding the provisions of subparagraphs (i) and (ii) be paid subsistence and travelling expenses in cases where the employer is of the opinion that it would be a less expensive arrangement to convey such educator to a suitable place elsewhere than his or her station for medical treatment.
- (b) (i) If an educator is on an official visit abroad and he or she must necessarily and inevitably make use of medical services there, the difference between the cost of such treatment abroad and the cost of a similar service charges by a supplier of such a service in the Republic may be refunded to him or her by the employer.
  - (ii) The provisions of subparagraph (i) shall *mutatis mutandis* be applicable in respect of the spouse of an educator who accompanies him or her officially.
- (3) (a) In order for an educator stationed abroad to qualify for the benefits in this regulation, he or she has to be a member or a dependant of a member (recognised as such by the medical scheme) of a medical scheme in the Republic which grants benefit with regard to medical or related expenses incurred abroad and which is willing to make such payments to the Department of Foreign Affairs.
  - (b) In the case where an educator is seconded to an institution abroad and he or she as a result thereof is compelled to obtain membership of a medical scheme to which the employees of the relevant institution have to become members, the medical assistance, where applicable, must be entrenched in the secondment agreement concerned.
- (4) (a) In order for an educator stationed abroad to qualify for the benefits in this regulation an amount in accordance with the tariffs as determined by the employer from time to time, and subject to subregulation (5), shall be deducted from the educator's salary and paid into the relevant Provincial Revenue Fund.
  - (b) The amount referred to in paragraph (a) shall be payable from the first day of the month following the month in which the educator concerned leaves the borders of the Republic until the last day of the month in which he or she is transferred back to the Republic: Provided that this period shall not be regarded to be interrupted by periods of absence for whatever reason: Provided further that the husband and the children of a married female educator who accompanies her abroad shall be taken into account in determining the amount referred to in paragraph (a).
- (5) Children of a divorced educator stationed abroad who are registered as dependants of such educator's medical scheme but who are staying with the former spouse within the Republic, qualify *mutatis mutandis* for the benefits in this regulation: Provided that –
    - (a) they on a *bona fide* basis stay with the former spouse and otherwise comply with the requirements relating to dependent children referred to in the definition of "household";
    - (b) they are taken into account in determining the amount referred to in subregulation (4)(a);
    - (c) the amount referred to in subregulation (4)(a) is paid for the duration of the educator's stay abroad; and
    - (d) where applicable, the educator beforehand exercises a choice to let such children participate in the benefits in this regulation.
- (6) The subsistence and travelling expenses referred to in subregulation (2)(a)(ii) shall apply in cases where the necessity of accompaniment contemplated in paragraphs (a) and (c) is confirmed on the basis of a medical certificate –
    - (a) when a parent accompanies a child who has to undergo medical treatment;
    - (b) when a spouse accompanies an educator who has to undergo medical treatment;
    - (c) when an educator accompanies his or her spouse who has to undergo medical treatment; and
    - (d) when the dependent children of an educator or those of his or her spouse accompany him or her or his or her spouse who has to undergo medical treatment: Provided that no alternative arrangement could be made for their care at the educator's station.
- (7) An educator stationed abroad experiencing problems in meeting the financial obligations resulting from the acquiring of a medical service that is recognised for benefit purposes by his or her medical scheme, may apply to the employer for relief-aid in the form of an advancement or the direct settlement of the medical bill: Provided that the payment of the amount of the relief-aid for which application is made, has been demanded by the supplier of the service concerned and that it is taken into account when claims are being processed.
- (8) The employer contribution in respect of –
    - (a) crown- and bridgework of teeth;

- (b) spectacle frames; and
  - (c) contact lenses,
- is limited to an amount calculated in accordance with a basis determined by the Minister.
- (9) An educator who is transferred abroad, as well as his or her dependents who will accompany him or her, shall prior to their departure undergo a medical examination by a registered physician at the cost of the employer: Provided that the employer may in his or her discretion and for reasons acceptable to him or her, grant exemption from such a medical examination.
  - (10) The submission, channelling and processing of claims shall be done in accordance with regulation 67.
  - (11) (a) In cases where an educator on an official visit abroad receives medical treatment, the contribution to be made by the employer towards the costs of such treatment may be determined after consultation with the medical scheme of which the educator is a member.
  - (b) If an educator referred to in paragraph (a) is not a member of a medical scheme the costs of a similar service must be determined by the employer after consultation with an acknowledged medical scheme.
  - (c) The provisions contained in subregulation (7), (8) and (9) shall *mutatis mutandis* apply to an educator referred to in paragraph (a).
  - (12) (a) The Department of Foreign Affairs –
    - (i) annually provides on its vote for the expenditure resulting from the granting of benefits referred to in subregulation (2)(a)(i) above with regard to all educators stationed abroad; and
    - (ii) is, where applicable, responsible for establishing the basis in accordance whereof foreign currencies are to be converted to rand or *vice versa*.
  - (b) Individual employers shall provide for the following expenses:
    - (i) Expenses resulting from the medical treatment of educators on official visits abroad.
    - (ii) Subsistence and travelling expenses referred to in subregulation (2)(a)(ii), read with subregulation (6).
    - (iii) The granting of relief-aid as referred to in subregulation (7).
    - (iv) Expenses resulting from medical examinations referred to in subregulation (9).

#### **Procedure for the submission, channelling and processing of claims abroad**

- 66. (1) (a) The original bill in respect of medical assistance abroad, shall, under cover of a claim form of the medical scheme of which the educator is a member, be submitted to the mission or foreign office who shall ensure that –
  - (i) the claim form is filled in correctly;
  - (ii) the bill is properly specified or that the type of service is understandable; and
  - (iii) proof of payment is provided.
- (b) The mission or foreign office shall pay the sum-total of the claim, or such other amount as determined in accordance with guidelines laid down by the Department of Foreign Affairs in consultation with other government institutions who have personnel abroad, to the educator in local currency.
- (c) The Department of Foreign Affairs checks and verifies the claim and sends it to the medical scheme of which the official is a member.
- (2) (a) The medical scheme determines in terms of its rules –
  - (i) the benefits payable in respect of a specific claim and pays it to the Department of Foreign Affairs; and
  - (ii) the member's liability in respect of a service not acknowledged by the scheme for benefit purposes.
- (b) With regard to the member's liability referred to in paragraph (a)(ii) the Department of Foreign Affairs determines the amount to be paid from State funds.
- (c) The mission or foreign office shall recover the member's liability referred to in paragraph (a)(ii) from him or her in local currency.

#### **Medical assistance to educators at retirement or termination of service**

- 67. (1) (a) The provisions contained in this regulation are applicable to an educator who retires with pension or whose service is terminated and who has been a member of a medical scheme prior to his or her retirement or termination of service.
- (b) In the case of the death of an educator who has been a member of a medical scheme, including an educator who passes away prior to retirement or termination of service, the provisions contained in this regulation are also applicable to the surviving spouse who becomes a member of the medical scheme in his or her place: Provided that in the case of an educator who as a result of a customary marriage has more than one spouse, the continued employer contribution in respect of such an

- educator who passes away prior to or after retirement or termination of service, is limited to an amount not exceeding the employer contribution for one surviving spouse with or without dependants, as the case may be.
- (2) The extent to which assistance is rendered shall be as set out in subregulation (3) and will be calculated only once in accordance with the position which applies or had been applicable in respect of an educator at retirement or termination of service or at his or her death, as the case may be.
- (3) (a) The following educators or their surviving spouses, qualify for assistance in accordance with the basis as set out in paragraph (b):
- (i) Educators who pass away or retire as a result of the attainment of the normal retirement age referred to in regulation 15;
  - (ii) educators whose services are terminated by the employer as a result of the abolition of their posts, reorganisation, to promote efficiency, or to economise;
  - (iii) educators who, at their request, retire with the approval of the employer (but not as a result of misconduct or incapacity), or as a result of a right to early retirement;
  - (iv) educators who retire according to a decision by the employer (but not as a result of misconduct or incapacity);
  - (v) educators who retire as a result of ill health not ascribed to their own doing; and
  - (vi) educators who retire as a result of injury on duty.
- [Reg. 67(3)(a) substituted by G.N. No. 1153 of 1997 dated 1 September 1997.]
- (b) Assistance in respect of the persons referred to in paragraph (a) is rendered on the following basis:
- (i) In the event of retirement or termination of service or death prior to 1 May 1996, the rules as applied on the date of termination of service or death, remain applicable.
  - (ii) In the event of retirement or termination of service or death on or after 1 May 1996 of educators who, at the time of their retirement or termination of service or death, are members of a medical scheme, assistance is rendered on the basis as determined by the Minister.
- [Reg. 67(3)(b) substituted by G.N. No. 1153 of 1997 dated 1 September 1997.]
- (c) . . . . .
- [Reg. 67(3)(c) deleted by G.N. No. 1153 of 1997 dated 1 September 1997.]
- (d) Assistance in respect of the persons referred to in paragraph (c) is rendered on the following basis:
- (i) In the event of retirement or termination of service prior to 10 June 1994 the rules as applied on the date of termination of service, remain applicable.
  - (ii) In the event of retirement or termination of service on or after 10 June 1994 educators who, at the time of their retirement or termination of service, are members of a medical scheme and –
    - (aa) who are at least 55 years old with at least 15 years service (which may include previous periods of service), the state contribution is 3/6 of membership fees, limited to 75% of the maximum rand amount;
    - (bb) who are at least 50 years but younger than 55 years old with at least 15 years service (which may include previous periods of service), the state contribution is 2/6 of membership fees, limited to 50% of the maximum rand amount;
    - (cc) who retire or whose services are terminated at an age younger than 50 years and who have at least 20 years service (which may include previous periods of service) at their disposal, such educators qualify for assistance according to the basis in subparagraph (ii) at attaining the age of 50: Provided that they are not receiving medical assistance on account of their employment by another employer.

[(sic) It would appear that (d) should also have been deleted by G.N. No. 1153 as it refers to (c) which was deleted.]

### **State housing**

- 68.** (1) The provisions of this regulation shall not be applicable to an educator residing in a hostel attached to a state educational institution.
- (2) An employer may make state housing available to an educator when it is to be utilised as an instrument in the execution of his or her duties and because the work specifications of a specific post require that the incumbent thereof be available on the terrain where such duties are performed, within and outside his or her official hours of duty and educators occupying such posts shall be obliged to occupy the housing.
- (3) (a) Rent in respect of standard married housing is levied at 4% of the annual basic pensionable salary of the educator with a maximum as determined by the Minister.

- (b) Rent in respect of standard single housing is levied at 1% of the annual basic pensionable salary of the educator.
- (c) Rent in respect of non-standard and voetstoets housing shall be 75% of that of standard housing referred to in paragraph (a) or (b), as the case may be.
- (4) An educator who occupies state housing is liable for any levy, tax on services or other charge in respect of water, electricity, sanitation services, refuse removal, etc. which is payable to the local authority concerned or other institution: Provided that if it is not paid directly by the educator, payment must be made to the employer at the compensating tariffs as determined by the providing department with the approval of the Department of State Expenditure.
- (5) (a) The providing department is responsible for the maintenance of state housing, as well as of the permanent fixtures and the grounds (gardens excluded) that form part thereof.
- (b) The employer who rents housing with the view to making it available as state housing, is responsible for the maintenance, etc. of such housing.
- (c) The educator is liable and responsible for –
  - (i) keeping the buildings and grounds clean and neat;
  - (ii) maintaining the garden;
  - (iii) all keys received by him or her;
  - (iv) the replacement of consumable articles such as fluorescent lights, light bulbs, etc; and
  - (v) repairing of damage to the housing caused through his or her own fault.
- (6) Should an educator to whom state housing is made available for occupation, be obliged to vacate such housing temporarily in order that it may be occupied by a substitute or to allow for essential repairs or renovations –
  - (a) he or she is exempted from all obligations imposed upon him or her by this regulation, until he or she again occupies such housing; and
  - (b) the measures determined by the Minister apply mutatis mutandis to him or her, should he or she at the same time be obliged to remove his or her personal possessions from the relevant housing.
- (7) An educator is not exempted from his or her obligations in terms of this regulation during periods of leave or the performance of official duty away from his or her normal place of work.
- (8) Should an educator –
  - (i) die; or
  - (ii) be discharged in terms of section 8(1)(b) or (c) of the Educators' Employment Act, 1994,
 the educator and/or his or her household may, whichever is applicable, subject to this regulation, be permitted to stay in state housing for a period not exceeding three months following the month of his or her death or discharge.
- (9) Only the educator and his or her household are allowed to occupy state housing and sub-letting may not take place, unless prior approval has been granted by the providing department or employer on conditions determined by the latter.
- (10) The employing department may supply furniture for state housing, in which case the educator shall pay the tariffs determined by the employing department with the approval of the Department of State Expenditure.
- (11) A department, the State or any person in the employment of a department or the State is not responsible for any loss of or damage to the personal possessions of an educator in state housing.

#### **Other housing**

- 69.** (1) Other housing that state housing may be provided to an educator if in the opinion of the employer exceptional circumstances exist and it is in the interest of education and in cases where –
- (a) an educator who, in the interest of the employer, stays at a specific headquarters for a relatively short period;
  - (b) private housing is not available;
  - (c) educators whose posts were not identified for the provision of state housing, must be provided with housing at training centres; and
  - (d) educators are stationed at a place where, or in the vicinity of which, private housing does exist, but their work is of such a nature that it must be possible to reach them on short notice and that they must be able to report as a unit, as a result of which it is essential that they be accommodated at a specific place or near such a place.
- (2) (a) If housing is provided in the circumstances set out in subregulation (1), rent shall be levied at market related tariffs.
- (b) Market related tariffs are rent which apply generally for the market in the area for comparable housing, or, where housing or comparable housing is not available, any other acceptable basis which reflects

rent tariffs for the particular area, as whether the housing is purchased or erected by the providing department or rented by the employer department.

- (3) The provisions of subregulation (1) shall *mutatis mutandis* apply to housing contemplated in subregulation (2).

#### **Accommodation expenditure**

70. An educator who, with the approval of the employer is on official duty away from his headquarters, shall be compensated by the employer for the accommodation expenditure incurred by him or her of necessity during such a period in addition to his or her normal expenditure on the basis determined by the Minister.

#### **Official journeys and transport**

71. If it is required of an educator to perform official duties at a centre other than his or her headquarters and he or she has of necessity to make use of transport approved by the employer to travel between his or her headquarters and such centre he or she may be compensated in accordance with a tariff determined by the Minister by the employer for the expenditure involved.

#### **Transport between residence and place of duty**

72. (1) A head of education may at his or her discretion authorise an educator to use government transport between his or her residence and place of duty, should exceptional transport problems arise regarding the performance of duty at a particular place of duty and which make it essential that government transport be provided.
- (2) If an educator is transported in terms of subregulation (1) he or she must pay for such transport according to the tariffs determined by the Minister.

#### **Home Owner Allowance Scheme: Application and limits of scheme**

73. (1) In order to participate in the provisions of the Home Owner Allowance Scheme (hereinafter referred to as the scheme) either on the date of application or at any point of time during the allowance payment period, an educator shall comply with all the provisions of these regulations dealing with the scheme in so far as such provisions are applicable to him or her.
- (2) An educator who wishes to participate in the scheme shall –
- (a) be a contributing member of a statutory instituted pension or provident fund or shall be under an obligation to contribute to such a fund upon completion of a qualifying period of service;
  - (b) be employed in a full-time capacity;
  - (c) in the event of being a full-time educator, employed in a temporary capacity, be younger than 65 years of age; and
  - (d) not be married to a person who already participates in the scheme for the Public Service.
- (3) If an educator or his or her spouse, in addition to the dwelling that he or she occupies, owns another paid-off dwelling or not paid-off dwelling (wherever located and in spite of the fact that the registered mortgage in the case of the other not paid-off dwelling is smaller or larger than the registered bond on the dwelling which he or she occupies) which is registered in his or her or his or her spouse's name and in respect of which he or she or his or her spouse previously for any period received an allowance (a subsidy) on the basis described in these regulations (or on a similar basis) on the strength of his or her or his or her spouse's service in the Public Service, an education department, the Department of Posts and Telecommunications, a provincial administration or with a council, institution or body established by or under a legal provision, as contemplated in section 15(1) of the Public Service Act, 1994, he or she qualifies for a reduced allowance.
- (4) If a reduced allowance is payable to an educator in terms of subregulation (3) and the other paid-off or not paid-off dwelling referred to in the said subregulation is sold, the provisions of regulation 75 are *mutatis mutandis* applicable: Provided that if the other paid-off or not paid-off dwelling is sold on a leasehold basis it is for this purpose still regarded as being in the possession of the educator or his or her spouse.
- (5) In order to qualify for participation in the scheme an educator shall own a dwelling –
- (a) which is registered in –
    - (i) such educator's name; or
    - (ii) both such educator's and his or her spouse's names; or
  - (b) which is constructed on –
    - (i) premises in respect of which the person(s) referred to in paragraph (a) has obtained a right of leasehold under a statutory provision; or
    - (ii) tribal or state land in respect of which official ratification of the right to occupy such land, can be produced by the person(s) referred to in paragraph (a); or
  - (c) that was obtained by the person(s) referred to in paragraphs (a) by way of a contract of sale which will lead to the acquisition of right of possession/proprietary rights and in respect of which a registered

- mortgage was granted to him or her by an institution referred to in subregulation (9), but which cannot as yet be transferred in the said person(s) name(s), because –
- (i) surveying or town establishment, or the provision of sewerage or other services such as roads, water, electricity, etc., are not finalised; or
  - (ii) the person concerned, if surveying and town establishment is finalised, has not paid the required deposit on the purchase price of the dwelling in full; or
  - (iii) the final purchase price of the property has not yet been finalised and only a provisional purchase price is known at the time of signing the suspensive sale agreement; and
- (d) that is situated within the borders of the Republic of South Africa.
- (6) (a) The dwelling shall be occupied by the educator and, if applicable also his or her dependants: Provided that if an educator with dependants purchases or constructs or already owns a dwelling elsewhere than at his or her headquarters (eg the new headquarters to which he or she is to be transferred or the place where he or she wishes to settle after retirement), and this dwelling is occupied only by his or her dependants, and he or she joins them periodically, he or she should be deemed to comply with this requirement.
- (b) If, as a result of disaster (hurricane, flood, earthquake, fire damage, etc.) or intimidation, an educator is forced to vacate the dwelling temporarily the employer may continue with the payment of a home owner allowance subject to the conditions and for the period which is deemed reasonable.
- (c) The home owner allowance may also be paid to an educator who is officially compelled to occupy official quarters: Provided that such educators’ –
- (i) private dwelling must be let, unless the employer is of the opinion that acceptable reasons exist why the dwelling cannot be let or letting would be impractical due to individual circumstances;
  - (ii) dwelling, if it is let, shall be let at a market-related tariff unless the employer is convinced that it is not possible, in which case a lower tariff can be accepted; and
  - (iii) home owner allowance shall be limited to the allowance payable on the compulsory instalment minus any rent received in a particular month.
- (7) The dwelling in respect of which a home owner allowance is paid must be situated in the vicinity of the workplace or headquarters of the educator concerned or must normally have been occupied by the educator should he or she not be living in official quarters, except in the case of an educator stationed at a place where no private housing is available or allowed, the employer may decide otherwise.
- (8) There shall be a registered mortgage (and not a leasehold contract) on the dwelling in respect of which a home owner allowance is paid, which mortgage was obtained from either –
- (a) the National Housing Board;
  - (b) a local authority;
  - (c) a financial institution registered with the Office for Banks in the South African Reserve Bank; or
  - (d) any other body instituted by an Act of Parliament and which grants loans:
- Provided that home loans granted by financial institutions created by statute for the development of *inter alia*, rural areas, eg development trusts or corporations, shall be deemed to be registered mortgages.

#### **Calculation of homeowners allowance**

74. Subject to the provisions of these regulations, the allowance payable under the scheme is calculated according to the basis, conditions and limitations determined by the Minister.

#### **Recognised loan amount**

75. (1) For purposes of the scheme the recognised loan amount is the total of the whole or part of the registered mortgage that was used to buy, construct or to make immovable improvement or alterations (including structural maintenance) to the dwelling or to the premises of the dwelling which an educator occupies.
- (2) In determining the recognised loan amount which is used to calculate the allowance –
- (a) a particular registered mortgage, or the total of registered mortgages if an educator has more than one such a loan on his or her dwelling, is considered the recognised loan amount it is used as contemplated in subregulation (1);
  - (b) the amount of registered mortgages or parts thereof which were not used for the purposes as contemplated in subregulation (1), shall be deducted from the registered mortgage, or the total of registered mortgages if an educator has more than one such a loan on his or her dwelling; and
  - (c) the recognised loan amount, when applicable, shall be further reduced with the amount with which an educator should be penalised in accordance with regulation 76.
- (3) The amounts of registered mortgages which were not used for the purposes as contemplated in subregulation (1) and with which an educator is penalised in terms of the order of magnitude of the recognised loan amount which is used to calculate his or her allowance, shall not be transferable with regard to dwellings which he or she may later purchase or cause to be constructed.

### **Employment of the proceeds from the sale of a previously subsidised dwelling**

76. (1) If an educator or his or her spouse previously owned another dwelling (paid-off or not paid-off) which was registered in his or her or his or her spouse's name in respect of which he or she or his or her spouse previously for any period received a subsidy (or allowance on the basis set out in these regulations or a similar basis) on the grounds of his or her spouse's service in the Public Service, an education department, the Department of Posts and Telecommunications, a provincial administration or with a council, institution or body established by or under a legal provision and which was sold (for this purpose it is deemed to be sold on the date on which the property is registered in the name of the owner), he or she is expected (but not obliged) to use an amount equal to the full difference between the full selling price of the previous dwelling, on the one hand, and the total sum of the balance of the mortgage loan (if any) on the date of sale plus his or her sale costs plus purchasing costs (agent's commission, inspection fees, architect's fees, etc.) conveyancing costs and transfer fees on the new property, on the other hand, for the purpose of purchasing the dwelling (or for purchasing the premises and for the construction of the dwelling) which he or she occupies: Provided that –
- (a) the "other dwelling" referred to in this subregulation concerns only the last dwelling in respect of which a home owner allowance (previously housing subsidy) was paid; and
  - (b) a dwelling sold on the leasehold basis is not deemed to have been sold, since it is registered in the name of the "seller".
- (2) If an educator does not use (or did not use) the said amount 'for this purpose, the recognised loan amount on the dwelling which is occupied by the educator (or the total of the recognised loan amounts in the case of an educator who has registered more than one mortgage on his or her dwelling) must be reduced by the said amount for the purpose of calculating the allowance.
- (3) Subregulation (2) is applicable in the case of –
- (a) an educator who granted the purchaser of his or her previous dwelling an extension for payment of a part of the purchase price until such time as he or she produces proof that the shortfall has been paid in full on the registered mortgage (or the registered mortgages if more than one mortgage is registered in respect of the dwelling); or
  - (b) an educator who is holding back part of the proceeds for immovable improvements or alterations to the new home, until such time as he or she produces proof that the improvements for which the amount concerned was held back have been completed.
- (4) The amount contemplated in subregulation (2) with which an educator is penalised in respect of a particular dwelling, in terms of the order of magnitude of the recognised loan amount which is used to calculate his or her allowance on such a dwelling, is not transferable with regard to dwellings which he or she may purchase or erect later.
- (5) An educator who sells a previous dwelling under the circumstances as contemplated in subregulation (1), but who fails or refuses to declare how the proceeds were spent, shall be completely excluded from participation in the scheme from the date of the sale of the previous dwelling: Provided however that he or she qualifies again for participation in the scheme from the salary pay day of the month in which he or she declares how the proceeds were spent.

### **Date with effect from which the home owners allowance is paid**

77. (1) An educator may be paid an allowance referred to in regulation 73, on each salary pay day.
- (2) An allowance contemplated in subregulation (1) shall be terminated if any of the conditions to which the scheme or such allowance is subject, is not complied with.
- (3) If an allowance contemplated in subregulation (1) is suspended in terms of subregulation (2), the allowance may be re-instated with effect from the date that the educator concerned complies with the said conditions.

### **Home owners allowance payment period**

78. (1) An allowance referred to in regulation 73 shall be paid for the duration of the redemption period to which the registered mortgage in respect of which the allowance is paid, is subject.
- (2) If an educator –
- (a) on his or her appointment applies for an allowance in respect of a dwelling which he or she purchased or constructed before his or her appointment; or
  - (b) whose allowance in respect of a dwelling was terminated for any reason, later again qualified for an allowance in respect of the same dwelling on the grounds of changes in his or her circumstances, his or her date of appointment, or the date on which he or she again qualifies for the allowance concerned, as the case may be, is his or her allowance period commencement date. The educator's allowance period expiry date is (remains) as determined in accordance with subregulation (1).
- (3) If an educator has more than one registered mortgage in respect of the dwelling that he or she occupies, the allowance payment period with regard to each such mortgage is as contemplated in subregulations (1) and (2).

- (4) If any adjustment of the redemption period (extension or reduction) to which a registered mortgage loan is subject, is made, the allowance payment period shall be adjusted accordingly.

#### **Recognition of further or increased registered mortgages**

79. (1) Subject to the provisions of regulation 75(1) and (2), an educator shall come into consideration for an increased monthly allowance whenever he or she negotiates a further or an increased registered mortgage and utilises the funds thus obtained –
- (a) to bring about any immovable improvement or alteration to the dwelling which is occupied by him or her or to the premises on which it is situated; or
- (b) for the redemption of a private loan which was obtained to purchase or to construct the dwelling or to improve or alter it as contemplated in paragraph (a).
- (2) If a further or increased registered mortgage is utilised for immovable improvements or alterations, it shall be acknowledged for the purpose of allowances at the earliest from the date on which the said improvements or alterations were completed: Provided that the employer may approve that completed parts of such improvements or alterations be taken into account for the purpose of allowances.
- (3) The fact that the registered mortgage debt of an educator on his or her dwelling is to be redeemed within a few months of that the registered mortgage debt which he or she had on his or her dwelling was redeemed in full (in other words the mortgage is cancelled), does not mean that subregulation (1) is not applicable to him or her and such an educator can still obtain a further registered mortgage loan on his or her dwelling and if all the qualifying requirements are met, be paid an allowance in respect thereof.

#### **Recognition of advances and reinstatement of existing registered mortgages**

80. (1) An educator who obtains an advance or reinstatement of existing registered mortgages (i.e. an action which does not influence the order or magnitude of his or her existing registered mortgage loan amount), even if the funds are utilised for recognised purposes, shall not come into consideration for an increased monthly allowance.
- (2) If an educator obtains an advance or reinstatement on his or her existing registered mortgage whether or not he or she utilises the funds for the purposes as contemplated in regulation 79(1)(a) or (b) and his or her mortgagee adjusts (lengthens) the redemption period to which the existing loan is subject, the allowance payment period remains unaltered.

#### **Allowance payment during official duty away from headquarters**

81. (1) If an educator and all his or her dependants, as a result of circumstances beyond his or her control and arising from his or her official duties are obliged to vacate the dwelling temporarily, payment of the allowance may, subject to subregulation (2), be continued from the date of such vacating until he or she and his or her dependants again occupy the dwelling.
- (2) The continued payment of the allowance in terms of subregulation (1) must be reduced with the rent received for the dwelling (for this purpose the person must indicate in writing that all steps are being taken to let the dwelling and he or she must inform the employer monthly of the rent received), on condition that this subregulation does not apply in respect of the first six months after a person and all his or her dependants have vacated the dwelling.
- (3) Subregulations (1) and (2) are *mutatis mutandis* applicable to a single educator (without dependants).

#### **Allowance payment on transfer to a foreign country or from one headquarter to another in the Republic**

82. (1) If an educator who has been transferred as well as his or her dependants vacate the dwelling in respect of which he or she is receiving an allowance, payment of the allowance may be continued, regardless of whether the dwelling is being leased or not –
- (a) until such time that he or she sells the dwelling and for this purpose it is deemed to have been sold on the date on which the property is registered in the name of the new owner; or
- (b) until such time as he or she qualifies for an allowance in respect of a dwelling at his or her new headquarters; or
- (c) for a period of six months, calculated from the date that his or her transfer comes into effect, regardless of whether he or she and his or her dependants physically left his or her previous headquarters before, on or after that date,
- whichever of the three periods is the shortest.
- (2) If the dependants of the transferred educator, or any of them, continue to occupy the dwelling at his or her previous headquarters, he or she shall be deemed still to be complying with the occupancy requirement laid down in regulation 73(7)(a) and payment of an allowance should be continued to him or her as long as such dependant continues to live in the dwelling and he or she continues to comply with all the qualifying requirements.
- (3) If the dependants of the transferred educator, referred to in subregulation (2), vacate the dwelling concerned –

- (a) before expiry of the relevant (shortest) period as set out in subregulation (1), the allowance may still be paid to him or her for the remaining part of such period; or
  - (b) after expiry of the relevant (shortest) period as set out in subregulation (1), payment of the allowance shall be terminated from the date of such vacating.
- (4) Subregulations (1) to (3) shall *mutatis mutandis* be applicable to an educator –
- (a) whose services are made available to a neighbouring state under the technical aid scheme; or
  - (b) who is transferred to another headquarters and who has to occupy official quarters there; or
  - (c) who purchases or constructs a dwelling, but before payment of a home owner allowance can be effected, is transferred.
- (5) If a transferred educator after expiry of the period during which, in terms of paragraphs (1) to (4), the allowance is payable to him or her in respect of the dwelling at his or her former headquarters, experiences substantial difficulties to sell such dwelling, the employer may authorise continued payment of the allowance to the educator by applying the provisions in paragraphs (1) to (4) *mutatis mutandis* for a further period as determined by the employer in respect of the relevant dwelling: Provided that –
- (a) the educator experiences difficulties outside his or her control to sell the dwelling at his or her former headquarters at a price which covers his or her outstanding mortgage loan: Provided that if an educator prefers not to sell his or her dwelling, this provision shall not be applicable to him or her;
  - (b) the continued allowance shall be calculated as if the educator is still occupying the dwelling;
  - (c) the continued allowance be reduced with the rent received for the dwelling at the former headquarters and for this purpose the educator must indicate in writing that all reasonable steps have been taken to let the dwelling and he or she must inform the employer monthly of the rent received and the rent so received must be market-related, unless the employer is convinced that rental at a market related tariff is not possible; and
  - (d) the continued payment of the allowance is reconsidered every six months.
- (6) (a) An educator serving abroad qualifies for the continued payment of the home owner allowance in respect of the dwelling in the Republic on which an allowance was paid at the time of transfer or secondment.
- (b) The amount of the continued allowance is limited to the allowance payable on the compulsory instalment, minus any rent received in a particular month.
  - (c) Payment of the continued allowance takes place only on submission of proof of rent received on the dwelling and in cases where the dwelling cannot be leased for a limited period of time, educators must indicate their willingness in writing to let their dwellings: Provided that the rent obtained must be market-related, unless the employer is convinced that rental at a market related tariff is not possible.

#### **Allowance payment on transfer to or appointment in education**

83. The provisions of regulation 81(1) to (3) apply *mutatis mutandis* to an educator who is transferred in terms of section 6 of the Act, or who was in the employ of the Public Service as contemplated in the Public Services Act, 1994, and is appointed in Education without any interruption in service if he or she –
- (a) changes his or her station as a result of such transfer or appointment;
  - (b) at the time of such transfer or appointment owns a dwelling at his or her previous station in respect of which he or she received an allowance from his or her former employer.

#### **Effect of leave of absence on allowances**

84. Payment of an allowance under the scheme to an educator shall be continued during periods of leave of absence of any nature, whether with or without payment, or periods of suspension, in terms of section 14(2) of the Act, on condition that if –
- (a) he or she is absent on leave without payment, the allowance may be paid to him or her for a particular month only if he or she provides acceptable proof that the monthly repayment on his or her mortgage which was payable during that month has in fact been paid; and
  - (b) he or she and his or her dependants vacate the dwelling during such period of leave of absence or suspension, the dwelling is not leased: Provided that if the dwelling is leased, payment of the allowance shall be terminated from the date of such leave.

#### **Responsibility of participants in scheme**

85. An educator who applies for an allowance under the scheme or who is in receipt of such allowance, shall –
- (a) substantiate his or her application with the necessary documentary evidence;
  - (b) during his or her allowance payment period, report any change which may have an influence on the registered loan amount or the expiry date of his or her allowance payment period and where applicable, substantiate it with documentary evidence;

- (c) make arrangements that his or her monthly instalments on his or her mortgage is recovered by stop-order from his or her salary and paid to the mortgagee; and

- (d) deliver a statement from the mortgagee which reflects the annual transactions with regard to his or her mortgage, on request to his or her employer.

#### **Over and underpayments of allowances**

86. (1) If the amount of an allowance under the scheme paid to an educator is found to be incorrect the error shall be corrected immediately and any amount which because of such error was –
- (a) overpaid shall be recovered from the educator: Provided that if the amount cannot be recovered in a single sum, interest shall not be charged on the monthly outstanding balance; or
  - (b) underpaid, shall be paid to the educator.
- (2) (a) If discovered that an allowance is paid to an educator who does not qualify for it, or that an allowance higher than that for which he or she qualifies is paid as a result of the fact that he or she deliberately provided incorrect information or withheld relevant information –
- (i) payment of the allowance to him or her shall be suspended from the first pay date after it was discovered;
  - (ii) the amount paid or overpaid shall be recovered from him or her: Provided that if such amount cannot be recovered in a single sum but by monthly payments, interest shall be charged on the outstanding balance at the rate determined from time to time for this purpose by the Minister of Finance; and
  - (iii) he or she shall not come into consideration for an allowance again.
- (b) Any action taken under paragraph (a) shall not prevent action in accordance with the provisions with regard to misconduct as contained in the Act.

#### **General measures concerning the payment of a home owner allowance**

87. (1) (a) If a dwelling is registered in the names of two or more persons none of whom are married to each other, the following shall be applicable in respect of each person who participates in the scheme:
- (i) If all the persons in whose names the dwelling is registered are educators or other persons who may take part in the scheme, the real loan amount is divided in the proportion to which the educators concerned obtained ownership in the property, thereby to determine the recognised loan amount of each educator.
  - (ii) If not all of the persons in whose names the dwelling is registered are educators or other persons who may take part in the scheme, the real loan amount –
    - (aa) is divided in the proportion to which the persons concerned have ownership in the property, thereby to determine the recognised loan amount for each person; or
    - (bb) is divided by the number of persons concerned to determine the loan amount for each person,and whichever recognised loan amount is the smaller is used for allowances purposes.
  - (iii) The allowance is paid for the normal allowance payment period, subject to the provisions of regulation 77.
  - (iv) When the dwelling is sold the gross return is divided in the proportion as used in subparagraph (a)(i) or (ii), in order to determine the gross return and furthermore the usable net return in each case for purposes of the application of regulation 75
- (b) The total of the monthly allowances payable in the case of educators as contemplated in paragraph (a)(i), or in the case of educators and those other persons as contemplated in paragraph (a)(ii) shall not be more than that payable if the dwelling was registered in only one person's name.
- (2) (a) No allowance shall be payable to an educator who occupies a dwelling that is registered in the name of a company, partnership or trust.
- (b) When a dwelling that was registered in the name of a deceased husband is kept in the last mentioned estate or in trust and it is clear from the testamentary directions that the widow who is employed as an educator will shortly acquire ownership of the dwelling (for example as soon as the estate has been administered) and she maintains the monthly instalments with regard to the mortgage of the dwelling concerned –
- (i) it shall be deemed that she complies with the ownership requirement and an allowance shall be paid to her if she complies with all the other requirements; and
  - (ii) her allowance period expiry date is that date when the registered redemption period to which the loan is subject will expire.
- (3) Loans that do not comply with the provisions of regulation 73(9) shall not be acknowledged for allowance purposes: Provided that if such a loan is redeemed by an acknowledged mortgage, such mortgage may be recognised for allowance purposes to the extent which the private loan was used for recognised purposes as contemplated in regulation 79(1)(a).
- (4) Regulation 75 shall *mutatis mutandis* be applicable to an educator who divides his or her property on which an allowance is paid to him or her, and sells part of it on the basis that it is expected of an educator to pay

off an amount equal to the difference between the full purchase price of the sold part and the total sum of his or her divisioning and sale costs, as well as any amount for the said return that it used by him or her for immovable improvements or alternations to or on the premises of the dwelling which he or she occupies: Provided that if the said return is not used accordingly, the provisions of regulation 75(2) shall be applicable.

- (5) (a) As mortgagees in general imposed interest on registered mortgages for the period from the date of registration of the mortgage loan to the date before that on which the first obligatory capital and interest redemption (instalment) is payable, an educator who complies with the occupancy requirement as referred to in regulation 73(7) during the period that interest is imposed, may be paid an allowance on the interest paid directly by an educator to his or her mortgagee, in respect of the true period that interest was imposed or 30 days, whichever is the shorter period.

- (b) The allowance that is payable in accordance with the paragraph (a), is calculated as follows:

$$A \times \frac{B}{30} = \text{allowance on interest}$$

where –

A represents the allowance that is payable in accordance with regulation 73 in respect of the recognised loan amount of the educator concerned; and

B represents the true number of days (maximum 30) in respect of which interest was imposed.

- (c) The provision in paragraph (a) shall only be applicable to the first or main mortgage loan on a dwelling, and an allowance is therefore not payable on the interim interest of a second or further mortgage loan on the dwelling that an educator occupies.

- (6) If an educator divorces his or her spouse and as a result thereof the dwelling in respect of which he or she or his or her spouse previously for any period of time received an allowance (or subsidy) on the basis set out in these regulations or on a similar basis on the grounds of his or her or his or her spouse's service in the Public Service, the Department of Posts and Telecommunications, a provincial administration or with a council, institution or body established by or under a legal provision as meant in section 15(1) of the Public Service Act, 1994 –

- (a) is sold so that the proceeds can be awarded to his or her spouse or that the proceeds can be divided between himself or herself and his or her spouse, his or her case should be dealt with in terms of the provisions of regulation 75 and for such purpose only 50% of the net proceeds from the sale of the dwelling as contemplated in the said regulation shall be taken into account if he or she obtains a further dwelling and applies for an allowance;

- (b) is granted to his or her spouse (where, for example, the dwelling is transferred in his or her spouse's name or usufruct is granted to her or him), his or her case should be dealt with in terms of the provisions of regulation 75 as if he or she had sold the dwelling and for such purpose and in order to determine the net proceeds and realistic valuation of the dwelling's market value at the time that it is awarded to the spouse must be obtained: Provided that only 50% of the net proceeds as contemplated in the said regulation shall be taken into account when he or she obtains a further dwelling and applies for an allowance; or

- (c) is retained by him or her but is encumbered by further debt by obtaining a higher or further registered mortgage loan to reimburse his or her spouse for her or his part in the joint estate, his or her case is to be dealt with in terms of the provisions of regulation 75 as if he or she had sold the dwelling and bought another one and for such purpose and in order to determine the net proceeds, a realistic valuation of the dwelling's market value at the time of his or her divorce, must be obtained: Provided that an allowance based on an amount of not more than 50% of the net proceeds may be paid on the higher or further mortgage loan.

### Service bonus

88. (1) (a) A non-pensionable service bonus is payable to educators in terms of this regulation.  
(b) An educator who does not qualify for leave is excluded from the provisions of this regulation.
- (2) (a) The date of payment of the service bonus referred to in subregulation (3) is the date on which an educator's salary is paid in the month in which his or her birthday falls: Provided that in the case of an educator whose birthday falls during any of the months of January, February or March, his or her service bonus is paid in April.  
(b) An educator whose services terminate for any reason with effect from the day following his or her service bonus pay date, nevertheless qualifies for the service bonus: Provided that a service bonus is not payable to an educator whose services terminate with effect from his or her service bonus pay date or any earlier date, for whatever reason, with the exception of an educator contemplated in subregulation (5).
- (3) The service bonus is calculated as follows:  
Amount of the service bonus

$$\frac{A}{365} \times B - \frac{C}{365} \times B + \frac{D}{E} \times \frac{B}{365}$$

where –

A represents the following service period (in days and not more than 365 days), as the case may be:

- The service period of 12 months ending on the last day of the month that precedes the month in which the service bonus pay date for the educator concerned falls; or
- the period which elapsed from the date of the (latest) appointment of the educator concerned up to the last day of the month preceding the month in which his or her service bonus pay date falls, if he or she had not been employed for the full period of 12 months as mentioned above;

B represents the following amount, namely:

- 93% of the full gross basic salary (excluding any allowance, irrespective of whether it is pensionable or not) of the educator for the month in which his or her service bonus pay date falls, if he or she is a member of a pension fund or is not yet a member because he or she has not yet completed the qualifying service period for membership; or
- the full gross basic salary (excluding any allowance, irrespective of whether it is pensionable or not) of the educator for the month in which his or her service bonus pay date falls if he or she does not qualify for membership of a pension fund, for example an employee employed under a contract that makes provision for payment of a benefit on expiring of such contract;

C represents the number of days, if any, in respect of which the person concerned, during the appropriate period represented by factor A above, received no salary as a result of –

- vacation and/or special leave without salary granted to him or her; and/or
- unauthorised absences from service recorded as vacation leave without salary; and/or
- his or her having been suspended from his or her duties without remuneration, according to the Act in terms of which he or she was appointed; and/or
- payment of his or her salary having been entirely suspended on the grounds of an offence which he or she committed while carrying out military service; and

D represents the number of working hours, if any, in respect of which the person concerned during the appropriate period represented by factor A above, received no salary as a result of unauthorised absences from duty which is recorded as pro rata vacation leave without salary; and

E represents the minimum number of working hours which the educator concerned must work per day.

- (4) (a) In respect of each educator to whom a service bonus is payable based on an amount of 93% of his full gross basic salary, a calculation shall be made according to the following formula, even if the reduction part of the formula referred to in subregulation (3) has the effect that no service bonus is payable to the educator:

$$28\% \times \frac{A}{365} \times B = \text{amount,}$$

where –

- A represents the same as factor A in the formula in subregulation (4); and
  - B represents the full gross basic monthly salary of the officer or employee concerned for the month in which his or her service bonus pay date falls.
- (b) The amounts calculated according to paragraph (a) in respect of all educators whose service bonus pay date falls in the same month should be added together and paid into the Civil Pension Stabilisation Account.

- (5) A *pro rata* service bonus is payable when –

- (a) the services of an educator is terminated for one of the reasons referred to in subregulation (6): Provided that he or she received a service bonus on his or her last service bonus pay date before his or her termination of service; or
- (b) an educator dies.

- (6) The reasons for termination of services contemplated in subregulation (5)(a) are the following:

- (a) Retirement at reaching the voluntary or optional retirement age.
- (b) Discharge of an educator –
- (i) on account of continued ill-health without own default;
  - (ii) owing to the abolition of his or her post or reduction in or reorganisation or readjustment of departments or offices;
  - (iii) if, for reasons other than his or her own unfitness or incapacity, his or her discharge will promote efficiency or economy in the department or office in which he or she is employed, or will otherwise be in the interest of the Public Service; and
  - (iv) on account of unfitness for his or her duties or incapacity to carry them out efficiently (as opposed to misconduct).

- (c) Termination of the services of an educator on or after attaining the age of 60 years, for any reason, including voluntary resignation, but excluding
- (i) voluntary resignation, in order to avoid discharge on account of misconduct or ill-health occasioned by own default;
  - (ii) discharge on account of misconduct or unsatisfactory service or ill-health occasioned by own default;
  - (iii) absconding;
- (d) Termination of an educator's services, irrespective of whether the department terminates his or her service, or he or she resigns voluntarily, because his or her spouse is transferred by the department in which he or she is employed and there being no vacant post available to him or her in any department at his or her spouse's new station: Provided that, should there be a post available for him or her (in any department) at his or her spouse's new station, but he or she refuses to accept it, no service bonus shall be paid to him or her.
- (7) The *pro rata* service bonus contemplated in subregulation (5) is calculated as follows:

Amount of pro rata service bonus

$$\frac{A}{365} \times B - \frac{C}{365} \times B + \frac{D}{E} \times \frac{B}{365}$$

where –

- A represents the period (in days) extending from the first day of the month in which his or her last service bonus pay date fell (or from the date of appointment in the case of death if the deceased was not paid a service bonus previously), up to his or her last day of service;
- B represents the applicable amount indicated below –
- 93% of the educator's full gross basic salary (excluding any allowance, irrespective of whether it is pensionable or not) in the month that his or her services terminate if he or she is a member of a pension fund or not yet a member because he or she has not yet completed the qualifying service period for membership; or
  - an educator's full gross basic salary (excluding any allowance, irrespective whether it is pensionable or not) in the month that his or her services terminate if he or she does not qualify for membership of a pension fund;
- C represents the number of days, if any, in respect of which the person concerned, during the appropriate period represented by factor A above, received no salary as a result of –
- vacation or special leave without salary granted to him or her; or
  - unauthorised absences from service recorded as vacation leave without pay; or
  - his or her having been suspended from his or her duties without remuneration according to the Act in terms of which he or she was appointed; or
  - payment of his or her salary having been entirely suspended on the grounds of an offence which he or she committed while carrying out military service; and
- D represents the number of working hours, if any, in respect of which the person concerned during the appropriate period represented by factor A above, received no salary as a result of unauthorised absences from duty which is recorded as pro rata vacation leave without salary; and
- E represents the minimum number of working hours which an educator concerned must work per day.
- (8) A *pro rata* service bonus, calculated in accordance with the formula in subregulation (7) may be paid to an educator whose birthday falls in January, February or March, when his or her services terminate before his or her normal service bonus pay date in April as a result of his or her voluntary resignation, on condition that such person is still employed on the salary pay date of the month in which his or her birthday falls, in other words if an educator whose birthday is in February resigns with his or her last day of service 31 January, a *pro rata* service bonus may not be paid to him or her: if such an educator's services terminate on or after his or her normal salary pay date in February, he or she shall qualify for a pro rata service bonus on his or her last day of service.
- (9) In respect of each educator to whom in terms of the provisions in subregulation (5) a *pro rata* service bonus is payable based on an amount of 93% of his or her full gross basic salary, a calculation shall be made according to the following formula, even if the reduction part of the formula contemplated in subregulation (7) has the effect that no *pro rata* service bonus is payable to the educator or employee:

$$28\% \times \frac{A}{365} \times B = \text{amount,}$$

where –

- A represents the same as factor A in the formula in subregulation (7);
- B represents the full gross basic salary of the educator concerned for the month in which his or her service bonus pay date falls.
- (10) The amounts calculated according to subregulation (9) in respect of all educators whose pro rata service bonus pay date falls in the same month should be added together and paid into the Civil Pension Stabilisation Account.

- (11) (a) When an educator dies, the *pro rata* service bonus contemplated in subregulation (5)(b) must be paid in respect of –
- (i) marriages in terms of the Marriage Act, 1961 –
    - (aa) to the surviving spouse; or
    - (bb) if there is no surviving spouse, in equal shares to, or for the benefit of, minor or major children (including a legally adopted child) of the deceased, who at the time of his or her death were fully dependent on him or her; or
    - (cc) if there is no surviving spouse or children, into his or her estate; and
  - (ii) customary marriages –
    - (aa) to the surviving spouse or in equal shares if there are more than one surviving spouse; or
    - (bb) if there is no surviving spouse, in equal shares to, or for the benefit of, minor or major children (including a legally adopted child) of the deceased, who at the time of his or her death were fully dependent on him or her; or
    - (cc) if there is no surviving spouse or children, into his or her estate.
- (b) When an educator's services terminate for any reason other than death, and he or she dies after his or her services have terminated but before a *pro rata* service bonus is paid to him or her, such *pro rata* service bonus should be paid into his or her estate, irrespective of whether or not he or she has left behind a surviving spouse or fully dependent children.
- (c) The *pro rata* service bonus which on termination of services –
- (i) is payable to an educator should be used as a set-off against any departmental debt which he or she may have, unless such debt can be fully recovered by other means, for example outstanding salary and allowances or pension moneys, or unless subparagraph (ii) applies; or
  - (ii) is payable to the surviving spouse or fully dependent children or into the estate of the deceased educator, shall not be used for the purposes mentioned in subparagraph (i).
- (d) For purposes of factor A in the formula in subregulations (3) and (7) previous uninterrupted service in a temporary or permanent capacity, as well as previous service at an institution contemplated in Public Service Regulation C5.7, may be acknowledged for service bonus purposes, on condition that this paragraph is not applicable to an educator if he or she has received a *pro rata* service bonus at the end of any previous service period.
- (e) The service bonus is not part of salary or an allowance or pensionable and should therefore not be taken into account –
- (a) in the calculation of service or leave gratuities, additional compensation, allowances or any other service benefit or compensatory measure which in any way is based on salary; and
  - (b) in the classification of educators according to their salaries for purposes of the granting of any service benefit or compensatory measure, overtime remuneration, any allowance, rent for official quarters, etc.

### **Long service recognition**

89. (1) The authority to approve that an award be made to an educator for long service recognition rests with the employer.
- (2) Awards for long service recognition may, subject to this regulation, be made to educators appointed in a permanent capacity.
- (3) An employer may make the following awards for long service recognition:
- (a) A certificate and, if the educator so wishes, the discounting of a maximum of 10 days available vacation leave in cash after he or she has rendered 20 years of continuous and consistently satisfactory and devoted service.
  - (b) A certificate and a wrist-watch and, if the educator so wishes, the discounting of a maximum of 15 days available vacation leave in cash after he or she has rendered 30 years of continuous and consistently satisfactory and devoted service.
- (4) (a) For purposes of the service requirement contemplated in subregulation (3), service in the Public Service contemplated in section 8 of the Public Service Act, 1994, may be acknowledged, as well as the following service on condition that there is no break in service during the transfer or appointment of the persons concerned:
- (i) In terms of a former provincial ordinance;

- (ii) rendered in terms of the –
    - Precious Stones Act, 1964 (Act No. 73 of 1964);
    - Water Act, 1956 (Act No. 54 of 1956); and
    - Development Trust and Land Act, 1936 (Act No. 18 of 1936);
  - (iii) rendered in terms of any law as an educator;
  - (iv) at a statutory institution in those cases where a function and the personnel therewith were transferred from the Public Service and the same personnel, with a “retransferring” of such function to the Public Service, is appointed again in the Public Service.
- (b) An educator to whom a wrist-watch may be granted, may make a choice regarding the wrist-watch he or she wants and such choice is limited to the make and the model (and the distributors thereof).
  - (c) If an educator elects to discount the available vacation leave referred to in subregulation (3), the actual applicable salary notch of the educator concerned as on the date of qualification for the award shall be used to calculate the amount to be paid to him or her.
  - (d) If a blind educator qualifies for the award of a wrist-watch, he or she may be permitted to purchase a braille wrist-watch of his or her choice from the South African National Council for the Blind: Provided that the cost involved, which can be arranged by means of an advance to the educator concerned, is limited to the maximum amount of the usual wrist-watch which could be awarded to him or her in terms of paragraph (b).
  - (e) Wrist-watches may be awarded posthumously subject to the award being made to the surviving spouse only and the educator having already qualified for the award before his or her death.

### **Resettlement expenditure**

- 90. (1)** Upon the transfer, appointment or termination of service of an educator in terms of the Act or of his or her death, such an educator or his or her estate, whichever is applicable, shall be compensated by the employer for the reasonable resettlement expenditure actually and necessarily incurred as a result thereof within the framework of the provisions of this regulation and taking into account the following measures and guidelines:
- (a) The head of education, within the context of the provisions, determine policy regarding aspects such as maximum periods of compensation, limits of expenditure, restrictions in respect of the quantity and kind of personal effects, the number and brand of motor vehicles, classes of travel, means of transport, costs of property transfer and any other possible form of expenditure or facet of transfer costs which may come to the fore.
  - (b) In considering the implications in terms of costs, it must be seen to that effective competition takes place where services are rendered for the purpose of resettling an educator or employee and that all available alternatives are taken into consideration to ensure that the most suitable option is exercised under the circumstances.
  - (c) The status of the educator being resettled in terms of his or her rank and taking into account the particular circumstances and underlying reasons.
  - (d) The principle of fairness and reasonableness by the employer in the application of the relevant measures.
  - (e) The delegation of any of the powers vested in the Minister in terms of the provisions of this regulation, must be done taking into account the provisions of the Exchequer Act, 1975 (Act No. 66 of 1975).
- (2)** The following expenses shall be payable to an educator on transfer:
- (a) The accommodation and transport expenditure of an educator and a member of his or her household arising from a visit beforehand to the new headquarters.
  - (b) The accommodation and transport expenditure of an educator and his or her household arising from the transfer to the new headquarters including the transport of personal effects from packing to the eventual unpacking thereof at permanent accommodation as well as the all-inclusive insurance cover thereof.
  - (c) The expense of storage of personal effects as well as the all-inclusive insurance thereof.
  - (d) The expense of interim accommodation at the old or new headquarters.
  - (e) The expense of customs duty, or other levies or fees arising from the transport of private motor vehicles across international borders.
  - (f) The transfer expense arising from the purchase of a dwelling or a building site and the erection of a building thereon which expenses shall include the costs of conveyance of the property, mortgage costs, expenses arising from the drafting of a contract and inspection fees: Provided that when transfer expenses are included in a mortgage loan, payment shall not be made to the educator personally, but directly to his or her mortgage loan account.
  - (g) A single amount as determined by the head of education for each child attending school as assistance towards the expenditure of school books, uniforms, sport outfits and other requirements: Provided that the amount shall be effective from a date determined by the Minister and shall be revised quarterly on

1 January, 1 April, 1 July and 1 October, respectively, on the grounds of price increases as reflected in the Central Statistical Service's Consumer Price Index for Clothing and footwear for the first month of the previous quarter, rounded-off for the nearest higher full rand.

- (h) A single amount to meet incidental expenses arising from resettlement, other than those for which specific provision is made in this regulation on the following basis:
- (i) If furnished accommodation is occupied permanently an amount equal to 35% of an educator's basic monthly pensionable salary as on the date of resettlement.
  - (ii) If unfurnished accommodation is occupied permanently an amount equal to 50% of a single educator's basic monthly pensionable salary as at the date of resettlement, or an amount equal to the basic monthly pensionable salary of an educator with dependents as on the date of resettlement.
  - (iii) An amount equal to 35% of the monthly norm station allowance in the local monetary unit as on the date of resettlement in the case of an educator who is transferred to a foreign country:

Provided that if the amount referred to in subparagraph (i) or (ii) is less than an amount calculated in accordance with the applicable percentage referred to in the said paragraphs and based on the monthly pensionable salary in the first salary position of salary range 8, the applicable amount based on the last mentioned basis must be paid: Provided further that the amount referred to in subparagraphs (i) and (ii) shall not exceed an amount based on the basic monthly pensionable salary of a Director: Education.

[Proviso to reg. 90(2)(h)(iii) amended by G.N. No. 1153 of 1997 dated 1 September 1997.]

- (i) The home owner allowance in respect of a dwelling at the previous headquarters may be continued with if the Member of the Executive Council so determine.
  - (j) The travelling expenses incurred by an educator's school attending children who remain at the old headquarters for a period not exceeding a school year: Provided that such expenditure shall be limited to the most economical means of travel to and from the new headquarters at the beginning and end of school holidays and at the end of the school year.
- (3) (a) The travelling as well as transport expenses, insurance costs and storage costs for not longer than one month, of the personal effects of a candidate and his or her household who, on appointment in terms of the Act, necessarily has to relocate may be compensated on the same basis as that provided for in subregulation (2).
- (b) Persons referred to in paragraph (a) shall be bound contractually in writing to be in the service of the employer concerned for a period of not less than 12 months.
- (4) The accommodation and transport expenditure of an educator and his household who is expected to do parliamentary duty, at the beginning and end of a parliamentary session as well as the conveyance to and from Cape Town of essential personal effects and the all-inclusive insurance cover thereof may be compensated on the basis determined by the Minister.
- (5) (a) The expenses provided for in subregulation (2)(b), (c), (d) and (e), arising from moving from an existing place of residence to a place where an educator (excluding an educator who was recruited abroad) and his or her household wishes to settle in the Republic on termination of service, may be paid *mutatis mutandis* to such educator, or his or her household in the case of his or her death on the basis, conditions and requirements which the employer may determine.
- (b) The expenses provided for in subregulation (2)(b) may be paid *mutatis mutandis* on termination of service to an educator who was recruited abroad or his or her household in the case of his or her death, from his or her existing place of residence back to the place where initially recruited.
- (6) If an educator dies whilst on official duty away from his or her headquarters or whilst stationed abroad, including a member of his or her family who accompanies him or her officially, expenses arising therefrom (excluding funeral costs), shall be paid.

### Repeal of regulations and savings

91. (1) Subject to the provisions of subregulation (2) the Regulations listed in Annexure A are hereby repealed.
- (2) Anything done or deemed to have been done in terms of the provisions of the Regulations repealed by subregulation (1) and which may or shall be done in terms of these Regulations, shall be deemed to have been done in terms of the corresponding provision of these Regulations.

## CHAPTER 5

### GENERAL CONDITIONS OF SERVICE OF PERSONS APPOINTED TO PERFORM DUTIES IN RESPECT OF PUBLIC EXAMINATIONS

#### Appointment

92. (1) A person may be appointed in terms of section 4(2) of the Act, in a part-time temporary capacity to perform duties, as determined by the employer, in respect of a public examination.
- (2) The criteria for the appointment of a person referred to in sub-regulation (1) shall be determined by the Minister.

[Reg. 92 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

**Remuneration and compensation**

93. (1) A person appointed in terms of regulation 92 shall be remunerated in terms of tariffs determined by the Minister and shall not be entitled to any other benefits provided for elsewhere in these regulations.  
 (2) A person referred to in sub-regulation (1) shall be compensated for travel and subsistence as determined by the Minister.  
 [Reg. 93 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

**Official duty**

94. (1) A person appointed in terms of regulation 92 for marking or related duties shall be on official duty during the determined period and shall give his or her full attention to such duties.  
 (2) A person referred to in sub-regulation (1) shall indicate in an attendance register provided by the employer for that purpose, the time of his or her commencement and ending of duties performed.  
 [Reg. 94 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

**Termination of duties**

95. The services of a person employed in terms of regulation 92 terminate on completion of the duties for which he or she has been appointed.  
 [Reg. 95 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

**Suspension from duties**

96. (1) The employer or his or her delegate may summarily suspend, in terms of section 14(2) of the Act, a person appointed in terms of regulation 92 from his or her duties without pay, in terms of Regulation 93, if:  
 (a) prima facie evidence exists that his or her appointment was based on false information; or  
 (b) in the opinion of the employer, reasonable evidence exists that the continued performance of duties by such a person may jeopardise the progress with and/or the integrity of the examination process.  
 (2) A person referred to in sub-regulation (1) shall leave the premises on which the examination-related duties are performed, immediately upon suspension from his or her duties.  
 (3) Upon completion of the said examination, a disciplinary investigation against the said person shall be conducted in terms of section 13 of the Act. If the employer decides not to charge the said person with misconduct or if the person is found not guilty of misconduct, the person will receive a remuneration equivalent to what he or she would have been paid had he or she not been suspended.  
 [Reg. 96 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

**ANNEXURE A**

**1. Regulations promulgated under the Education Affairs Act (House of Assembly), 1988 (Act No. 70 of 1988), as contained in:**

Government Notice No	Dated	Extent of repeal
R. 693 .....	30 March 1990 .....	The whole
R. 290 .....	24 January 1992 .....	The whole
R. 972 .....	3 April 1992 .....	The whole
R. 1871 .....	10 July 1992 .....	The whole
R. 2253 .....	26 November 1992 .....	The whole
R. 695 .....	30 March 1990 .....	The whole
R. 292 .....	24 January 1992 .....	The whole
R. 1872 .....	10 July 1992 .....	The whole
R. 3396 .....	24 December 1992 .....	The whole
R. 2255 .....	26 November 1992 .....	The whole

**2. Regulations promulgated under the Indians Education Act, 1965 (Act No. 61 of 1965), as contained in:**

Government Notice No	Dated	Extent of repeal
R. 1288 .....	26 August 1966 .....	The whole
R. 911 .....	30 May 1974 .....	The whole
R. 2260 .....	22 October 1982 .....	The whole
R. 1563 .....	5 July 1991 .....	The whole
R. 2501 .....	25 October 1991 .....	The whole
R. 2584 .....	11 September 1992 .....	The whole

3. Regulations promulgated under the Education and Training Act, 1979 (Act No. 90 of 1979), as contained in:

Government Notice No	Dated	Extent of repeal
R. 1099 .....	2 July 1993 .....	The whole
R. 493 .....	18 March 1994 .....	The whole

4. Regulations promulgated under the Coloured Persons Education Act, 1963 (Act No. 47 of 1963), as contained in:

Government Notice No	Dated	Extent of repeal
R. 1898 .....	21 November 1963 .....	Chapter B
R. 675 .....	11 April 1975 .....	The whole
R. 675 .....	5 April 1984 .....	The whole
R. 7 .....	3 January 1986 .....	The whole
R. 1611 .....	12 July 1991 .....	The whole
R. 3178 .....	20 November 1992 .....	Regulations 3,4 and 5
R. 350 .....	5 March 1993 .....	The whole
R. 826 .....	14 May 1993 .....	The whole

5. Regulations promulgated under the Technical Colleges Act, 1981 (Act No. 104 of 1981), as contained in:

Government Notice No	Dated	Extent of repeal
R. 901 .....	26 April 1991 .....	The whole
R. 1873 .....	10 July 1992 .....	The whole
R. 2257 .....	26 November 1993 .....	The whole

6. Regulations promulgated under the Education Ordinance, 1953 (Ordinance No. 29 of 1953) (Transvaal), in so far as it relates to conditions of service of educators at colleges of education and as contained in:

Administrator's Notice No.	Dated
1053 .....	23 December 1953
211 .....	16 March 1960
219 .....	28 March 1962
594 .....	5 September 1962
888 .....	2 December 1964
214 .....	23 March 1966
609 .....	19 July 1967
624 .....	19 July 1967
625 .....	19 July 1967
962 .....	18 September 1968
348 .....	2 April 1969
687 .....	25 June 1969
1028 .....	17 September 1969
470 .....	29 April 1970
1355 .....	18 November 1970
469 .....	14 April 1971
1359 .....	9 August 1972
2154 .....	6 December 1972
7 .....	3 January 1973
534 .....	3 April 1974
1054 .....	25 August 1976
490 .....	20 April 1977
629 .....	20 June 1979

Government Notice No.	Dated
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R. 1877 .....	10 July 1992
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**7. Regulations promulgated under the Education Ordinance, 1980 (Ordinance No. 12 of 1980) (Orange Free State), as contained in:**

Administrator's Notice No.	Dated	Extent of repeal
310	18 November 1981	Chapter 9, in so far as it relates to conditions of service of educators at colleges of education.
6	4 January 1985	In so far as it relates to conditions of service of educators at colleges of education.

Government Notice No.	Dated	Extent of repeal
R. 1513	5 June 1992	In so far as it relates to conditions of service of educators at colleges of education.
R. 1876	10 July 1992	In so far as it relates to conditions of service of educators at colleges of education.

**8. Regulations promulgated under the Natal Education Ordinance, 1969 (Ordinance No. 46 of 1969) (Natal), in so far as it relates to conditions of service of educators at colleges of education and as contained in:**

Provincial Notice No.	Dated
328 .....	6 July 1972
636 .....	7 December 1972
24 .....	1975
377 .....	26 June 1975
504 .....	1975
739 .....	18 December 1975
340 .....	1977
513 .....	1981
292 .....	8 August 1985

Government Notice No.	Dated
R. 1512 .....	5 June 1992
R. 1875 .....	10 July 1992

**9. Regulations promulgated under the Education Ordinance, 1956 (Ordinance No. 20 of 1956) (Cape), in so far as it relates to conditions of service of educators at colleges of education and as contained in:**

Government Notice No.	Dated
R. 1511 .....	5 June 1992
R. 1874 .....	10 July 1992

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