(b) SCOTLAND

The Superannuation (Local Government, Social Workers and Health Education Staff) (Scotland) Interchange Rules, 1949

1949 No. 1990 (S. 140)

Made - - - -	24*th October*, 1949
Laid before Parliament	27*th October*, 1949
Coming into Operation	31*st October*, 1949

The Secretary of State, in exercise of the powers conferred on him by sections 2 and 15 of the Superannuation (Miscellaneous Provisions) Act, 1948(**a**), hereby makes the following rules:—

1.—(1) These rules may be cited as the Superannuation (Local Government, Social Workers and Health Education Staff) (Scotland) Interchange Rules, 1949, and shall come into operation on the 31st day of October, 1949.

(2) In these rules the following expressions have the meanings hereby assigned to them—

"the Act of 1937" means the Local Government Superannuation (Scotland) Act, 1937(**b**);

"national service" in relation to any person means compulsory national service within the meaning of the Superannuation (Miscellaneous Provisions) Act, 1948, and includes any period immediately following the termination thereof during which the person with the consent of the authority or body by whom he was employed before undertaking compulsory national service continues in similar service; and

"war service" means war service within the meaning of the Local Government Staffs (War Service) Act, 1939(**c**), but does not include, in the case of a person who before the termination of his war service made a claim under section 10 of the said Act for the return of contributions made by him for superannuation purposes, any part of his war service after the date on which the claim was made.

(3) References in these rules to the Social Workers Pension Fund include references to the Central Council for Health Education Staff Pension Fund.

(4) The Interpretation Act, 1889(**d**), applies to the interpretation of these rules as it applies to the interpretation of an Act of Parliament.

2.—(1) Subject as hereinafter provided this Rule shall apply to any person who enters, or has entered before the date of the coming into operation of these rules, employment in which he is a contributor to the Social Workers Pension Fund, and who is a person who falls under any one of the following classes:—

(*a*) persons who within a period of twelve months prior to such entry have been in employment by virtue of which they were or were deemed to be contributory employees or local Act contributors;

(**a**) 11 & 12 Geo. 6. c. 33.
(**b**) 1 Edw. 8 & Geo. 6. c. 69.
(**c**) 2 & 3 Geo. 6. c. 94.
(**d**) 52 & 53 Vict. c. 63.

(*b*) persons who within a period of six months prior to such entry have been engaged in war service, having for the purpose of such service left such employment as is specified in subparagraph (*a*) of this paragraph;

(*c*) persons who within a period of six months prior to such entry have been engaged in national service immediately after leaving such employment as is specified in subparagraph (*a*) of this paragraph;

Provided that he shall not have become entitled to any benefit under the Act of 1937, or as the case may be, under any Local Act scheme, other than the return of contributions.

(2) Subject to the provisions of the next following paragraph any person who satisfies the requirements of the last foregoing paragraph may elect, by notice in writing given to the authority maintaining the superannuation fund to which he was formerly a contributor, that these rules shall apply to him.

(3) Any election by virtue of the last foregoing paragraph shall be made by the person concerned within three months after the date of his entry into such employment in which he is a contributor to the Social Workers Pension Fund, or where the said date preceded the date of the coming into operation of these rules, within three months after the latter date or such longer period, not exceeding twelve months after the latter date as the authority maintaining the superannuation fund to which he was formerly a contributor may in special circumstances allow, and any sum received by that person by way of a return of contributions shall forthwith be repaid by him to that authority.

(4) Where a person to whom this rule applies ceases to hold such employment in which he is a contributor to the Social Workers Pension Fund and thereupon becomes entitled to receive a pension out of the said Fund, he shall be entitled, as from the date on which he ceases to hold that employment, or if the pension is not a breakdown pension and the person has not attained such an age as would have entitled him to retire with a benefit under the Act of 1937 or the local Act scheme had that Act or scheme continued to apply to him in relation to the employment in which he was a contributor to the Social Workers Pension Fund, as from the date on which the person attains that age, to receive out of the superannuation fund to which he was a contributor before entering such employment, a benefit equal to the benefit to which he would have become entitled on the date on which he ceased to hold his former employment if at the date on which he so ceased he had attained the age of sixty-five years, and had been entitled, for the purpose of determining whether he was qualified to receive any benefit under the Act of 1937 or, as the case may be, under the local Act scheme, to aggregate with his service for the purposes of that Act or scheme a period of service equal in length to the period of the employment in which he was a contributor to the Social Workers Pension Fund.

(5) Where a person to whom this rule applies dies while in the employment in which he is a contributor to the Social Workers Pension Fund there shall be paid out of the appropriate superannuation fund the like benefits (if any) in respect of him as would have been paid if he had died immediately before ceasing to hold his former employment and a period of service equal in length to the period of the employment in which he was a contributor to the Social Workers Pension Fund had been reckonable for the purpose of determining whether any benefit might have become payable to or in respect of him under the Act of 1937 or, as the case may be, under any local Act scheme in addition to any service reckonable under the said Act or scheme.

(6) Where a person to whom this rule applies dies after having become entitled to a superannuation allowance under paragraph (4) of this rule there shall be paid out of the appropriate superannuation fund the like benefits (if any) in respect of him as would have been paid if he had become entitled to the said superannuation allowance under the Act of 1937 or, as the case may be, under the local Act scheme.

(7) A person to whom this rule applies and who falls under subparagraph (*b*) or subparagraph (*c*) of paragraph (1) of this rule may, for the purposes of calculating any benefit payable to or in respect of him under this rule, reckon such war service or national service, as the case may be, as contributing service under the Act of 1937 or service for the purposes of any local Act scheme if such war service or national service would have been so reckonable had he returned to his former employment at the date on which he entered the employment in which he was a contributor to the Social Workers Pension Fund, or if it would not have been so reckonable as aforesaid by reason of the fact that the person had not complied with any condition as to the payment of contributions if immediately after he entered the employment in which he was a contributor to the Social Workers Pension Fund he paid to the authority maintaining the superannuation fund to which he was formerly a contributor the like sum as he would have been required to pay in order to comply with the said condition had he returned to his former employment.

(8) Notwithstanding anything in the preceding provisions of this rule,

(*a*) this rule shall not apply in relation to any person who entered the employment in which he was a contributor to the Social Workers Pension Fund, before the date of the coming into operation of these rules unless he ceased to hold his former employment not earlier than twelve months before the date of the making of these rules and has not ceased to hold his new employment before the date of the coming into operation of these rules.

(*b*) this rule shall not apply to persons who ceased to be contributors to a fund maintained by any authority before the date of the coming into operation of these rules unless that authority consent; and

(*c*) the reference in paragraph (1) (*a*) of this rule to a period of twelve months shall be construed in relation to a person to whom section 6 of the Superannuation (Miscellaneous Provisions) Act, 1948, has become applicable as a reference to a period of five years or such longer period as the Secretary of State may in any particular case allow.

3. Where a person to whom the last preceding rule has become applicable ceases to hold the employment in which he is a contributor to the Social Workers Pension Fund and within twelve months thereafter again enters employment in which he is subject to the Act of 1937 or a local Act scheme, he shall be treated as if he had become so subject within twelve months after leaving the employment in which he was formerly so subject, and he shall be entitled to reckon the period of his employment as a contributor to the said fund for the purpose of determining whether he becomes entitled to a benefit under the Act of 1937 or the local Act scheme but not for any other purpose:

Provided that—

(*a*) the amount of any transfer value that becomes payable in respect of a person in pursuance of this rule under the regulations for the time being

in force under section 24 of the Act of 1937 shall be calculated by reference to his age at the date on which he enters his new employment; and

(*b*) where the local authority by whom the person was formerly employed have exercised the discretion conferred on them by paragraph (3) of rule 5 of these rules in respect of any period of service which but for this proviso would be reckonable at a fraction of its actual length for the purposes of section 13 of the Act of 1937 and of the regulations for the time being in force under section 24 of that Act, that period of service shall be reckonable for those purposes at its full length.

4.—(1) Where a benefit becomes payable in respect of a person by virtue of rule 2 (5) or (6) of these rules, any provision of the Act of 1937 as modified by or under any other enactment or of a local Act scheme prescribing a minimum benefit or a method of calculating the benefit otherwise than by reference to the amount of the person's contributions or the service reckonable by him or the amount of the pension which was or would in certain circumstances have become payable to him shall be disregarded.

(2) Where a benefit becomes payable to or in respect of a person to whom rule 3 of these rules has become applicable, and the amount of that benefit falls to be calculated under any provision of the Act of 1937 as modified by or under any other enactment or of a local Act scheme prescribing a minimum benefit or a method of calculating the benefit otherwise than by reference to the amount of the person's contributions or the service reckonable by him or the amount of the pension which was or would in certain circumstances have become payable to him, then, if the number of years of service so reckonable by the person as aforesaid is less than any minimum number of years of qualifying service prescribed for the receipt of the said benefit, the amount of the said benefit, in so far as it is obtained by reference to the said provision, shall be reduced in the same proportion as the difference between the number of years of service so reckonable as aforesaid and the minimum number of years of qualifying service bears to the minimum number of years of qualifying service.

5.—(1) Where a person has entered employment in which he is a contributor to the Social Workers Pension Fund after having ceased to be subject to the Act of 1937 and these rules have become applicable to him in relation to that employment, then, the authority or body by whom he was formerly employed may, within three months after the date of the receipt of his notification that he desires these rules to apply to him, resolve that the whole or any part of his non-contributing service (if any) shall be reckonable as contributing service, and if that person was a female nurse, midwife or health visitor to whom section 16 (1) (*a*) of the Act of 1937 applied and had not completed, and could not before attaining the age of sixty years have completed forty years service, that authority or body may similarly resolve that a number of years not exceeding five shall be added to the number of years which that person had actually served in the aggregate.

(2) Where a person has entered employment in which he is a contributor to the Social Workers Pension Fund after having ceased to be subject to the Act of 1937 or a local Act scheme and these rules have become applicable to him in relation to that employment, then, if any local Act modifying the Act of 1937 or the local Act scheme conferred a discretion on the authority or body by whom he was formerly employed or the authority administering the scheme to which he was formerly subject, as the case

may be, in calculating any benefit to which that person might have become entitled on ceasing to be employed, to add a number of years to the number of years which that person had actually served in the aggregate, that authority or body may, within three months after the date of the receipt of his notification that he desires these rules to apply to him, exercise that discretion in relation to him, notwithstanding that he has not become entitled to that benefit.

(3) Where a person has entered employment after having ceased to be subject to the Act of 1937, and these rules have become applicable to him in relation to that employment, then, if a scheme modifying the Act of 1937 conferred a discretion on the local authority by whom he was formerly employed to increase in respect of any period of service the rate for the calculation of any benefit to which he might have become entitled on ceasing to be employed, that authority may, within three months after the date of the receipt of his notification that he desires these rules to apply to him, exercise that discretion in relation to any benefit to which he may become entitled under rule 2 of these rules as if it were a benefit under the Act of 1937 as so modified as aforesaid to which he had already become entitled thereunder.

(4) For the purposes of the Act of 1937 or the local Act scheme, any period of non-contributing service of a person in respect of which a resolution has been passed under paragraph (1) of this rule, and any number of years added to a person's service under paragraph (1) or (2) of this rule shall be deemed to be a period of service which that person was entitled to reckon immediately before ceasing to hold his former employment as a period of contributing service for the purposes of the Act of 1937 or as a period of service for the purposes of the local Act scheme, as the case may be.

(5) Where the amount of any benefit to which a person becomes entitled under rule 2 of these rules, or the amount of any transfer value payable in pursuance of rule 3 of these rules, is greater than it would otherwise have been in consequence of the exercise by an authority or body of any power conferred upon them by paragraph (1), (2) or (3) of this rule, that authority or body shall repay to the superannuation fund out of which the benefit or transfer value is payable the amount by which the benefit or transfer value is greater as aforesaid.

6.—(1) Where a person in respect of whom a benefit may become payable under rule 2 of these rules was in course of making but had not completed making additional contributory payments under the Act of 1937 at the date on which he ceased to hold his former employment, the right to receive the balance of the debt shall remain vested in the authority or body by whom he was formerly employed.

(2) Where such a person as aforesaid has been discharging but had not fully discharged a liability subsisting at the date on which he ceased to hold his former employment to pay a sum by instalments as a condition of becoming entitled to reckon any period as a period of service or contribution for the purposes of a local Act scheme, he shall be entitled to discharge the liability notwithstanding that he has ceased to hold his former employment, and if he does so the said period of service or contribution shall be taken into account in calculating any benefit which may become payable to or in respect of him under rule 2 of these rules.

(3) Where such a person as aforesaid would had he not ceased to hold his former employment as a local Act contributor have been under a liability to make payments to the superannuation fund maintained by the local Act

authority by way of a contribution of a percentage of emoluments additional to the percentage contribution payable in respect of current service as a consequence of having become entitled to reckon any period as a period of service for the purposes of the local Act scheme, then, unless during the employment in which he is a contributor to the Social Workers Pension Fund he continues to make such additional contribution as he would have been liable to make had he continued to follow his former employment and to be entitled to the remuneration thereof, account shall not be taken of the said period for the purposes of any benefit which may become payable to or in respect of him under rule 2 of these rules.

7. A person who becomes entitled to a superannuation allowance under rule 2 of these rules and who would have been entitled to surrender a part thereof had he become entitled thereto under the Act of 1937 or a local Act scheme as an employee of the authority or body whose employment he left before entering the employment in which he was a contributor to the Social Workers Pension Fund may surrender a part of that allowance in consideration of the grant of a pension to the spouse or any dependant of the person on the person's death, subject to and in accordance with the provisions of the Schedule to these rules.

8. Notwithstanding anything in the Act of 1937 or any local Act scheme, no payment shall be made thereunder by way of a return of contributions to any person who enters employment in which these rules have become applicable to him unless and until he ceases to hold that employment in circumstances in which he does not become entitled to any benefit under these rules.

9. Where a person enters or has entered employment by virtue of which he is or is deemed to be a contributory employee or local Act contributor within a period of twelve months after ceasing to be a contributor to the Social Workers Pension Fund, then, if the authority maintaining the fund to which he becomes a contributor receive from the Social Workers Pension Fund an amount equal to the sum standing to the person's credit in the Fund immediately before he ceased to be a contributor thereto, less any amount paid to him by way of a return of contributions on his ceasing to be a contributor thereto, he shall be entitled, notwithstanding anything in rule 3 of these rules, to reckon as contributing service or service for the purposes of the local Act scheme, as the case may be, such number of completed years and months as having regard to his age and remuneration at the date on which he becomes such contributory employee or local Act contributor as aforesaid would have produced, under the regulations for the time being in force by virtue of section 24 of the Act of 1937 had he ceased to be a contributory employee at the said date, a transfer value equal to the sum standing to his credit in the fund immediately before he ceased to be a contributor thereto.

Provided that:

(*a*) this rule shall not apply to any person unless within three months after entering his new employment or, if he entered that employment before the date of the coming into operation of these rules, within three months after that date, he notifies in writing the authority maintaining the superannuation fund to which he is a contributor that he desires these rules to apply to him, furnishes them with particulars of his previous superannuable employment and pays to them an amount equal to any sum paid to him by way of a return of contributions on or after his ceasing to hold his former employment.

(*b*) this rule shall not apply in relation to any person who entered his new employment before the date of the coming into operation of these rules, unless he ceased to hold his former employment not earlier than twelve months before the said date and is such an employee or contributor at the date of the coming into operation of these rules, or, if he is not such an employee or contributor at that date, he again becomes such an employee or contributor within twelve months after having ceased to be such an employee or contributor.

10. The provisions of section 10 of the Act of 1937, and the corresponding provisions of any local Act scheme, shall have effect in relation to a contributory employee or local Act contributor who has been a contributor to the Social Workers Pension Fund as if references therein to contributions which may be returned thereunder on such an employee or contributor ceasing to be employed or dying included references to contributions and additional contributions (not being contributions made voluntarily for the purpose of securing benefits for his widow, children or other dependents) to which he was entitled on ceasing to be such a contributor in so far as any such contributions have not been returned to and retained by him, and are attributable to service which might have been reckoned under the Act of 1937 or the local Act scheme, as the case may be, for the purposes of superannuation allowance in respect of the employment which he has ceased to hold or in which he has died, as the case may be:

Provided that if the said pension scheme made provision for the calculation of interest on contributions returned thereunder in a different manner from that provided by the Act of 1937 or the local Act scheme interest on the contributions to which the person was so entitled as aforesaid shall, on their becoming returnable under the Act of 1937 or local Act scheme as modified by this rule, be calculated in manner provided by the said pension scheme, up to the date on which he became a contributory employee or local Act contributor, or, if he received a return of those contributions before that date, up to the date of such return.

11. The provisions of section 30 of the Act of 1937 shall have effect in relation to a person who has ceased to be a contributory employee or to be deemed to be a contributory employee and to whom these rules have become applicable as if the reference therein to an employee of a local authority included a reference to such a person and as if the reference to regulations made under that Act included a reference to these rules.

Dated this 24th day of October, nineteen hundred and forty-nine.

Arthur Woodburn,
One of His Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh.

SCHEDULE

Surrender of part of superannuation allowance

1. For the purpose of the exercise by a person of the right conferred by rule 7 of these rules to surrender part of a superannuation allowance the Local Government Superannuation (Surrender of Superannuation Allowance) (Scotland) Rules, 1939, shall apply, subject to the modifications made by this Schedule and any other necessary modifications.

2. Rule 5 of the said rules shall not apply.

3.—(1) Where possible, a person who may become entitled to exercise and may desire to exercise such right as is mentioned in paragraph 1 of this Schedule shall give at least six months notice in writing to the local authority maintaining the superannuation fund out of which will be payable the superannuation allowance in respect of which the right will be exercisable of the date, or probable date, on which the allowance will become payable and shall similarly notify any alteration in any date so notified.

(2) Where a person has not given a notice under the last preceding sub-paragraph but has become entitled to exercise and may desire to exercise such right as aforesaid, he shall within one month after ceasing to hold the employment in which he was a contributor to the Social Workers Pension Fund notify the local authority aforesaid in writing of the date that he may desire to exercise such right as aforesaid, and of the date on which he ceased to hold that employment.

(3) Upon receipt of a notification from a person under either of the last two preceding sub-paragraphs, the local authority shall forthwith furnish the person with a copy of these rules and of the Tables for the time being in force, together with a provisional estimate of the amount of the superannuation allowance which is or may become payable to him and copies of the relevant form of notification of surrender of allowance.

(4) Not more than one month after receipt of the documents mentioned in the last preceding sub-paragraph, the person may notify his desire to surrender a part of the superannuation allowance which is or may become payable to him by completing the form provided for the purpose and sending it to the local authority.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These rules enable a pensionable employee of a local authority who changes his employment for employment in which he is a contributor to the Social Workers Pension Fund or the Central Council for Health Education Staff Pension Fund to secure the payment of superannuation benefits out of the superannuation fund to which he was a contributor while in the local government service, if he ceases to hold his new employment in circumstances which, had they obtained when he ceased to hold his local government employment, would have entitled him or his widow or his legal personal representatives to receive a benefit payable out of that superannuation fund. These benefits will be calculated by reference to the service which the person was entitled to reckon at the date on which he left his former employment and will be payable as from the date on which the event happens which makes them payable.

The rules also make provision for enabling the service in respect of which a person has been a contributor to the Social Workers Pension Fund or the Central Council for Health Education Staff Pension Fund to be taken into account for superannuation purposes if he subsequently transfers to pensionable employment in the Local Government service.

The rules are made retrospective in effect to a limited extent, under the express powers of section 2 of the Act under which they are made, but, as thereby required, transferees and local authorities affected by the retrospective provisions of the rules are given an opportunity of electing that those provisions shall not apply.