

SOUTH AUSTRALIA

**TECHNICAL AND FURTHER EDUCATION REGULATIONS 1998**

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**REGULATIONS UNDER THE TECHNICAL AND FURTHER EDUCATION ACT 1975**

*Technical and Further Education Regulations 1998*

being

No. 183 of 1998: *Gaz.* 10 September 1998, p. 854<sup>1</sup>

<sup>1</sup> Came into operation 10 September 1998: reg. 2.

**PART 1  
PRELIMINARY**

**Citation**

1. These regulations may be cited as the *Technical and Further Education Regulations 1998*.

**Commencement**

2. These regulations come into operation on the day on which they are made.

**Revocation**

3. The *Technical and Further Education Regulations 1976* (see *Gazette* 29 April 1976 p. 2233), as varied, are revoked.

**Interpretation**

4. In these regulations, unless the contrary intention appears—

"**the Act**" means the *Technical and Further Education Act 1975*;

"**administrative instructions**" means administrative instructions issued by the Minister under Part 5;

"**college premises**", in relation to a college, means the land and buildings acquired or set apart for the purposes of the college;

"**college property**", in relation to a college, means the land, buildings, equipment and facilities acquired or set apart for the purposes of the college;

"**college staff**", in relation to a college, means the officers and employees, or employees in the Department, conducting courses for or performing duties at the college;

"**college year**" means the period from 1 February to 31 January the following year (inclusive);

"**council fund**" means the money referred to in section 32 of the Act;

"**council fund account**" means a bank, building society, credit union or Treasury account maintained by a council for the purposes of its council fund;

"**director**" of a college means the person to whom for the time being the administration and control of the college is committed by the Minister;

"**duty day**" means a day on which an officer is required to be on duty;

"**duty hour**" means an hour during which an officer is required to be on duty;

"**medical certificate**" means a medical certificate from a legally qualified medical practitioner, or, where an officer does not reside in the vicinity of a legally qualified medical practitioner, such other medical evidence as the Chief Executive Officer requires;

3.

**"part-time"**, in relation to an officer, means an officer employed on the basis that he or she will work in any pay period a specified percentage of the time ordinarily expected of an officer employed on a full-time basis (regardless of the number of working days and the period of time in any one day over which the officer performs the required amount of work in any pay period);

**"the previous regulations"** means—

- (a) the *Technical and Further Education Regulations 1976* (see *Gazette* 29 April 1976 p. 2233), as varied; or
- (b) the *Technical and Further Education Regulations 1997* (see *Gazette* 28 August 1997 p. 565), as varied.

**"student"** means a person enrolled at or attending a course or class at a college;

**"the Union"** means the South Australian Branch of the Australian Education Union.

**PART 2  
OFFICERS**

**DIVISION 1—APPOINTMENT, CLASSIFICATION**

**Application for appointment**

**5.** (1) The Minister may require a person who applies for appointment as an officer to provide any of the following:

- (a) a certified birth extract from an official register of births or such other evidence of the applicant's age as is satisfactory to the Minister;
- (b) a medical certificate certifying that the applicant is of sound health and free from a physical or mental defect likely to impair the applicant's efficiency in the performance of the duties he or she would be required to perform if appointed;
- (c) documentary evidence of the applicant's experience and qualifications or other evidence satisfactory to the Minister of the applicant's suitability to perform the duties that he or she would be required to perform if appointed.

(2) An applicant who—

- (a) in his or her application; or
- (b) in response to a requirement of the Minister; or
- (c) in response to a question put to the applicant in relation to the application by a medical practitioner or a person responsible for assessing the application,

knowingly furnishes information that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular), is guilty of an offence.

Maximum penalty: \$100.

(3) The Minister must pay the medical expenses, if any, incurred by an applicant under this regulation.

**Appointment, classification**

**6.** (1) The Minister will appoint an officer at one of the following classification levels:

- (a) Lecturer's Assistant;
- (b) Lecturer;
- (c) Principal Lecturer;
- (d) Educational Manager 1;
- (e) Educational Manager 2;
- (f) Educational Manager 3;

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- (g) Educational Manager 4;
- (h) Educational Manager 5;
- (i) College Director 1;
- (j) College Director 2;
- (k) College Director 3.

(2) The Minister may determine the qualifications required for appointment of a person as an officer.

(3) However, the Minister may appoint as an officer a person who does not have all of the required qualifications.

(4) The Minister may, if an officer applies for a position at a lower classification level than the officer's existing position, appoint the officer to that position.

#### **Committee to make recommendation on certain applications**

7. (1) An application for appointment at the classification level of Principal Lecturer, Educational Manager 2, 3, 4, or 5 or College Director 1, 2 or 3 must be considered by a committee established in accordance with this regulation.

(2) The committee must make a recommendation to the Minister on the application.

(3) The committee for the purposes of this regulation will consist of—

- (a) at least one representative of the Department appointed by the Chief Executive Officer; and
- (b) at least one representative of the Union, appointed by the Chief Executive Officer from a panel supplied at his or her request by the managing committee of the Union.

(4) The panel from which the representatives of the Union are chosen must be reviewed by the managing committee of the Union at least every 3 years.

#### **Reclassification of Lecturers**

8. (1) There are 2 personal classification levels as follows:

- (a) Advanced Skills Lecturer 1;
- (b) Advanced Skills Lecturer 2.

(2) Where an officer is at the classification level of Lecturer and—

- (a) has had at least 2 years' satisfactory teaching experience recognised by the Minister for the purposes of this regulation; and
- (b) has the formal educational qualifications specified in administrative instructions by the Minister for the classification level of Advanced Skills Lecturer 1 or 2,

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the officer may apply in a manner approved by the Chief Executive Officer for reclassification to the level of Advanced Skills Lecturer 1 or 2 (as the case may be).

(3) Where an officer is at the classification level of Advanced Skills Lecturer 1 and—

- (a) has had at least 2 years' satisfactory teaching experience recognised by the Minister for the purposes of this regulation; and
- (b) has the formal educational qualifications specified in administrative instructions by the Minister for the classification level of Advanced Skills Lecturer 2,

the officer may apply in a manner approved by the Chief Executive Officer for reclassification to the level of Advanced Skills Lecturer 2.

(4) If an application under subregulation (2) or (3) is refused by the Minister, the applicant may appeal against that decision to the Appeal Board.

(5) Nothing in this regulation limits the power of the Minister to reclassify an officer to a classification level referred to in subregulation (2) or (3) despite the fact that the officer does not fulfil all of the relevant requirements.

#### **Reappointment after resignation to contest election**

**9.** (1) Where—

- (a) an officer resigns for the purpose of standing as a candidate for election to the Parliament of the State or of the Commonwealth; and
- (b) the resignation takes effect not more than 1 month before the issue of the writ for the election; and
- (c) the former officer is not elected and applies in writing for reappointment as an officer within two months after the return of the writ for the election,

the Minister must reappoint that person as an officer (without probation) at the classification and salary level that he or she enjoyed immediately before resigning to contest the election.

(2) For the purposes of determining the rights of a person reappointed under this regulation—

- (a) he or she will be taken not to have resigned; and
- (b) the period between the resignation and reappointment will be taken to have been leave without pay granted under these regulations.

#### **Acting appointments**

**10.** (1) Where—

- (a) a vacancy occurs and the Chief Executive Officer determines that it is inexpedient to make a permanent appointment to fill the vacancy at that time; or
- (b) an officer is unable for any reason to perform his or her duties,

the Chief Executive Officer may appoint an officer to the unoccupied position in an acting capacity.

(2) Where an officer is appointed in an acting capacity to a position at a higher classification level than the officer's existing position, the officer is entitled—

- (a) if he or she acts in that capacity for a period of more than 1 week—to receive as from the date of that appointment and while he or she continues to so act the salary and increments applicable to that higher classification level (but not if the officer's salary would thereby be reduced); and
- (b) if he or she acts in that capacity for a period of more than 3 months—to receive as from the date of that appointment and while he or she continues to so act the non-attendance days applicable to that higher classification level.

(3) Where an officer, while acting in a position at such a higher classification level, is appointed to a position at that level, his or her service in that acting capacity will for all purposes of salary and promotion be taken to have been service at that higher classification level.

## **DIVISION 2—LEAVE AND NON-ATTENDANCE DAYS**

### **Application for leave and non-attendance days**

**11.** (1) Subject to subregulation (3), an officer who proposes to be or is absent from duty must apply to the Chief Executive Officer for the appropriate type of leave or for non-attendance days, as the case may be.

(2) Application must be made in writing in a form approved by the Chief Executive Officer.

(3) If it is not practicable for an officer to apply for leave or non-attendance days, an application may be made on the officer's behalf by the director of his or her college or, where the officer is not employed in a college, by another officer, or an employee in the Department, employed at his or her place of work.

### **Recreation leave**

**12.** (1) Subject to this regulation, an officer is entitled to such recreation leave as the Minister may from time to time determine and specify in administrative instructions.

(2) A determination by the Minister as to recreation leave may relate to officers of a specified class.

(3) A part-time officer is entitled to *pro rata* recreation leave in respect of his or her hours of duty.

(4) Recreation leave accrues on an annual basis in respect of completed years of service, but if an officer resigns or retires before the end of a given year of service, the officer is in respect of that year entitled to payment of recreation leave entitlements on a *pro rata* basis.

(5) The Chief Executive Officer may require an officer to take recreation leave at specified times, and if an officer who has not completed a year of service is so required, leave will be granted on a *pro rata* basis.

8.

(6) Recreation leave must be taken within 1 year of accrual unless the Chief Executive Officer approves otherwise, but all such leave must be taken within a period of 2 years from accrual.

#### **Recreation leave loading allowance**

**13.** (1) An officer is entitled to be paid a recreation leave loading allowance in accordance with this regulation.

(2) Subject to this regulation, the allowance—

- (a) is 17½ per cent of the salary payable to an officer for the first four weeks' recreation leave commenced in a college year; and
- (b) in the case of an officer who has his or her services terminated, may be paid *pro rata* in accordance with each complete month for which the officer has not been granted recreation leave; and
- (c) only applies to an officer who is employed for the whole of the college year; and
- (d) is not cumulative.

(3) The recreation leave loading allowance for officers eligible for the allowance for a college year must not exceed the maximum amount prescribed by the Public Service (Recreation Leave Loading) Award of the Industrial Relations Commission of South Australia (as amended or substituted from time to time) for employees appointed under the *Public Sector Management Act 1995*.

(4) The Minister may authorise the payment of a proportionate recreation leave loading allowance to an officer who has not been employed for the whole of the college year.

(5) For the purposes of this regulation, the salary payable to an officer includes the Whyalla cost of living loading and any other allowance (other than a locality allowance) payable to the officer in accordance with an applicable industrial award, determination or agreement or enterprise agreement.

#### **Non-attendance days**

**14.** (1) Subject to this regulation, an officer is entitled to such non-attendance days as the Minister may from time to time determine and specify in administrative instructions.

(2) The entitlement of an officer to non-attendance days is subject to any conditions that the Minister may from time to time determine and specify in administrative instructions.

(3) A determination by the Minister under subregulation (1) or (2) may relate to officers of a specified class.

(4) A part-time officer is entitled to *pro rata* non-attendance days in respect of his or her hours of duty.

(5) Non-attendance days accrue on an annual basis in respect of completed years of service, but if an officer resigns or retires before the end of a given year of service, the officer is in respect of that year entitled to payment of non-attendance day entitlements on a *pro rata* basis.

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(6) The Chief Executive Officer may require an officer to take non-attendance days at specified times and if an officer who has not completed a year of service is so required, non-attendance days will be granted on a *pro rata* basis.

(7) Non-attendance days must be taken within 1 year of accrual.

**Sick leave**

15. (1) Subject to these regulations, the Chief Executive Officer will grant sick leave with pay to an officer on the ground of sickness or injury for a period not exceeding the sick leave standing to the credit of that officer.

(2) The sick leave standing to the credit of an officer (other than an officer at the classification level of Lecturer's Assistant), whenever appointed, is, subject to this regulation—

(a) 70 duty hours credited on the officer's appointment as an officer;

plus

(b) 70 duty hours credited on each 1 January succeeding the day of appointment during the continuous service of the officer,

less the number of duty hours of sick leave (debited in hours and quarters of an hour, to the nearest quarter of an hour) that have been taken by the officer under these regulations or the previous regulations.

(3) The sick leave standing to the credit of an officer at the classification level of Lecturer's Assistant, whenever appointed, is, subject to this regulation—

(a) 45 duty hours credited on the officer's appointment as an officer;

plus

(b) the duty hours credited as follows:

(i) in the case of an officer appointed during the period 1 January to 30 June (inclusive) in any year—90 duty hours credited on each 1 July succeeding the day of appointment during the continuous service of the officer; or

(ii) in the case of an officer appointed during the period 1 July to 31 December (inclusive) in any year—

(A) 45 duty hours credited on the 1 January next succeeding the day of appointment; and

(B) 90 duty hours credited on each 1 July thereafter,

during the continuous service of the officer,

less the number of duty hours of sick leave (debited in hours and quarters of an hour, to the nearest quarter of an hour) that have been taken by the officer under these regulations or the previous regulations.

(4) However—

- (a) an officer referred to in subregulation (3) who is appointed to a position at a higher classification level will retain the sick leave standing to his or her credit in accordance with subregulation (3) and will from the time of that appointment (except where it is an acting appointment) be credited with sick leave in accordance with subregulation (2)(b); and
- (b) a person who is appointed as an officer at the classification level of Lecturer's Assistant is not entitled to be granted paid sick leave exceeding—
  - (i) 45 duty hours in aggregate during the first 6 months; or
  - (ii) 90 duty hours in aggregate during the first 12 months,

of his or her service at that level or in an acting capacity at a higher classification level.

(5) For the purposes of determining the sick leave entitlement of an officer, the following provisions apply:

- (a) leave of absence on full pay will be taken to be service as an officer;
- (b) leave of absence without pay or on part pay will be taken to be service as an officer to the extent (if any) determined by the Minister;
- (c) where leave of absence is determined under paragraph (b) not to be service as an officer, the sick leave credit to which the officer would otherwise be entitled under this regulation is reduced by 7 duty hours (or, in the case of an officer whose substantive classification level is that of Lecturer's Assistant, 7.5 duty hours) for each complete 4 weeks of that leave of absence, to a maximum reduction of 70 duty hours (or, in the case of a Lecturer's Assistant, 75 duty hours) for the year ending on 31 December in which the leave of absence is taken;
- (d) where an officer takes a period of long service leave on half salary under section 20 of the Act, the officer will be taken to be on full pay for the first half of that period and on leave without pay for the remainder of that period;
- (e) where an officer is retired pursuant to section 17 of the Act by reason of invalidity or physical or mental incapacity and is subsequently reappointed as an officer, his or her continuity of service will not be taken to have been broken by the retirement;
- (f) an officer's prior service in prescribed employment (as defined in section 23(2) of the Act) that is continuous with his or her service as an officer will be taken to be service as an officer, unless the sick leave taken during that prior service is not established to the satisfaction of the Minister, in which case the sick leave credited to the officer in respect of that prior service (if any) may be determined by the Minister.

(6) The sick leave entitlement of a part-time officer must be determined on a *pro rata* basis in respect of his or her hours of duty (to the nearest quarter of an hour).

(7) Where an officer is absent from duty due to sickness or injury for a period exceeding 3 duty days, the officer must provide a medical certificate with the officer's application for sick leave.

(8) The Chief Executive Officer may, at his or her discretion, require an officer who applies for sick leave for a period of 3 duty days or less to provide evidence satisfactory to the Chief Executive Officer of the existence of the sickness or injury claimed by the officer.

(9) Where a medical certificate or other evidence required by the Chief Executive Officer is not provided by an officer in respect of a period of absence in accordance with this regulation, the leave will be taken to be leave without pay.

(10) Where an officer suffers or sustains sickness or injury while on recreation leave, he or she may, on provision of a medical certificate and with the approval of the Chief Executive Officer, convert the relevant period of recreation leave into a debit against any sick leave standing to the officer's credit.

(11) Where an officer, while on long service leave (other than long service leave taken immediately prior to the resignation, retirement, retrenchment or other termination of the services of the officer), is confined to a residence or hospital for a period of at least 14 days due to sickness or injury suffered or sustained by the officer, he or she may—

- (a) on provision of a medical certificate satisfactory to the Chief Executive Officer as evidence of that fact; and
- (b) with the approval of the Chief Executive Officer,

convert that period of long service leave into a debit against any sick leave standing to the officer's credit.

### **Special leave**

**16.** (1) The Chief Executive Officer may, where reasonable cause exists, grant to an officer special leave with pay for a period or periods not exceeding, in aggregate, 15 college days in any one college year.

(2) The Minister may, on the recommendation of the Chief Executive Officer, grant to an officer special leave with pay or with part pay for such period and on such conditions as the Minister thinks fit.

(3) The Minister may, where reasonable cause exists, grant to an officer special leave without pay for such period and on such conditions as the Minister thinks fit.

(4) Special leave granted under this regulation is in addition to any other leave to which an officer may be entitled.

### **Special leave for infectious diseases**

**17.** (1) Where an officer is absent from duty and provides to the Chief Executive Officer—

- (a) a medical certificate indicating that he or she has an infectious disease; and

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- (b) a statement by the director of a college at which the officer has been employed that the infectious disease was probably contracted by the officer while on duty or as a result of his or her contact with the students or staff of the college,

the Chief Executive Officer will grant the officer special leave with pay (not debited against sick leave credits) for the period of the officer's absence from duty due to the infectious disease.

(2) Special leave granted under this regulation must not exceed a total of 52 weeks in aggregate for any particular infectious disease.

(3) Special leave granted under this regulation is in addition to any other leave to which an officer may be entitled.

(4) In this regulation—

**"infectious disease"** means Chicken Pox, Diphtheria, Erysipelas, Glandular Fever, Infectious Hepatitis, Herpetic Whitlow, Infectious Mononucleosis, Measles, Meningitis, Mumps, Poliomyelitis, Rubella, Scarlet Fever, Staphylococcal Infection of a cutaneous nature, Typhoid, Whooping Cough, or any other disease declared by administrative instructions issued by the Minister to be an infectious disease for the purposes of this regulation.

#### **Special leave for war service disabilities**

**18.** (1) The Chief Executive Officer may grant an officer who provides evidence that he or she is absent from duty because of a disability accepted by the Commonwealth Repatriation Commission as due to war service special leave with pay (not debited against sick leave credits) for a period not exceeding the leave standing to the credit of that officer under this regulation.

(2) The special leave standing to the credit of an officer absent due to a disability arising from war service is as follows:

- (a) a non-accumulative credit of 45 duty days credited on 1 July 1955 or on appointment as an officer (whichever is the later);

plus

- (b) a cumulative credit of 15 duty days credited on 1 July 1964, or on appointment as an officer (whichever is the later) and on the anniversary of that date in each succeeding year to a maximum accumulation of 45 duty days at any one time under this paragraph,

less the number of duty days of leave that have been taken by the officer under this regulation or a corresponding provision of the previous regulations, debited in accordance with subregulation (3).

(3) The special leave standing to the credit of an officer under subregulation (2)(b)—

- (a) may only be taken after the special leave standing to the officer's credit under subregulation (2)(a) has been exhausted; and
- (b) re-accumulates in accordance with subregulation (2)(b) if taken, but not so as to exceed the specified maximum accumulation.

(4) Special leave granted under this regulation is in addition to any other leave to which an officer may be entitled.

**Maternity leave**

19. (1) Subject to these regulations, the Chief Executive Officer will grant a female officer who is pregnant maternity leave for a period commencing at any time after the issue of a medical certificate confirming the officer's pregnancy and ending no later than the close of the college year in which the first anniversary of the birth falls.

(2) An application for maternity leave must—

- (a) specify the period for which leave is sought; and
- (b) be accompanied by a medical certificate indicating the expected date of birth.

(3) The Chief Executive Officer may, on application by an officer, vary the period of leave previously specified in an application for leave under this regulation (but not so as to extend the leave beyond the end of the period specified in subregulation (1)).

(4) Maternity leave granted in accordance with this regulation is without pay, but—

- (a) an officer entitled to long service leave under the Act may use any of that entitlement during the period that she is on leave; and
- (b) if an officer, while on maternity leave, suffers or sustains a sickness or injury that is, in the opinion of the Chief Executive Officer, unconnected with the pregnancy or birth or is a significant abnormal medical condition arising out of the pregnancy or birth, the Chief Executive Officer may, on application by the officer accompanied by a medical certificate, grant the officer paid sick leave for a period not exceeding the sick leave standing to the credit of the officer.

(5) An officer who has been granted maternity leave must give the Chief Executive Officer at least 4 weeks' prior notice in writing of the date on which she intends to resume duty.

(6) An officer who resumes duty after a period of maternity leave will, subject to any agreement to the contrary between the officer and the Chief Executive Officer, resume in the position she held at the time she commenced that leave.

**Determination of long service leave entitlements**

20. For the purposes of determining the long service leave entitlements of an officer—

- (a) leave of absence on full pay will be taken to be service as an officer; and
- (b) leave of absence without pay or on part pay will be taken to be service as an officer to the extent (if any) determined by the Minister; and
- (c) if an officer takes a period of long service leave on half salary under section 20 of the Act, the officer will be taken to be on full pay for the first half of that period and on leave without pay for the remainder of that period.

**Certain officers subject to public service conditions**

21. If the Minister appoints an officer to a position the duties of which do not, in the Minister's opinion, justify the officer working normal college hours and taking the recreation leave and non-attendance days that would otherwise apply, the Minister may declare that the officer is subject to the hours of work, recreation leave, non-attendance days and overtime applicable to Public Service employees under the *Public Sector Management Act 1995*.

**Failure to resume duty after leave or non-attendance days**

22. An officer who fails to resume duty on completion of leave or non-attendance days will be taken to be absent from duty without proper cause for the purposes of section 26 of the Act.

**Continuity of service**

23. The continuity of service of an officer is not broken by leave or non-attendance days under this Division.

**DIVISION 3—REMUNERATION**

**Remuneration for temporary duties not covered by award**

24. If an officer performs, on a temporary basis, duties to which no industrial award, determination or agreement or enterprise agreement applies, the Minister may determine the remuneration payable in respect of those duties.

**Commencing salary at higher increment**

25. Where an appointment is made to a position the salary of which has a number of incremental levels, the Minister may, on the recommendation of the Chief Executive Officer, determine that the commencing salary for the appointment is to be at a particular incremental level, despite the fact that the appointee does not meet the requirements for payment at that level.

**Increments not payable in certain circumstances**

26. If an officer—

- (a) resigns under regulation 42(2)(a); or
- (b) retires under section 25 of the Act,

and the effective date of resignation or retirement is 31 January in any year, the officer is not entitled to be paid an increment that would otherwise have been payable to the officer from 1 January of that year.

**Reduction of salary for absence from duty**

27. (1) If—

- (a) an officer has, without proper cause, absented himself or herself from the officer's place of work during ordinary hours of duty (or other hours during which the officer is lawfully directed to work); or
- (b) has not discharged his or her duties as a result of or in the furtherance of industrial action taken by the officer,

the Chief Executive Officer may direct that the officer's remuneration be reduced by one seventieth (or in the case of an officer at the classification level of Lecturer's Assistant, one seventy-fifth) of the officer's fortnightly salary for each hour (or part of an hour) for which the officer was so absent or so failed to discharge his or her duties.

(2) For the purposes of this regulation, the fortnightly salary of an officer who is employed on a part-time basis is the fortnightly salary that the officer would be entitled to receive if he or she were employed on a full-time basis.

#### **Minister may recover remuneration wrongly paid to officer**

**28.** The Minister may require an officer who has in any circumstances received remuneration to which he or she is not entitled to repay the amount of the overpayment and, in default of repayment, may recover the amount as a debt due and owing by the officer to the Crown.

#### **Travelling expenses**

**29.** (1) An officer must be reimbursed in accordance with this regulation for expenses reasonably and actually incurred in undertaking, in connection with his or her duties, travel approved by the Minister.

(2) Reimbursement must be at the same rate as would be applicable to a Public Service employee under the *Public Sector Management Act 1995*, but if it appears necessary because of special circumstances, the Minister may, on the recommendation of the Chief Executive Officer, authorise reimbursement at a different rate.

#### **Removal expenses**

**30.** (1) Subject to subregulation (2), if an officer is transferred to another college and moves residence as a result of that transfer, the officer is entitled to be paid the following:

- (a) the cost of the removal of the officer's household furniture and effects removed under arrangements made or approved by the Chief Executive Officer; and
- (b) a packing allowance determined by the Chief Executive Officer; and
- (c) the cost of any fares paid for moving the officer and his or her dependent family to the new residence; and
- (d) such other expenses as the Chief Executive Officer may determine—
  - (i) of which satisfactory proof is provided; and
  - (ii) that have been, in the opinion of the Chief Executive Officer, necessarily and reasonably incurred by the officer or his or her dependent family in connection with the transfer.

(2) Subregulation (1) does not apply if an officer is transferred solely at his or her own request after less than 3 years' satisfactory service at a college.

(3) Where a person is first appointed as an officer and moves residence as a result of that appointment, the officer is entitled to be paid the following:

16.

- (a) if he or she was resident in this State at the time of the appointment—the amounts specified in subregulation (1); or
- (b) if he or she was resident outside this State at the time of the appointment—any amount approved by the Chief Executive Officer prior to the appointment for costs and expenses of a kind referred to in subregulation (1).

(4) If an officer retires or dies while employed at a location to which he or she moved wholly or largely at the expense of the Department and the officer or his or her surviving spouse (as the case may be) moves residence on that retirement or death to another location in South Australia, the officer or surviving spouse is entitled to be paid the amounts specified in subregulation (1), subject to the following limitations:

- (a) in the case of an officer who was resident in this State at the time of his or her appointment as an officer—travelling expenses are limited to not more than the amounts that would be payable under that subregulation on removal from his or her current location back to that original residence;
- (b) in the case of an officer resident outside this State at the time of his or her appointment as an officer—all amounts specified in subregulation (1) are limited to not more than the amounts that would be payable under that subregulation on removal from his or her current location to Adelaide.

(5) The Chief Executive Officer may authorise the payment to an officer who is transferred to another college and moves residence as a result of that transfer of an allowance approved by the Chief Executive Officer for the depreciation of the officer's household furniture and effects, except where—

- (a) the officer is establishing a home for the first time; or
- (b) the officer has less than 3 years' satisfactory service at a college and is transferred solely at his or her own request.

(6) The Chief Executive Officer may, where travelling expenses are payable under this regulation, grant an allowance to the officer concerned in lieu of payment of those expenses.

(7) Despite this regulation, the Minister may, on the recommendation of the Chief Executive Officer, approve the payment—

- (a) of an allowance greater than is otherwise payable under this regulation; or
- (b) the whole or part of an allowance of a kind provided for in this regulation to an officer who is not entitled to claim such an allowance.

(8) For the purposes of this regulation a transfer will not be taken to be solely at an officer's own request if the officer applied for the transfer to another college in response to a call by the Department for such applications.

## **DIVISION 4—APPEALS AND DISCIPLINARY PROVISIONS**

### **Right of review and appeal in respect of administrative acts or decisions**

**31.** (1) If an officer is aggrieved by an administrative act or decision of the Chief Executive Officer or any other employee in the Department that directly affects the officer, the officer may apply in writing to the Chief Executive Officer for a review of the act or decision.

(2) An application under subregulation (1) must be made within 28 days after the date of the act or decision in question.

(3) The Chief Executive Officer must notify the officer in writing of any act or decision of the Chief Executive Officer resulting from the review.

(4) Where the officer is aggrieved by an act or decision of the Chief Executive Officer resulting from the review, the officer may, within 14 days after receiving written notification of that act or decision, appeal in writing to the Appeal Board against the act or decision.

(5) Except as provided in regulation 8, an appeal may not be made against an act or decision that concerns the appointment of a person as an officer or the promotion of an officer.

(6) Nothing in this regulation prevents the reference of a dispute concerning the appointment of a person as an officer to a Board of Reference established for that purpose under an applicable industrial award, determination or agreement or enterprise agreement.

### **Appeal Board to give orders and directions**

**32.** The Appeal Board may, on hearing an appeal under these regulations, give such orders and directions as it considers just.

### **Selection of members to constitute Appeal Board**

**33.** Where the Chief Executive Officer is required to select a member of the Appeal Board for the purposes of an appeal, the Chief Executive Officer must not select the person who took the action or made the decision appealed against.

### **Suspension of further action where appeal is made**

**34.** Where an appeal is made to the Appeal Board against an act or decision, the Chief Executive Officer must take no further action against the officer pending the determination of the appeal.

### **Suspension of proceedings on commencement of criminal proceedings**

**35.** (1) Where an officer is charged with a criminal offence, any proceedings by the Chief Executive Officer, or appeal to the Appeal Board, arising out of the incident that is the subject of that charge must be suspended pending the determination of the criminal proceedings.

(2) Despite subregulation (1), an officer may be suspended under section 27 of the Act.

## **DIVISION 5—DUTIES OF OFFICERS**

### **Officers to serve where required**

**36.** An officer must, at any time during his or her service, serve in such part of the State as the Minister may require.

**Officers to comply with regulations, instructions**

37. An officer must comply with these regulations and the administrative instructions of the Minister, as in force from time to time.

**Outside employment**

38. (1) An officer must not engage in remunerative employment or in an occupation or business outside the Department unless he or she—

- (a) is an officer employed on a part-time basis; or
- (b) obtains the permission of the Chief Executive Officer.

(2) The Chief Executive Officer may at any time withdraw permission given under this regulation.

(3) The Chief Executive Officer must, when deciding whether to give or withdraw permission under this regulation, have regard to the following:

- (a) whether the employment, occupation or business is to be, or has been, conducted outside the hours of duty of the officer; and
- (b) whether the employment, occupation or business is likely to affect, or has affected, the performance of the officer's duties as an officer; and
- (c) whether the employment, occupation or business may give rise, or has given rise, to a conflict or potential conflict of interest with the officer's duties as an officer.

**Impartiality of instruction**

39. Where, in the course of his or her duties, an officer discusses social, religious or political issues with students, the officer must present those issues impartially.

**Political intervention to obtain unfair advantage**

40. An officer must not seek political intervention to obtain an unfair advantage in appointment, reclassification, transfer or any other aspect of his or her employment as an officer.

**Officer not to incur liability on behalf of Crown**

41. Except as otherwise provided in these regulations, an officer must not incur any liability or make or alter any contract on behalf of the Crown, or attempt to do so, without the prior written authority of the Chief Executive Officer.

**DIVISION 6—RESIGNATION**

**Notice of resignation**

42. (1) Subject to these regulations, an officer who seeks to resign must give the Chief Executive Officer at least 6 weeks' prior notice in writing of that intention to resign.

(2) Despite subregulation (1)—

- (a) an officer who is on maternity leave (or long service leave taken during maternity leave) may resign at any time during that leave on giving the Chief Executive Officer at least 2 weeks' prior notice in writing of her intention to resign; and

19.

(b) an officer appointed on a temporary basis may resign on giving the Chief Executive Officer at least 2 weeks' prior notice in writing of his or her intention to do so.

(3) The Chief Executive Officer may, where reasonable cause exists, waive notice of resignation and permit a resignation to take effect at a time other than that provided for in this regulation.

(4) Where an officer resigns without complying with this regulation, the Minister may, by notice in writing, require the officer to pay to the Minister—

(a) in the case of a failure to comply with subregulation (1)—an amount not exceeding 6 weeks' salary of that officer; or

(b) in the case of a failure to comply with subregulation (2)(b)—an amount not exceeding 2 weeks' salary of that officer.

(5) If an officer fails to pay an amount required to be paid under this regulation, the amount may be recovered as a debt due and owing by the officer to the Crown.

**PART 3**  
**STUDENTS AND EDUCATIONAL ARRANGEMENTS**

**Student conduct**

**43.** (1) The director of a college is responsible for ensuring orderly conduct on the part of students at the college so as to facilitate the effective implementation of the college's education programs.

(2) The director must for that purpose—

- (a) establish a body of rules and directions governing student conduct; and
- (b) from time to time review and revise the rules and directions; and
- (c) ensure that the rules and directions are properly promulgated and enforced within the college.

(3) The director may delegate powers, functions or duties under this regulation to a member of the college staff.

(4) A delegation by the director is revocable at will and does not prevent the exercise or performance of the delegated power, function or duty by the director.

**Destruction or damage of college property by students**

**44.** (1) If a student destroys, damages, removes, loses or otherwise disposes of college property without the permission of the college director, the student must, at the request of the director, pay to the Department the cost of the repair or (where necessary) replacement of that property.

(2) If an amount required to be paid under subregulation (1) is not paid, the amount may be recovered as a debt due and owing by the student to the Crown.

**Suspension or expulsion of students**

**45.** (1) Subject to this regulation, a student—

- (a) may be suspended from attendance at a college by order of the director of the college;  
or
- (b) may be expelled from a specified college, or colleges generally, by order of the Minister.

(2) An order of suspension or expulsion may not be made under this regulation unless the director or the Minister, as the case may be, is satisfied that the order is justified by reason of—

- (a) conduct on the part of the student involving any threat to or interference with—
  - (i) college property; or

- (ii) the safety or well being of a member of the college staff or college council, or any person employed or performing duties at the college, or the ability of any such member or person properly to perform his or her college duties (whether at the college or elsewhere); or
  - (iii) the safety or well being of another student or the ability of another student properly to benefit from instruction or pursue studies or other college activities (whether at the college or elsewhere); or
  - (iv) the good order of the college; or
- (b) the failure of the student to pay, by the due date, a fee under the Act that he or she is lawfully required to pay.

(3) The director or the Minister must, before making an order of suspension or expulsion under this regulation—

- (a) give the student concerned notice in writing (by post or otherwise) of the matters alleged against him or her and of the action proposed to be taken; and
- (b) allow the student a reasonable opportunity to answer the allegations and make representations to the director or the Minister, as the case may be.

(4) An order of suspension or expulsion under this regulation—

- (a) must be in writing and a copy must be served (by post or otherwise) on the student to whom it relates; and
- (b) remains in force for the period specified in the order subject to variation or revocation—
  - (i) in the case of an order of suspension—by order of the director of the college concerned or the Minister; or
  - (ii) in the case of an order of expulsion—by order of the Minister.

#### **Treatment of sick or injured students**

**46.** (1) If a student becomes sick or sustains an injury while attending a college, an officer may, if he or she thinks it necessary, obtain the services of a legally qualified medical practitioner or hire a suitable conveyance to convey the student to an appropriate place for treatment.

(2) A student must, on being required by the Minister to do so, pay expenses incurred by the Department under subregulation (1).

(3) If an amount required to be paid under this regulation is not paid, the amount may be recovered as a debt due and owing by the student to the Crown.

#### **Student associations**

**47.** (1) Subject to this regulation, an association of students or an association of students and staff (or both) may be formed in any college.

(2) The adoption or alteration of the constitution of an association has no force or effect unless first approved by the Chief Executive Officer.

(3) If an association is formed with, or adopts, a name that includes the words "further education", "technical and further education" or the name of a college without the approval in writing of the Chief Executive Officer for that name first being obtained, each member of the managing committee of the association at the time of that formation or adoption is guilty of an offence.

Maximum penalty: \$50.

Expiation fee: \$25.

(4) The director of a college may make facilities of the college available for use by an association.

### **Times of operation of colleges**

**48.** The Minister may determine the days during which a college will be open and those during which it will be closed.

### **Subjects, assessment and awards**

**49.** (1) A college must provide such subjects and courses and conduct such examinations and assessment processes as the Chief Executive Officer may from time to time approve or direct.

(2) The Minister may confer on students successfully completing courses of instruction at a college such awards as are specified by administrative instruction.

### **Provision of scholarships**

**50.** (1) The Chief Executive Officer may establish for students of a college scholarships of such kinds, number and value as the Chief Executive Officer may from time to time determine.

(2) The Minister may, as a result of private benefaction, establish for the students of a college scholarships of such kinds, number and value as the Minister may from time to time determine.

### **Closure of classes**

**51.** The Chief Executive Officer may direct that a class at a college be closed—

- (a) if he or she is of the opinion that the class is not being satisfactorily taught and a competent instructor cannot be obtained; or
- (b) if the average attendance of students at that class falls below a minimum figure determined by the Chief Executive Officer.

**PART 4**  
**COLLEGE COUNCILS**

**Constitution of college councils**

**52.** (1) Subject to this regulation, the number of members of a council will be determined by the Minister, but must not exceed 15.

(2) The membership of a council must include—

- (a) the director of the college; and
- (b) 1 member (or, if the Minister so determines, 2 members) of the college staff elected by the college staff; and
- (c) 1 student (or, if the Minister so determines, 2 students) of the college elected by the students of the college.

(3) All other members of a council, of whom there must be at least one, will be appointed by the Minister.

(4) When appointing members of a council the Minister must, as far as is practicable—

- (a) appoint persons who can substantially contribute to the exercise or performance by the council of its powers, authorities, duties and obligations; and
- (b) appoint equal numbers of men and women.

(5) The Minister must—

- (a) consult the director of a college before appointing the first members to a council established for that college; and
- (b) if a college has an established council, consult the council before appointing members to fill vacancies in the membership of the council.

(6) All elections for membership of a council must be by secret ballot.

**Term of office**

**53.** (1) Subject to these regulations, the term of office of an elected or appointed member of a council is—

- (a) in the case of a staff member elected by other members of staff—2 years; and
- (b) in the case of a student elected by other students of the college—1 year; and
- (c) in the case of a member appointed by the Minister—a term not exceeding 2 years.

(2) At the expiration of a term of office, a member elected or appointed to a council is eligible for re-election or reappointment.

**Removal of members; vacancies**

**54.** (1) The Minister may remove an elected or appointed member of a council from office—

- (a) for mental or physical incapacity to carry out satisfactorily the duties of the office; or
- (b) for neglect of duty; or
- (c) for misconduct; or
- (d) for any other cause considered sufficient by the Minister.

(2) The office of an elected or appointed member of a council becomes vacant if—

- (a) the member dies; or
- (b) the member's term of office expires and he or she is not re-elected or reappointed; or
- (c) in the case of an elected member, the member does not continue in the capacity in which he or she was elected to membership of the council (unless the date of the next election to his or her office is within four months from the date on which the member ceased to continue in the capacity in which he or she was elected); or
- (d) the member resigns by notice in writing given to the president of the council; or
- (e) the member is removed from office by the Minister under subregulation (1).

(3) On the office of an elected or appointed member of a council becoming vacant under this section, a person must be elected or appointed, as the case may require, to the vacant office in accordance with these regulations.

(4) Subject to these regulations, a member elected or appointed to fill a casual vacancy in the membership of a council holds office for the balance of the term of his or her predecessor.

(5) An act or decision of a council is not invalid by reason only of a vacancy in its membership or a defect in the election or appointment of a member.

**Council officers and meetings**

**55.** (1) At the first meeting of a council in each college year, the council must appoint the following officers:

- (a) a president;
- (b) a vice-president;
- (c) a treasurer;
- (d) such other officers as the council may determine.

25.

(2) At that first meeting the council must also—

- (a) appoint 2 members of the council to hold and attest to the affixing of the council's common seal; and
- (b) authorise 2 or more members of the council (at least one of whom must be a member appointed by the Minister) to act as signatories for the council fund account.

(3) A college council may authorise one or more members of the staff of the college to act as signatories for the council fund account.

(4) The director of a college must not be appointed to an office, or authorised to perform a function, referred to in subregulation (1), (2) or (3).

(5) A council must, as far as is practicable, meet at least once every 2 months.

(6) A quorum at a meeting of a council consists of one half of the total number of council members (ignoring any fraction resulting from the division) plus one, and no business may be transacted at a meeting of a council unless a quorum is present.

(7) The presiding member at a meeting of a council will be—

- (a) the president; or
- (b) in the absence of the president—the vice-president; or
- (c) in the absence of both the president and vice-president—a member chosen to preside by those members of the council present at the meeting.

(8) A decision carried by a majority of the votes cast by the members present at a meeting of a council is a decision of the council.

(9) Each member present at a meeting of a council has 1 vote on any matter arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(10) A telephone or video conference between members of a council in which each participating member is able to communicate with each other participating member will for the purposes of this regulation be taken to be a meeting of the council at which the participating members are present.

(11) A council must have accurate minutes kept of its proceedings.

(12) Subject to these regulations, a council may determine its own procedures.

### **Powers, authorities, duties and obligations of college councils**

**56.** A college council has the following powers, authorities, duties and obligations:

- (a) to provide advice and information to the college director on the present and future needs of industry, commerce and the community in relation to the programs of the college and technical and further education generally;

- (b) to liaise with industry and commerce (including employer and employee bodies), other education providers and community and public sector organisations on matters relating to technical and further education;
- (c) to assist and encourage the promotion and development of the college and technical and further education generally;
- (d) to make representations to the Chief Executive Officer or the Minister on matters affecting the college and technical and further education generally;
- (e) to assist in the development of educational and financial priorities for the college;
- (f) to assist in the provision of student amenities and services, contribute to the development of a student services plan for the college and encourage and support the development of student associations and networks;
- (g) to support and encourage staff development for staff of the college;
- (h) to assist in the provision of equipment or facilities or (subject to the approval of the Minister) land, buildings or structures for the college;
- (i) to engage in or conduct fundraising activities;
- (j) to develop a strategic plan for the council in accordance with guidelines issued by the Chief Executive Officer, and establish and manage a council budget;
- (k) to manage the council fund and maintain a bank, building society, credit union or Treasury account for the purposes of the fund;
- (l) to use the council fund for the exercise or performance of the council's powers, authorities, duties and obligations under the Act and these regulations;
- (m) subject to the approval of the Minister, to employ staff to assist the council in the exercise or performance of its powers, authorities, duties and obligations under the Act and these regulations;
- (n) to form committees (which may include persons who are not members of the council) to consider matters that are relevant to the college or to an individual campus of the college;
- (o) to exercise or perform such other powers, authorities, duties and obligations as are prescribed by or under the Act.

#### **Disclosure of interest**

**57.** (1) A member of a council who has a direct or indirect pecuniary or personal interest in a matter under consideration by the council—

- (a) must disclose the nature of the interest to the council; and
- (b) must not take part in any deliberation of the council in relation to that matter; and

- (c) must not vote in relation to that matter; and
- (d) must be absent from the meeting when any such deliberation or voting is taking place.

Maximum penalty: \$200.

(2) A member of a committee formed by a council who has a direct or indirect pecuniary or personal interest in a matter under consideration by the committee—

- (a) must disclose the nature of the interest to the committee; and
- (b) must not take part in any deliberation of the committee in relation to that matter; and
- (c) must not vote in relation to that matter; and
- (d) must be absent from the meeting when any such deliberation or voting is taking place.

Maximum penalty: \$200.

(3) A person who is a member of the college staff or a student will not be taken to have an interest in a matter for the purposes of this regulation by reason only of the fact that he or she has an interest in the matter that is shared in common with the college staff or student body generally or a substantial section of the college staff or student body.

(4) It is a defence to a charge of an offence against subregulation (1) or (2) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(5) A disclosure under this regulation must be recorded in the minutes of the relevant body and reported—

- (a) in the case of a council—to the Chief Executive Officer;
- (b) in the case of a committee formed by a council—to the council and to the Chief Executive Officer.

(6) If a person discloses an interest in a proposed contract under this regulation and complies with subregulation (1) or (2) (as the case may be)—

- (a) the contract is not liable to be avoided by the council; and
- (b) the person is not liable to account for profits derived from the contract.

#### **Audit of council fund**

**58.** (1) A council must cause its council fund to be audited annually by a person with qualifications of a kind approved by the Chief Executive Officer.

(2) The Auditor-General may at any time inspect or audit those parts of the council fund relating to loans or grants made under sections 30 and 31 of the Act.

**Control of council fund account**

**59.** No withdrawal by cheque or otherwise may be made from a council fund account without the signature of at least 2 persons authorised by the council for that purpose, one of whom must be a member of the council appointed by the Minister.

**Council members not to direct officers, etc.**

**60.** No college council or member of a college council when acting in that capacity may give directions to an officer or employee or an employee in the Department or to any person employed or performing duties at the college (other than a member of the staff of the council), concerning the person's duties at the college or elsewhere.

**Council members to return property**

**61.** A person must, on ceasing to be a member of a council or to hold a particular office on a council, surrender to his or her successor all books, papers, funds or other property of any kind held by virtue of that membership or office.

**PART 5**  
**MISCELLANEOUS**

**Scholarships or awards for officers**

**62.** (1) The Minister may provide scholarships or awards for officers for purposes and on conditions determined by the Minister and may withdraw such scholarships.

(2) If money or real or personal property is made available for the founding of a scholarship or award for officers, the Minister may accept the money or property and may grant a scholarship or make an award in accordance with any agreement or trust subject to which the money or property was made available or, where there was no such agreement or trust, on such terms as the Minister thinks fit.

**Compulsory medical examination of officer**

**63.** (1) An officer must, if required to do so by the Chief Executive Officer, submit himself or herself to examination by a legally qualified medical practitioner selected by the Chief Executive Officer.

(2) The Chief Executive Officer must, before making a requirement under subregulation (1), consult with the President of the Union.

(3) Where a medical examination is required in respect of an officer under subregulation (1)—

- (a) the examination must be at the expense of the Crown; and
- (b) the medical practitioner conducting the examination must, if so required by the officer or a member of the officer's family, consult with some other medical practitioner nominated by the officer or member of the officer's family.

**Use of college premises and property for commercial, community or other purposes**

**64.** (1) The director of a college may—

- (a) in accordance with any administrative instructions issued by the Minister; and
- (b) with the consent of the council,

permit (for reward or otherwise) the use of college premises or property for commercial, community or other purposes.

(2) If a council does not consent to the use of college premises or property under subregulation (1), the director may refer the matter to the Chief Executive Officer for determination, and any such determination will be final.

(3) Revenue derived under this regulation from the use of college premises or property is to be applied as follows:

- (a) 10 per cent of the revenue is to be applied, in accordance with any administrative instructions issued by the Minister, by the Department for the purposes of the college; and

- (b) the remainder is to be paid into the council fund account.

**Surrender of property on closure of college**

65. If a college is closed, or if a council ceases to function as such, all books, papers, funds and property of any kind in a person's possession or custody by virtue of any office or position held, or function performed, in respect of the college or council must be surrendered by that person to a person nominated by the Minister.

**Notice to officers**

66. (1) If a provision of the Act, these regulations or an administrative instruction provides that a notice or other written notification must or may be given to an officer, it is sufficient if the notice or other written notification is delivered to the officer personally, delivered to the officer's college or other place of employment in an envelope addressed to the officer or sent by post to the officer at the officer's college or other place of employment or last known residential address.

(2) A notice or other written notification to an officer will, unless the contrary is shown, be taken to be received by the officer on the day on which—

- (a) it is personally delivered to the officer; or
- (b) it is delivered to the officer's college or other place of employment; or
- (c) it would, where sent by post, be delivered in the ordinary course of post.

(3) A notice or other notification may be given directly to an officer by word of mouth or telephone unless a provision of the Act, these regulations or an administrative instruction provides that the notice or other notification must be in writing.

**Notice to Minister or Chief Executive Officer**

67. (1) Where a provision of the Act, these regulations or an administrative instruction provides that a notice or other written notification must or may be given to the Minister or the Chief Executive Officer, it is sufficient if the notice or other written notification is delivered to the Minister or Chief Executive Officer personally or delivered or sent by post to the office of the Minister or Chief Executive Officer (as the case may be).

(2) A notice or other written notification to the Minister or the Chief Executive Officer will, unless the contrary is shown, be taken to be received by the Minister or the Chief Executive Officer (as the case may be) on the day on which—

- (a) it is personally delivered to the Minister or the Chief Executive Officer; or
- (b) it is delivered to the office of the Minister or the Chief Executive Officer; or
- (c) it would, where sent by post, be delivered in the ordinary course of post.

**Administrative instructions**

68. (1) The Minister may from time to time issue administrative instructions as contemplated by these regulations or as necessary or expedient in the exercise of the powers and functions conferred on the Minister by the Act or prescribed by these regulations.

(2) An administrative instruction issued by the Minister under these regulations may be varied or revoked by further administrative instructions.

**Fees**

**69.** (1) The Minister may, from time to time—

- (a) fix the fees (including differential fees) to be paid for, or in relation to—
  - (i) the instruction, training or assessment of students under the Act;
  - (ii) the assessment and certification of qualifications (whether or not relating to instruction or training under the Act);
  - (iii) the use or provision of land, buildings, equipment, facilities or services under the Act;
- (b) regulate the payment (including the time and manner of payment) of any such fee;
- (c) provide for the refund, in whole or in part, of any such fee.

(2) The Chief Executive Officer may exempt a student (in whole or in part) from liability to pay a fee fixed under this regulation.

**SCHEDULE**

*Transitional provision*

**Transitional provision**

1. An administrative act (including the fixing of a fee) under a provision of the previous regulations that substantially corresponds to a provision of these regulations will, subject to later administrative acts and these regulations, be taken to be an administrative act under the corresponding provision of these regulations.