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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 308**

**PENSIONS**

**The Teachers' Superannuation (Scotland)  
Amendment Regulations 2006**

<i>Made</i>	- - - -	<i>5th June 2006</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>7th June 2006</i>
<i>Coming into force</i>	- -	<i>30th June 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 9 and 12 of the Superannuation Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, after consulting with representatives of education authorities and of teachers and with such representatives of other persons likely to be affected by these Regulations as appear to them to be appropriate, in accordance with section 9(5) of that Act, and with the consent of the Treasury<sup>(2)</sup>, hereby make the following Regulations:

**Citation, commencement and effect**

1. These Regulations may be cited as the Teachers' Superannuation (Scotland) Amendment Regulations 2006, shall come into force on 30th June 2006 but—

- (a) regulation 13 and the Schedule shall have effect from 1st October 2005; and
- (b) regulations 3 to 12, 15, 19 to 21, 22(5) and (6), 23(b) to (d) and 25 shall have effect from 6th April 2006.

**Amendment of the Teachers' Superannuation (Scotland) Regulations 2005**

2. The Teachers' Superannuation (Scotland) Regulations 2005 (“the 2005 Regulations”)<sup>(3)</sup> are amended in accordance with regulations 3 to 13 of these Regulations.

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(1) 1972 c. 11; section 9 was amended by sections 4(1), 8(3), (4) and (6), and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) (“the 1990 Act”), by section 190 and Schedule 8, paragraph 7 of the Pension Schemes Act 1993 (c. 48) and by article 107 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I.2001/3649), and section 12 was amended by section 10 of the 1990 Act. The functions of the Secretary of State exercised in the making of these Regulations were transferred to the Scottish Ministers as regards Scotland by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I. 1999/1750).

(2) This function was transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670) and is still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(3) S.S.I. 2005/393, amended by S.S.I. 2005/543.

3. In regulation C12(2), in the definition of “C”, and in regulation C13(6), for “section 598 of the Taxes Act” substitute “section 205 of the Finance Act 2004 (short service refund lump sum charge)(4).”

4.—(1) Regulation E6 (Entitlement to payment of retirement benefits) is amended as follows.

(2) For sub-paragraph (1)(d)(ii) substitute—

“(ii) has attained the age of 55 if he is a post-30th June 2006 entrant or the age of 50 in any other case;”.

(3) After paragraph (4) insert—

“(5) Subject to paragraph (6) a teacher is a post-30th June 2006 entrant if—

(a) he or she enters pensionable employment for the first time after 30th June 2006; or

(b) he or she enters pensionable employment after 30th June 2006 having previously been in pensionable employment where—

(i) the previous period of pensionable employment ended on or before 30th June 2006, and

(ii) a cash equivalent transfer value or a transfer value under Part G had been paid in respect of that employment, or the person has been repaid the balance of his or her contributions relating to that pensionable employment under regulation C11.

(6) A teacher is not however a post-30th June 2006 entrant (even if he or she falls within paragraph (5)) if—

(a) he or she was in comparable British service on or before 30th June 2006; and

(b) neither a cash equivalent transfer value nor a transfer value has been paid in respect of that service (other than a cash equivalent transfer value or a transfer value accepted by the Scottish Ministers) nor has the balance of his or her contributions relating to that service been repaid.”.

5.—(1) Regulation E26 (family benefits generally) is amended as follows.

(2) In paragraph (6)—

(a) omit “; or” at the end of sub-paragraph (a), and

(b) omit sub-paragraph (b) and the words “who is wholly or mainly dependent on him or her”.

(3) In paragraph (7) for “E27” substitute “E28”.

(4) In paragraph (7)(b) after “having attained that age” insert “but not having attained the age of 23”.

(5) For paragraph (7)(d) substitute—

“(d) was, at the date of death of the teacher referred to in paragraph (6), dependent on that teacher because he or she was incapacitated.”.

(6) After paragraph (10) insert—

“(11) In relation to—

(a) a child who was entitled to a pension under regulations E28 to E33 on 5th April 2006; and

(b) provision to or for the benefit of a child born on or before 5th April 2007 of a teacher who was entitled to payment of retirement benefits under regulation E6 on 5th April 2006,

paragraphs (6) and (7) shall have effect with the modifications specified in paragraph (12).

(12) The modifications are—

(a) in paragraph (6) after “or their adopted child” insert “, or accepted by him or her as a member of the family, who is wholly or mainly dependent on him or her,”; and

(b) in paragraph (7)—

(i) omit “but not having attained the age of 23” in subparagraph (b); and

(ii) for sub-paragraph (d) substitute—

“(d) having ceased while incapacitated to fall within subparagraph (a), (b) or (c), he or she continues to be incapacitated.””.

6. In regulation E27(1), for “who is not a child” substitute “who is not the teacher’s child”.

7. In regulation G1(3)(a), for the words from “an approved superannuation scheme” to the end, substitute “a registered pension scheme; or”.

8.—(1) Regulation G2 (acceptance of transfer values) is amended as follows.

(2) In paragraph (1) for the words from “benefit under – ” to “self employed pension arrangement,” substitute “benefit under a registered pension scheme”.

(3) For paragraph (2) substitute—

“(2) Subject to paragraphs (3) to (5), the Scottish Ministers on receipt of the notice from the teacher may accept from the trustees or managers of the registered pension scheme in which his or her accrued rights are preserved (hereinafter in this regulation referred to as “the previous scheme”) a transfer value in respect of all, or part, of those accrued rights.”.

(4) For paragraph (4) substitute—

“(4) A transfer value shall not be accepted in respect of a teacher—

(a) who is a re-employed teacher to whom regulation E18 applies;

(b) who has become entitled to payment of benefits under a provision of a statutory scheme corresponding to regulation E6; or

(c) whose previous scheme was a money purchase arrangement as defined in section 152 of the Finance Act 2004(5) to which the teacher’s employer was not a contributor and which provided benefits additional to those provided by a scheme to which he or she was a contributor.”.

9. In regulation J9 (commutation of benefits)—

(a) for paragraphs (1) to (3) substitute—

“(1) Where a teacher has become entitled to a retirement pension and the capital value of that pension and of any benefits that might otherwise have become payable on that teacher’s death would be a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to the Finance Act 2004, the Scottish Ministers may pay to that teacher a lump sum representing such capital value.

(2) No payment may be made under paragraph (1) if the pension includes a guaranteed minimum unless the teacher to whom it is paid has reached state pensionable age or any pension in respect of the guaranteed minimum is otherwise payable.

(3) Where a teacher has died and the capital value of any family benefits would be a trivial commutation lump sum death benefit as defined in paragraph 20 of Schedule 29

to the Finance Act 2004, the Scottish Ministers may pay to the dependant a lump sum representing such capital value.”; and

(b) omit paragraphs (5) and (6).

**10.** In Schedule 1 (glossary of expressions)–

(a) omit the definition of “Appropriate personal pension scheme”;

(b) omit the definition of “Approved superannuation scheme”;

(c) for the definition of “Personal pension scheme” substitute–

““Personal pension scheme”	A personal pension scheme within the meaning of section 1 of the 1993 Act which is a registered pension scheme.”;
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(d) after the definition of “Reckonable service” insert–

““Registered pension scheme”	Shall be construed in accordance with section 150(2) of the Finance Act 2004.”; and
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(e) omit the definition of “Self-employed pension arrangement”.

**11.** For paragraph 2(1)(b) of Schedule 3 substitute–

“(b) will become entitled to retirement benefits under–

(i) the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995; or

(ii) a money purchase agreement as defined in section 152 of the Finance Act 2004 to which the teacher’s employer was not a contributor and which provided benefits additional to those provided by a scheme to which he or she was a contributor.”.

**12.** In Schedule 12 (transfer values)–

(a) in paragraph 2(a) for “an approved pension or superannuation scheme” substitute “a registered pension scheme”;

(b) for paragraph 4(a) substitute–

“(a) a teacher requests that a transfer value be paid to a registered pension scheme, which is not contracted out; and”;

(c) in paragraph (4)(b) for “the trustees or managers of the occupational pension scheme, personal pension scheme or self employed pension arrangement” substitute “the trustees or managers of the registered pension scheme”;

(d) in paragraph 13(1)(a) for “personal pension scheme or an approved pension or superannuation scheme” substitute “registered pension scheme”; and

(e) in paragraph 14(d) for “an occupational pension scheme” substitute “a registered pension scheme” and delete subparagraph (v).

**13.** The amendments made by the Schedule to these Regulations shall have effect.

## **Amendment of the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995**

**14.** The Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 (“the AVC Regulations”)(6)are amended in accordance with regulations 15 to 27 of these Regulations.

**15.—**(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (2)–

- (a) omit “references to the Taxes Act are references to the Income and Corporation Taxes Act 1988,”; and
- (b) for “and references to the Superannuation Regulations are references to the Teachers' Superannuation (Scotland) Regulations 1992.” substitute “, references to the Superannuation Regulations are references to the Teachers' Superannuation (Scotland) Regulations 2005(7)and references to the 2004 Act are references to the Finance Act 2004(8).”.

(3) In paragraph (3)–

- (a) omit the definition of “approved scheme”;
- (b) in paragraphs (b) and (c) respectively of the definition of “dependant” for “E21” substitute “E26” and for “E22” substitute “E27”;
- (c) omit the definition of “free-standing additional voluntary contributions scheme”;
- (d) in the definition of “the Index” for “the Central Statistical Office” substitute “the Office for National Statistics”;
- (e) omit the definition of “personal pension scheme”;
- (f) after the definition of “reckonable service” insert the following definition–  
““registered pension scheme” shall be construed in accordance with section 150(2) of the 2004 Act;”;
- (g) in the definition of “retire” for “E5” substitute “E6”;
- (h) omit the definition of “retirement benefits scheme”; and
- (i) in paragraph (b) of the definition of “salary” for “C8A” substitute “C9”.

**16.** In regulation 3 (making and acceptance of elections) omit “or” at the end of paragraph (2) (a) and omit paragraph (2)(b).

**17.** In regulation 5(4) (allocation of lump sum death benefit to provide dependants' pensions) omit “Subject to regulation 7(4).”.

**18.** In regulation 7 (payment and amount of additional voluntary contributions) omit paragraphs (3) and (4).

**19.** In regulation 8 (contributor)–

- (a) in paragraph (2)(a) for “retiring allowances” substitute “retirement benefits”;
- (b) in paragraph (2)(c) for “C8A” substitute “C9”; and
- (c) in paragraph (2)(d) for “B6” substitute “B7”.

**20.** In regulation 10 (inward transfers) for paragraph (1) substitute–

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(6) S.I. 1995/2814 (S. 207), amended by S.S.I. 2000/444, 2001/292, 2005/543.

(7) S.S.I. 2005/393, amended by S.S.I. 2005/543.

(8) 2004 c. 12.

“(1) Where a person in pensionable employment has paid contributions to a registered pension scheme for the purposes of the 2004 Act, that person, whether or not he or she becomes a contributor (within the meaning of these Regulations) may give written notice to the Scottish Ministers that he or she wishes the Scottish Ministers to accept from the trustees or managers of that scheme a transfer value representing the value of the investments from those contributions.”.

**21.** In regulation 11 (outward transfers)–

(a) for paragraph (1) substitute–

“(1) The Scottish Ministers shall, on application by a person who has ceased to be a contributor by virtue of regulation 8(2)(c) or (d), pay a transfer value representing the value of investments made under regulation 9(1) or 10(2) to any other registered pension scheme in which the person may be participating (provided that the other pension scheme is willing and able to accept such a transfer).”; and

(b) for paragraph (2) substitute–

“(2) Where a person has ceased to be a contributor before 30th June 2006 a transfer value shall not be payable under paragraph (1) unless that person has applied for a transfer value under regulation G1 of the Superannuation Regulations.”.

**22.**—(1) Regulation 12 (retirement and dependants' pensions) is amended as follows.

(2) In paragraph (1) for “a retirement pension and one or more dependants' pensions” substitute “a retirement pension, one or more dependants' pensions and a lump sum which is a pension commencement lump sum for the purposes of Part 1 of Schedule 29 to the 2004 Act”.

(3) In paragraph (5) after sub paragraph (e) insert–

“(f) whether a pension commencement lump sum is to be paid, and if so, the amount of such sum.”.

(4) For paragraph (7) substitute–

“(7) Subject to paragraphs (9) and (10), upon receipt of the notice of election the Scottish Ministers shall, as soon as is reasonably practicable, realise the investments made under regulation 9(1) or 10(2) and–

(a) out of the amount obtained make any payment of a pension commencement lump sum in accordance with the election, and

(b) apply the balance of the amount obtained to the purchase of a pension policy from an authorised provider chosen by the participator to provide the benefits specified in the election.”.

(5) At the end of paragraph (10) insert “if such a lump sum would be a serious ill-health lump sum as defined in paragraph 4 of Schedule 29 to the 2004 Act.”.

(6) For paragraph (11) substitute–

“(11) The authorised provider may discharge the liability for payment of the benefits under the pension policy by payment of a lump sum representing their capital value if such a lump sum would be a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to the 2004 Act.”.

**23.** In regulation 13A (pension sharing on divorce or on the dissolution of a civil partnership)–

(a) in paragraph (3), for “a pension and one or more dependant’s pensions” substitute “a pension, one or more dependant’s pensions and a lump sum which is a pension commencement lump sum for the purposes of Part 1 of Schedule 29 to the 2004 Act”;

(b) at the end of sub-paragraph (7)(e), insert “and”;

- (c) at the end of sub-paragraph (7)(f), omit “; and”; and
  - (d) omit sub-paragraph (7)(g).
- 24.** Omit regulation 14 (benefit limits).
- 25.** In regulation 15 (repayment of investments in certain cases)–
- (a) in paragraph (1)(b) for “C10” substitute “C11”; and
  - (b) in paragraph (2) for “section 598 of the Taxes Act” substitute “section 205 of the 2004 Act”.
- 26.** In regulation 16 (payment by Scottish Ministers)–
- (a) after paragraph (2) insert the following paragraph–
    - “(2A) Lump sums payable as mentioned in regulation 12(1) shall be paid by the Scottish Ministers to the participator.”;
  - (b) in paragraph (3) omit “(subject to paragraph (5) of this regulation)” and for “E19(7)” substitute “E24(7)”;
  - (c) omit paragraphs (5) to (7); and
  - (d) in paragraph (8) for “the Taxes Act” substitute “the 2004 Act”.
- 27.** Omit the Schedule.

St Andrew’s House,  
Edinburgh  
24th May 2006

*GEORGE LYON*  
Authorised to sign by the Scottish Ministers

We consent

5th June 2006

*DAVE WATTS*  
*ALAN CAMPBELL*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

Regulation 13

### MINOR AMENDMENTS TO THE 2005 REGULATIONS

1. In regulation C12(3)(a) for “regulations C3, C5 and C8 to C10” substitute “regulations C3, C5 and C7 to C10”.
2. In regulation D3(5) after “Schedule 4,” insert “or has continued to pay them in accordance with Schedule 5.”.
3. In regulation E7(2)(b) for “regulation E35(5)” substitute “regulation E35(4)”.
4. In regulation E24(6) for “regulation C11” substitute “regulation C12”.
5. In regulation E34(3)(e) for “regulation C8” substitute “regulation C9”.
6. In regulation H2(4) for “under paragraph (1)” insert “under regulation G4(1) of the 1992 Regulations”.
7. In paragraph 9(1)(b) of Schedule 6 for “regulation C5 or C7” substitute “regulation C5, C7, C8 or C9”.
8. In paragraph 4(1)(c) of Schedule 7 omit “to 7(10)”.
9. In paragraph 2(1)(a)(ii) of Schedule 9 for “Scottish Ministers” substitute “Secretary of State”.
10. For paragraph 7 of Schedule 12 substitute—  
“In relation to any teacher to whom paragraph 6 applies—
  - (a) regulation G1(4)(b) shall have effect as if for the words “he or she ceased to be employed in pensionable employment or entered excluded employment, whichever is later” there were substituted the words “he or she terminated excluded employment”; and
  - (b) regulation G1(11)(b)(i) shall have effect as if it read “he or she terminated excluded employment on a date prior to his or her attaining the age of 59 years; and”.”.
11. In paragraph 13(3) of Schedule 12 for the formula “(A × B)” substitute “(A + B)”.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Teachers' Superannuation (Scotland) Regulations 2005 (“the 2005 Regulations”) and the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 (“the AVC Regulations”) in connection with the new provisions for the taxation of pension schemes contained in the Finance Act 2004. They also correct some minor inaccuracies in the 2005 Regulations, and update the cross references in the AVC Regulations to the 2005 Regulations.



### *Amendment of the 2005 Regulations*

Regulation 4 amends regulation E6 of the 2005 Regulations to increase the minimum pension age from 50 to 55 where the teacher is a “post-30th June 2006 entrant” as defined.

Regulation 5 amends regulation E26 of the 2005 Regulations so that a child’s pension can only be paid until the age of 23, except where the child is incapacitated. The effect of regulation 5(6) is that these changes do not apply where the child is in receipt of benefits under the 2005 Regulations on 5th April 2006, or where the teacher in question was already in receipt of retirement benefits on 5th April 2006, and the child was born on or before 5th April 2007.

The other amendments are minor amendments consequential on the new taxation provisions and the provisions specified above. These include–

- (a) amendments referring to provisions in the Finance Act 2004 which allow payments to be made without incurring a charge to tax (for example the commutation of small pensions to lump sums, or the refund of contributions in respect of short service); and
- (b) amendments changing references to schemes which were approved under the old tax regime to references to registered pension schemes; this has meant some simplification to provisions relating to transfers (regulations 7, 8 and 12) including an express provision preventing the acceptance of a transfer value from certain schemes which are money purchase arrangements and which provide additional benefits (regulation 8(4)).

### *Amendment of the AVC Regulations*

Regulations 16, 17, 18, 24 and 27 amend the AVC Regulations to remove the constraints on the levels of contributions and benefits payable. Following the introduction of the Finance Act 2004, an individual can make contributions up to his or her relevant UK earnings which are chargeable to income tax without incurring a charge to tax.

Regulations 22, 23 and 26 amend the AVC Regulations so that a teacher or pension credit member can elect to take part of his or her benefits as a lump sum if it is a “pension commencement lump sum” as defined in the Finance Act 2004.

Regulation 21 amends the rules on outward transfers so that a person who is still a contributor on the date that these Regulations come into force becomes entitled to request a transfer in respect of his or her AVC investments, regardless of whether that individual has also applied for a transfer value under the 2005 Regulations.

The other amendments are minor amendments consequential on the new taxation provisions in the provisions specified above, or update cross references to the 2005 Regulations.

### *General*

A regulatory impact assessment has not produced for these Regulations as they have no additional impact on business, charities, voluntary bodies or any public bodies distinct from that as the Finance Act 2004 itself. The regulatory impact assessment in relation to the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it was published by the Board of Inland Revenue on 8th April 2004, and is available on the website of Her Majesty’s Revenue and Customs at <http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf> or (for hard copies) by writing to the Ministerial Correspondence Unit, Capital and Savings, First Floor, Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.