

## EXECUTIVE NOTE

### THE TEACHERS' SUPERANNUATION (SCOTLAND) REGULATIONS 2005 SSI/2005/393

The above instrument is made in exercise of the powers conferred by sections 9 and 12 of and Schedule 3 to the Superannuation Act 1972 (c.11). As regards Scotland, these powers have been executively devolved to the Scottish Ministers by virtue of The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (SI 1999/1750). The instrument is subject to negative resolution procedure.

#### Policy Objectives

The Teachers' Superannuation (Scotland) Regulations 2005 (the "Regulations") consolidate the Teachers' Superannuation (Scotland) Regulations 1992 (SI 1992/280), which have been amended substantially since they came into force on 31 March 1992. The Regulations (except for the provisions relating to paternity and adoption leave which have effect from 6<sup>th</sup> April 2003) have effect from 1<sup>st</sup> October 2005.

The main purpose of the Regulations is to restate existing law. This has necessitated renumbering of Regulations and minor and drafting alterations. However, some changes of substance to existing law are also made. These are -

- Regulations B6, C1, C2, D1, E24, E29, E34, J4 and Schedule 1 - Paternity and adoption leave. The Regulations introduce provisions to take account of the new entitlements to paternity and adoption leave provided for by the Employment Act 2002. They provide that for the purposes of the Regulations, periods of paternity and adoption leave shall be treated in the same way as periods of maternity leave. By virtue of Regulation A1(1) these provisions, shall have effect as from 6<sup>th</sup> April 2003. It was considered necessary for these provisions to have retrospective effect to ensure there was no prejudice to persons covered by the Regulations. Section 12 of the Superannuation Act 1972 enables retrospective provision to be made.
- Regulation B6(1)(c) - Maternity pay. This provision has been altered to reflect that a teacher may be entitled to contractual remuneration in addition to any statutory entitlement.
- Regulation E6(1) and Schedule 8 Simplification of Schedule 8. Schedule 8 has been simplified by the omission of certain specific employments as it was considered no longer necessary to specify them.
- Regulation E24(1)(c) - Death grants. The corresponding provision in the 1992 Regulations is Regulation E19(1)(c). The policy intention under the 1992 Regulations was that, where a member dies within 12 months of retirement on grounds of incapacity and is in receipt of an incapacity pension, a death gratuity is not payable. It was considered that Regulation E19(1)(c) was unclear in this respect and accordingly Reg E24(1)(c) has been altered to more clearly reflect the policy intention.
- Regulation G2(3) - Acceptance of transfer values. Regulation G2(1) provides that where a teacher wishes to transfer his or her rights in a previous pension scheme to the scheme provided for in the Regulations, that teacher may give notice of that intention to Scottish Ministers. Regulation G2(3) provides that unless the teacher was employed in comparable British service, that notice must be given within 12 months of entering pensionable employment. The corresponding provision in the 1992 Regulations (Regulation F(3)(2))

was erroneously repealed by The Teachers' Superannuation (Scotland) Amendment Regulations 1997 (SI 1997/676).

- J9(5) - Commutation of benefits. Under this Regulation, where the amount of retirement benefit is below the permitted maximum, Scottish Ministers may discharge their liability by payment of a lump sum. Regulation J9(5) has been altered to reflect the current permitted maximum which is £260 (SI 1992/1531).
- Obsolete regulations - Certain obsolete provisions of the 1992 Regulations have been omitted. These are set out in the Explanatory Note to the Regulations. The omitted provisions relate to war service, deeming of elections made under the Teachers' Superannuation (Scotland) Regulations 1977 ( SI 1977/1360), deductions from salary via Method C (Schedule 4, Part III of the 1992 Regulations), resignations predating 1996, winding down employment and agricultural colleges.

In addition to the above changes, the following drafting alterations have been made :

- changes have been made to the terminology in order to modernise the language used. For example, 'retiring allowances' has been amended to 'retirement benefits' (see E4 of the Regulations) and 'death gratuity' has been amended to 'death grant' (see E24 of the Regulations)
- the pension sharing provisions (previously in Part J of the 1992 Regulations) have been moved to Part F of the Regulations and subsequent Parts have therefore been renumbered.

### **Tables of Derivations and Destinations**

Tables of Derivations and Destinations have been prepared identifying individual regulations in the 2005 consolidated Regulations with the equivalent provisions in the superseded Regulations and vice versa. Copies of the Tables are available from the Scottish Public Pensions Agency (Policy Branch), 7 Tweedside Park, Tweedbank, Galashiels TD1 3TE. The Tables have been prepared to assist readers of the Regulations and do not have any legal effect.

### **Consultation**

The Regulations have been the subject of consultation with local authorities and other employers of teachers and lecturers, with representatives of teachers, and with other Government Departments. Consultation on the proposed consolidation took place from September to December 2003. Initially it was proposed that certain of the changes of substance ( paternity and adoption leave, death grants and re-instating the requirement to give Scottish Ministers notice to accept a transfer value) would be effected as amendments to the 1992 Regulations. Subsequently, it was considered preferable to combine all provisions into consolidating Regulations. Responses to these consultations were not controversial.

### **Financial Effects**

No Regulatory Impact Assessment has been prepared because no impact on the private or voluntary sector is foreseen.