

2005 No. 543

PENSIONS

**The Teachers' Superannuation (Scotland) Amendment
Regulations 2005**

<i>Made</i> - - - -	<i>31st October 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>4th November 2005</i>
<i>Coming into force</i> - -	<i>5th December 2005</i>

The Scottish Ministers, in exercise of the powers conferred by sections 9, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972(a) 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(b), hereby make the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Teachers' Superannuation (Scotland) Amendment Regulations 2005 and shall come into force on 5th December 2005.

Amendment of the Teachers' Superannuation (Scotland) Regulations 2005

2. The Teachers' Superannuation (Scotland) Regulations 2005 ("the 2005 Regulations")(c) shall be amended in accordance with regulations 3 to 23 of these Regulations.

3. In regulation C10 (additional contributions for family benefits), after paragraph (2) insert the following—

“(3) Parts IIA and III of Schedule 6 have effect for enabling family benefit contributions in respect of a civil partner's reckonable service before 6th April 1988 to be paid.”.

4.—(1) Regulation E1 (overriding provisions as to guaranteed minimum pension) is amended as follows.

(2) In paragraph (2)(c) after “his guaranteed minimum;” omit “and”.

(3) In paragraph (2)(d) for “subsequent tax years.” substitute “subsequent tax years; and”.

(a) 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, 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).

(b) 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.

(c) S.S.I. 2005/393.

(4) After paragraph (2)(d) insert the following paragraph–

“(e) in the case of a teacher who dies at any time leaving a surviving civil partner who is not entitled to a pension as a surviving civil partner at a higher rate under these Regulations, the surviving civil partner is entitled to a pension in the circumstances and for the period set out in or prescribed under section 17 of the 1993 Act(a).”.

5.—(1) Regulation E14 (allocation of part of retirement pension) is amended as follows.

(2) In paragraph (2)(a) after “a surviving spouse” insert “, surviving civil partner”.

(3) In paragraph (2)(b) after “spouse”, in each place where it occurs, insert “or civil partner”.

(4) In paragraph (4) for “refers” substitute “and “civil partner” refer”.

6.—(1) Regulation E24 (death grants) is amended as follows.

(2) In paragraph (6)(b) after “surviving spouse” insert “, a surviving civil partner”.

(3) For paragraph (7)(a) substitute the following–

“(a) if the deceased is survived by one widow, a widower or a surviving civil partner, to the widow, widower or surviving civil partner,”.

(4) In paragraph (7)(c) for “widow or widower” substitute “widow, widower or surviving civil partner”.

7.—(1) Regulation E25 (deficiency grants) is amended as follows.

(2) For paragraph (8)(a) substitute the following–

“(a) if the deceased is survived by one widow, a widower or a surviving civil partner, to the widow, widower, or surviving civil partner,”.

(3) In paragraph (8)(c) for “widow or widower” substitute “widow, widower or surviving civil partner”.

8. In regulation E26 (family benefits generally)–

(a) in paragraph (1) after “widowers,” insert “surviving civil partners,”; and

(b) in paragraph (7) for “while he or she is unmarried” substitute “while he or she is neither married nor a civil partner”.

9.—(1) Regulation E27 (nomination of beneficiaries) is amended as follows.

(2) In paragraph (1) for “an unmarried person” substitute “a person who is neither married nor a civil partner”.

(3) For paragraph (3) substitute the following–

“(3) The eligible persons are–

(a) a parent, brother or sister of the appointor who is not married or is not a civil partner and has never been married or a civil partner, and

(b) a parent, step-parent, brother or sister of the appointor who is widowed or is a surviving civil partner.”.

(4) For paragraph (4)(a) substitute the following–

“(a) if the person nominated dies, marries or forms a civil partnership, on that death, marriage or formation of civil partnership; or”.

(5) For paragraph (4)(b) substitute the following–

“(b) if the appointor marries or forms a civil partnership, on that marriage or formation of civil partnership.”.

10. In regulation E28 (entitlement to short-term family benefits)–

(a) in paragraph (2)(a) after “surviving spouse” insert “or surviving civil partner”; and

(b) in paragraph (4)(c) after “surviving spouse” insert “, surviving civil partner”.

(a) Section 17 is amended with effect from 5th December 2005 by S.I. 2005/2050, Schedule 1, paragraph 4.

11. In regulation E29 (amount and duration of short-term family benefits)–

- (a) In paragraph (2) after “surviving spouse” insert “or surviving civil partner”; and
- (b) In paragraph (3) and the Table after “spouse”, in both places where it occurs, insert “, civil partner”.

12.—(1) Regulation E30 (entitlement to long-term family benefits) is amended as follows.

- (2) In paragraph (3), after “male teacher” insert “not falling within paragraph (4A)”.
- (3) In paragraph (4), after “paragraph (3)”, where it first appears, insert “or (4A)”.
- (4) After paragraph (4) insert the following–

“(4A) In the case of a teacher who dies and is survived by a surviving civil partner, the teacher’s relevant service comprises, subject to paragraph (2)–

- (a) any period of pensionable employment after 5th April 1988;
- (b) any period beginning after 5th April 1988 in respect of which additional contributions have been paid under regulation C8 or C9;
- (c) any period in respect of which additional contributions have been paid under regulation C5 or C7(1) in accordance with an election made on or after 6th April 1988;
- (d) any period of reckonable service in respect of which family benefit contributions have been paid under Part IIA of Schedule 6 or are treated as having been paid under Part III of Schedule 6 in respect of an election made under Part IIA;
- (e) where a transfer value has been accepted in respect of comparable British service, any period which consists of or is attributable to service after 5th April 1988; and
- (f) where the teacher entered pensionable employment after 5th April 1988 and a transfer value (other than one mentioned in sub-paragraph (e)) was accepted, any period counting as reckonable service by virtue of the acceptance of the transfer value.”.

(5) In paragraph (5)(a) after “surviving spouse” insert “or any surviving civil partner”.

(6) In paragraph (9)–

- (a) after “surviving spouse” insert “or surviving civil partner”; and
- (b) “for regulation E1(2)(c) or (d)” insert “for regulation E1(2)(c), (d) or (e)”.

13.—(1) Regulation E31 (amounts of spouses’ and nominated beneficiaries’ long-term pensions) is amended as follows.

(2) For the heading substitute “Amount of surviving spouses’, surviving civil partners’ or nominated beneficiaries’ long-term pensions”.

(3) In paragraph (1) after “surviving spouse” insert “, surviving civil partner”.

(4) In paragraph (3) for “of a nominated beneficiary” substitute “, surviving civil partner or a nominated beneficiary”.

(5) After paragraph (7) insert–

“(7A) If the pension is payable to a surviving civil partner, the deceased’s family benefit service, subject to paragraphs (4) and (9) to (11), comprises the relevant service described in regulation E30(4A).”.

(6) In paragraph (10) for “paragraphs (4) to (7)”, in both places where it occurs, substitute “paragraphs (4) to (7A)”.

14. In Regulation E32 (amounts of children’s long-term pensions), in paragraph (1)(a) after “surviving spouse” insert “, surviving civil partner”.

15.—(1) Regulation E33 (commencement and duration of long-term family pensions) is amended as follows.

(2) In paragraph (1) after “surviving spouse” insert “, surviving civil partner”.

(3) For paragraph (3) substitute the following—

“(3) Subject to regulation E1(2)(c), (d) and (e), an adult pension—

- (a) shall not, unless the Scottish Ministers determine otherwise, be payable if, at the date of the deceased’s death, the person to whom it would (apart from this sub-paragraph) have been payable is living with someone else as if they were husband and wife or as if they were civil partners; and
- (b) shall not, unless the Scottish Ministers determine otherwise, be payable after the person to whom it was payable marries or forms a civil partnership or begins to live with someone else as if they were husband and wife or as if they were civil partners; and
- (c) if the Scottish Ministers so decide, may be payable on the person to whom it would (apart from sub-paragraph (a) or (b)) have been payable again becoming a widow, widower or surviving civil partner, or on termination of any such marriage, civil partnership or, as the case may be, of the period of cohabitation.”.

(4) After paragraph (3) insert the following—

“(3A) But paragraph (3) does not apply to so much of any pension as is payable in respect of section 9(2B) Rights to a widow or widower whose entitlement arose from a death occurring before 5th December 2005 and who forms a civil partnership or lives with someone as if they were civil partners.

(3B) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.”.

(5) In paragraph (4)(a) after “surviving spouse” insert “, surviving civil partner”.

16. In regulation F1 (pension sharing mechanism in the Scheme), in paragraph (2) after “surviving spouse” insert “, surviving civil partner”.

17. In regulation F6 (discharge of pension credit liability)—

- (a) in paragraph (1) after “ex-spouse” insert “or ex-civil partner”; and
- (b) in paragraph (3) after “ex-spouse” insert “or ex-civil partner”.

18. In regulation F8 (implementation period for discharge of pension credit)—

- (a) in each place in which it occurs, omit “matrimonial”; and
- (b) in paragraph (2)(b) after “divorce” insert “, dissolution”.

19. In regulation F9 (failure to discharge liability in respect of pension credit within the implementation period - death of ex-spouse within period)—

- (a) in the heading and in paragraph (4) after “ex-spouse” insert “or ex-civil partner”; and
- (b) in paragraph (6) after “spouse” insert “or civil partner”.

20. In regulation F15 (charges in respect of pension sharing costs), in paragraph (4) for “or his or her spouse”, in both places where it occurs, substitute “his or her spouse or his or her civil partner”.

21. In Schedule 1 (glossary of expressions)—

- (a) after the definition of “Equivalent pension benefits” insert the following—

““Ex-civil partner”	Means a former civil partner to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order.”;
---------------------	---

- (b) in the definition of “Ex-spouse” for “an individual” substitute “a former spouse”.

22.—(1) Schedule 6 (family benefits) is amended as follows.

(2) After Part II insert the following—

“PART IIA

CONTRIBUTIONS: CIVIL PARTNERS

12A.—(1) A teacher is a qualifying teacher for the purposes of this Part if he or she is—

- (a) a civil partner; and
- (b) in pensionable employment.

(2) A qualifying teacher may by giving notice in writing to the Scottish Ministers before the end of the election period elect to pay family benefit contributions attributable to a period of his or her reckonable service which ended before 6th April 1988.

(3) If a qualifying teacher dies before the end of the election period without making an election under sub-paragraph (2), his or her surviving civil partner may by giving notice in writing to the Scottish Ministers within 3 months of the qualifying teacher’s death elect to pay family benefit contributions attributable to a period of the qualifying teacher’s reckonable service which ended before 6th April 1988.

(4) The election period begins on the day on which a teacher first becomes a qualifying teacher (in respect of each civil partnership he or she forms) and ends on the earlier of the day on which—

- (a) any election he or she makes under regulation B6 has effect, and
- (b) he or she has been a qualifying teacher for a continuous period of 6 months.

(5) A teacher who makes an election under this paragraph must specify in the notice the period in respect of which the election is made, which must be either the whole of the qualifying teacher’s reckonable service which ended before 6th April 1988 or such part of such service as consists of one or more whole years.

(6) Where an election is made under sub-paragraph (2), the qualifying teacher must state in the notice whether family benefit contributions are to be paid by Method 1 (monthly payments) or Method 2 (lump sum) and, if the former, must specify a percentage of his or her contributable salary at which they are to be paid and which must comply with paragraph 13(2) and (3).

(7) Where a qualifying teacher’s pensionable employment is part-time, for the purpose of specifying (under sub-paragraph (6)) a percentage rate at which family benefit contributions are to be paid or varying (under paragraph 13(4)) that rate, sub-paragraph (6) and paragraph 13(2) have effect as if the reference to the qualifying teacher’s contributable salary were to his or her full-time equivalent salary.

(8) Except as provided in paragraph 13(4), an election under this paragraph is irrevocable.

12B.—(1) This paragraph applies where—

- (a) the qualifying teacher states under paragraph 12A(6) (in accordance with an election made under paragraph 12A(2)) that the family benefit contributions are to be paid by Method 1, and
- (b) the payment period exceeds a year.

(2) Where this paragraph applies, except as otherwise provided in Part III, the qualifying teacher must pay family benefit contributions to the Scottish Ministers by way of monthly payments from his or her contributable salary at the percentage rate specified under paragraph 12A(6) or, where the rate is varied under 13(4), at the specified higher rate for the duration of the payment period.

(3) Except as otherwise provided in Part III, the payment period (in years) is the period in respect of which the election is made specified under paragraph 12A(5) (in years) multiplied by the multiplier specified ascertained from Table 5A below.

Table 5A

<i>Rate specified under paragraph 12A(6)</i>	<i>Multiplier Where qualifying teacher is a man</i>	<i>Multiplier Where qualifying teacher is a woman</i>
1%	1.90	1.70
2%	0.95	0.81
3%	0.64	0.54
4%	0.48	0.39
5%	0.38	0.32
6%	0.31	0.26
7%	0.27	0.21
8%	0.24	0.19
9%	0.21	0.16

(4) Where the payment period would (apart from this sub-paragraph) end on a day other than the last day of a month, the payment period ends with the last day of the month in which it would otherwise end.

12C.—(1) Except where paragraph 12B applies, the teacher who makes an election under paragraph 12A must pay family benefit contributions to the Scottish Ministers by way of a lump sum calculated in accordance with the Method 2 formula in sub-paragraph (2) within 3 months of receiving written notice of the amount of the lump sum.

(2) The Method 2 formula is $A \times B \times C$,

where—

A is 1.9% if the qualifying teacher is a man and 1.7% if the qualifying teacher is a woman,

B is the period (in years) specified under paragraph 12A(5), and

C is the annual rate of the qualifying teacher's contributable salary.”.

(3) In paragraph 13—

(a) in sub-paragraph (1)(b) for “Method A.” substitute “Method A, or”; and

(b) after sub-paragraph (1)(b) insert the following—

“(c) family benefit contributions are payable by monthly payments under paragraph 12B (Method 1).”.

(4) In paragraph 15 for “or widower” substitute “, widower, or surviving civil partner”.

23.—(1) Schedule 12 is amended as follows.

(2) In paragraph 4—

(a) after “spouse’s” insert “or civil partner’s”;

(b) for “teacher’s and his widow’s or, as the case may be, her widower’s pensions” substitute “pensions of the teacher and his or her widow, widower or surviving civil partner (as the case may be)”.

(3) In paragraph 5(b) after “spouse’s” insert “or civil partner’s”.

(4) In paragraph 12(a) after “marital” insert “and civil partnership”.

(5) After paragraph 12, insert—

“12A. In paragraph 12(a) “marital and civil partnership status”, in relation to a teacher, means whether that teacher has previously formed a marriage or a civil partnership, and if so, whether that marriage or civil partnership has ended.”.

Amendment of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996

24. The Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996(a) shall be amended in accordance with regulations 25 and 26.

25. In regulation 7(3) (short-term compensation) after “spouse” insert “, civil partner”.

26.—(1) Regulation 10 (payment of compensation under regulations 7, 8 and 9) is amended as follows.

(2) In the Table below paragraph (1) after “spouse”, in the three places where it occurs, insert “, civil partner”.

(3) For paragraph (3) substitute the following—

“(3) Unless the employing authority determines otherwise in a particular case, short-term or long term compensation payable to or in respect of any person under regulation 7, 8 or 9—

- (a) is not payable if, at the date of the deceased’s death, the person to whom it would (apart from this sub-paragraph) have been payable is living with someone else as if they were husband and wife or as if they were civil partners;
- (b) ceases to be payable when the person to whom it was payable marries, forms a civil partnership or begins to live with someone as if they were husband and wife or as if they were civil partners; and
- (c) if the employing authority so decides, may be payable upon the person to whom it would (apart from sub-paragraph (a) or (b)) have been payable again becoming a widow, widower or surviving civil partner, or on the termination of any such marriage, civil partnership or, as the case may be, of the period of cohabitation.”.

(4) After paragraph (3) insert the following—

“(3A) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex”.

The Teachers’ Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995

27.—(1) The Teachers’ Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995(b) are amended as follows.

(2) In regulation 2(3) (interpretation) in the definition of “dependant” after “spouse” insert “or surviving civil partner”.

(3) For the heading of regulation 13A (pension sharing on divorce) substitute “Pension sharing on divorce or on the dissolution of a civil partnership”.

Right to opt out

28.—(1) Where—

- (a) apart from this regulation, the amendments made by regulations 3 to 23 would place any relevant beneficiary in a worse position than that in which he or she would otherwise be; and
- (b) that relevant beneficiary so elects by notice in writing given to the Scottish Ministers before 5th June 2006,

then the 2005 Regulations shall have effect in relation to him or her as if those amendments had never been made.

(a) S.I. 1996/2317, to which there are amendments not relevant to these Regulations.

(b) S.I. 1995/2814, amended by S.S.I. 2001/292 and other amendments not relevant to these Regulations.

(2) For the purposes of paragraph (1), a relevant beneficiary is a person to whom any benefit is or may become payable being a benefit payable to or in respect of a person who—

(a) ceased to hold an employment in respect of which he or she was a member (whether or not he or she had subsequently recommenced any such employment); or

(b) died while in such employment,

before the date on which these Regulations come into force.

GEORGE LYON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
26th October 2005

We consent

31st October 2005

VERNON COAKER

DAVE WATTS

Two of the Lords Commissioners of
Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 5th December 2005 make amendments to the Teachers' Superannuation (Scotland) Regulations 2005 ("the 2005 Regulations"), and further amendments to the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 ("the 1996 Regulations") and the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 ("the 1995 Regulations").

The amendments in these Regulations make provision following the introduction of the new status of civil partner by the Civil Partnership Act 2004. The following changes of substance are made.

Regulations 3 and 22 amend regulation C10 of and Schedule 6 to the 2005 Regulations to enable a Scheme member who forms a civil partnership to pay family benefit contributions in respect of periods of his or her service prior to 6th April 1988.

Regulation 4 amends regulation E1 to require a pension to be paid in certain circumstances to a surviving civil partner of a teacher who has a guaranteed minimum (within the meaning of the Pensions Schemes Act 1993).

Regulation 5 amends regulation E14 to enable a teacher to allocate his or her pension to provide an alternative benefit for his or her civil partner.

Regulations 6 and 7 amend regulations E24 and E25 to require any death gratuity or deficiency payment to be paid, in the absence of a nominee, to the teacher's surviving civil partner in the first instance.

Regulation 8 amends regulation E26 so that a "child" for the purposes of the 2005 Regulations does not include someone who is a civil partner.

Regulation 9 amends regulation E27 so that a civil partner cannot nominate, or be nominated as, a beneficiary to receive a survivor's pension.

Regulations 8, 10, 11, 12 and 13 amend regulations E26 and E28 to E31 to provide for short-term and long-term pensions to be paid to surviving civil partners of Scheme members.

Regulation 14 amends regulation E32 to provide for the calculation of long-term pensions payable to the children of Scheme members who are civil partners.

Regulation 15 amends regulation E33 so that a survivor's pension ceases to be payable if the survivor forms a civil partnership, or lives with someone as if they were civil partners.

Regulations 16 to 21 amend Part F and Schedule 1 to provide for the pension sharing provisions to have effect on the dissolution of a civil partnership.

Regulation 26 amends regulation 10 of the 1996 Regulations to provide for the period for which short- and long-term compensation is payable to the surviving civil partner of a teacher who was credited with a period of service on termination of employment.

Regulation 27 amends regulation 2(3) of the 1995 Regulations so that "dependant" includes a surviving civil partner.

Regulation 28 makes transitional provision for opting out where rights relating to former teachers or their dependents are adversely affected.

Some Scheme employers are in the business, charity and voluntary sectors. An assessment of the impact on these sectors together with the cost implications to public sector pension schemes of the provision of this instrument is included in the regulatory impact assessment published with the Civil Partnership Act 2004. A copy of that assessment can be viewed at <http://www.dti.gov.uk/access/ria/index/htm#equality>.

2005 No. 543

PENSIONS

**The Teachers' Superannuation (Scotland) Amendment
Regulations 2005**

£3.00

© Crown Copyright 2005