
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further amendments to the Teachers' Superannuation (Scotland) Regulations 2005 ("the 2005 Regulations"), 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 AVC Regulations").

Amendment of the 2005 Regulations

Regulation 4 amends regulation B2 of the 2005 Regulations to provide for those part-time teachers who are not existing members of the Scottish Teachers' Superannuation Scheme ("STSS"), but who elect to join on or after 1st April 2007 and consequently have either mixed service or are a "2007 or later entrant" and elect to backdate contributions.

Regulation 5 amends regulation B6. Paragraph (2) raises the upper membership age of the scheme from age 70 to 75 and paragraph (3) inserts the provisions of current regulation B9 to provide that a teacher is not in pensionable employment where the re-employment commenced between 1st April 1997 and 30th September 2001 unless he or she makes an election under regulation B8.

Regulation 6 amends regulation B7 to make clear that a teacher in concurrent employment can only opt out in relation to all of the employments.

Regulation 7 amends regulation B8 to cover teachers who were in post-retirement employment before 1st April 2007, but who had not made an election under that regulation that the employment should be pensionable. Such employment will not become pensionable automatically by virtue of the omission of regulation B9 but such a teacher can elect to join on or after 1st April 2007 with a normal pension age of 65 (classed as a new entrant). The employer and employee can pay back contributions to cover earlier service.

Regulation 8 omits regulation B9 which is redundant as re-employed teachers will automatically be included in the STSS membership by virtue of regulations B1 and B2. The provisions of B9(2) have been transferred to regulation B8.

Regulation 9 amends regulation C2 to make changes consequential to the removal of the provisions for buying current added years (CAY) and past added years (PAY). Paragraph (3) omits paragraph (11) of regulation C2 because the definition of the "retail prices index" is now in Schedule 1.

Regulation 10 substitutes regulation C3 to make new provision as to how member contributions will be determined. The effect of the amendment is that member contributions will increase from the current 6% to 6.4% on 1st April 2007 and that future member contribution rates will be set as equal to the member rate applied at the equivalent scheme valuation in the Teachers' Pension Scheme (England and Wales).

Regulation 11 inserts new regulations C4A and C4B. Regulation C4A makes provision for the payment of contributions to be paid where an election under regulation B8 is made and is to take effect from an earlier date. Regulation C4B, together with the new Schedule 2A allows a member or his or her employer to make an election to purchase an amount of additional pension. The amount of additional pension purchased will be increased in line with the Retail Prices Index (RPI) between the date of the election and the date the benefit is drawn in accordance with new regulation E7A. Once in payment, the additional pension will, in the same way as the main retirement pension, be uplifted

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in accordance with the Pensions Increase Act. The election may cover either personal benefits or personal and dependant benefits. The limits are specified in the new Schedule 2A.

Regulation 12 omits regulation C5 and regulation C6 to remove the provisions to purchase PAY by the member and the facility for the beneficiary to complete the payments on the early death of the member. Transitional arrangements are in place to cover elections already in place. Regulation C5 and C6 are replaced by the provision to purchase additional pension benefits under new regulation C4B.

Regulation 13 substitutes regulation C7 which, when taken with the existing Schedules 3 and 4 of the 2005 Regulations, allows persons purchasing PAY to continue purchasing PAY until the end of the arrangement. The effect of the amendments is that it will not be possible for a teacher, who has made a PAY election, to alter the payment period or reduce the rate of additional contributions.

Regulation 14 omits regulation C8 to removes the ability to purchase CAY. Transitional provisions in paragraph 5 of Schedule 2 allow for a person to continue to purchase CAY until the end of the arrangement].

Regulation 15 amends regulation C9 to provide for the change in the employee's contribution rate.

Regulation 16 amends regulation C10. Together with Schedule 6 (which is amended by inserting new Part IIB) the amendment provides for payment of additional contributions to cover pre-1st April 2007 service which would not otherwise count for the purpose of paying a survivor's pension to the surviving partner of a member nominated in accordance with new Regulation E22A.

Regulation 17 amends regulation C11. Paragraph (2) makes changes consequential to the deletion of PAY and paragraph (3) raises the age for the return of contributions to age 75 where a teacher does not qualify for benefits and a refund has not been claimed. This corresponds with changes to regulation B6 whereby teachers can contribute to the STSS up until their 75th birthday.

Regulation 18 amends regulation C12 in consequence of the removal of the PAY and CAY provisions and regulation 19 amends regulation C14 to reflect the removal of regulations B9 and C8. Regulation 20 amends regulation C15 in consequence of new regulations C4A and C4B. Regulation 21 makes changes to regulation D4 in consequence of the omission of regulation C8.

Regulation 22 inserts new regulation EA1 which makes provision for existing members, new entrant and mixed service member. Under paragraph (5) and (6) any break in service of more than 5 years will result in a change in status for existing members and that to retain their normal pension age, 60 days pensionable employment or 30 days reckonable service (whether continuous or not) over a 12 month period within that 5 year period will be required. Paragraph (10) stipulates the definition of normal pension age in relation to each type of member. Paragraphs (12) creates added protection to those who are making contributions using the Current Added Years facility and to cover service in a reserve force, with the effect that such members will be treated as if they are in pensionable employment for the purposes of determining their status within the scheme.

Regulation 23 makes consequential amendment to regulation E2 in respect of the normal pension age of 65. Regulation 24 amends regulation E4 to enable an increase in the amount of tax-free lump sum at retirement from the 3/80ths currently allowed. Regulation 25 amends regulation E5 in consequence of the removal of regulation B9.

Regulation 26 substitutes regulation E6 to provide that deferred members are eligible for benefits subject to meeting the total incapacity standards set out in paragraphs (5), and specifies that the minimum retirement age in relation to premature retirement (i.e. the minimum age at which a member who is not a "post 30th June entrant" can be entitled to benefits under Regulation E6) is raised from age 50 to 55 where the member has not reached the age of 50 before 6th April 2010.

Regulation 27 introduces a new regulation E6A to enable a teacher to elect to receive some of his or her accrued benefits without the requirement of having to retire, known as phased retirement benefits. Under paragraph (2), to be eligible, a member must have reached the age of 55 and either is to continue in his or her employment or has secured further employment elsewhere. In both cases,

the teacher's employer has to certify that the member has taken a minimum reduction in salary of 25% compared to before he or she applied for phased retirement benefits. A member can choose to make up to two such elections of his or her pension benefits before retirement. The amount of phased retirement benefits is calculated as set out in regulation E7 and (where applicable) E8 but taking into account actuarial reduction. The pensionable salary is calculated as the teacher's pensionable salary immediately before the change in employment and the effective reckonable service is the percentage of the election up to the date of that change. Similar adjustment is made for any additional benefits to be paid as part of the phased retirement benefits.

Regulation 28 replaces regulation E7 to insert the differences in application between the 1/80th and 1/60th arrangements in respect of pension calculation. Paragraphs (9) and (10) introduce actuarial enhancements for those who are covered by the normal pension age arrangements (whether as a new entrant or with mixed service) and who work beyond the normal pension age of 65.

Regulation 29 inserts a new regulation E7A which makes provision for the calculation and payment of additional pension at retirement where the member had previously made an election to purchase additional pension under regulation C4B.

Regulation 30 substitutes regulation E8 to insert differences in application between the 1/80th and 1/60th arrangements in respect of lump sum. Paragraph (4) provides that a member's lump sum cannot exceed the "permitted maximum" defined in Schedule 1 by reference to the Finance Act 2004; paragraph (6) provides that a teacher aged 75 or over cannot receive a lump sum.

Regulation 31 introduces new regulations E8A and E8B. Regulation E8A sets out the commutation factors to be applied to the tax-free lump sum conversions from pension and the requirement for it to be within the maximum 25% of the fund value. Regulation E8B provides that where a member is prevented from receiving a lump sum because he or she is 75 years of age or over, he or she will receive an increased pension.

Regulation 33 amends regulation E10 and inserts new regulation E10A. Regulation E10 is amended so that existing service enhancements are only applied in respect of applications received before 1st April 2007. Regulation E10A is inserted to cater for those whose application is received on or after 1st April 2007. Paragraph (2) details the conditions for enhancement to apply and E10A(3) to E10A(5) explain how enhancement will be calculated. E10A(6) confirms that enhancement will be calculated to the Normal Pension Age (NPA) of 65 in cases of mixed NPA 60 and NPA65 service and E10A(7) confirms that the enhancement (Total Incapacity Benefit), although separate to the retirement pension (Partial Incapacity Benefit), is paid at the same time. Under the new provisions, a member who is not in pensionable employment is only entitled to benefits if, as well as being incapacitated, his or her ability to carry out work is impaired by more than 90% and is likely permanently to be so. Where however a member is in pensionable employment or taking unpaid leave immediately following pensionable employment and is entitled to benefits he or she will also be entitled to payment of an additional "total incapacity pension" and, where applicable, lump sum if his or her ability to carry out work is impaired by more than 90% and is likely permanently to be so.

Regulation 35 omits regulation E14, with the effect that part of a member's pension may no longer be allocated to a dependant. Regulation 36 amends regulation E16 in consequence of the renumbering of regulation E6. Regulation 37 amends regulation E17 so that it only relates to applications received before 1st April 2007.

Regulation 38 creates a new regulation E17A for those teachers whose application is received on or after 1st April 2007. The provision sets out how those teachers with Total Incapacity Benefit can take up employment outside teaching if they have a medical certificate confirming that total incapacity still exists. Otherwise, it replicates the existing regulation E17 in determining the dates from which incapacity has ceased and future retirement benefits become payable. Where the member has received the additional total incapacity pension but the member's ability to carry out work ceases to be impaired by more than 90% the total incapacity pension ceases to be payable. If a member ceases to be incapacitated his or her retirement pension ceases to be payable. If a member takes up

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certain types of employment his or her ability to carry out work is treated as ceasing to be 90% impaired or (as the case may be) he or she is treated as ceasing to be incapacitated.

Regulation 39 amends regulation E18 to provide for, where appropriate, the new pensionable salary arrangements in the determination of a member's 'salary of reference'. From 1st April 2007 onwards, the 'salary of reference' used to determine a teacher's 'earnings margin' will depend on the date of cessation of employment or re-employment:

- (a) cases where the member became entitled to pension before 1st April 2007 (regulation E18(3A)): the 'salary of reference' will be determined as per regulation E18 as it currently stands;
- (b) cases where the member became entitled to pension on or after 1st April 2009 (regulation E18(3B)): the 'salary of reference' will be based on the highest salary during the final 365 days (if used to calculate pension) OR the highest salary during the best three-year average period (if used to calculate pension); and
- (c) cases where the member became entitled to pension on or after 1st April 2007 and before 1st January 2009 (regulation E18(3C)): the better of (a) or (b).

Regulation 40 makes changes to regulation E19 in consequence of the omission of regulations B9, E14 and the renumbering of E6. Regulation 41 amends regulation E20 as a consequence of the removal of B9. Regulation 42 amends regulation E23 to reflect the renumbering of paragraphs in regulation E6.

Regulation 43 amends regulation E24 to raise the death grant to three times the pensionable salary of the teacher for those who have service on or after 1st April 2007.

Regulation 44 amends regulation E25 to require any deficiency grant to be paid, in the absence of a nominee, to a surviving nominated partner. Regulation 45 amends regulation E26 to provide for short and long-term pensions to be paid to a surviving nominated partner and to provide that a person nominated under regulation E27 does not receive a pension if he or she is co-habiting at the date of the member's death.

Regulation 46 inserts new regulation E26A to enable scheme members who are living together as civil partners or as husband and wife to nominate their partner to receive a beneficiary's pension.

Paragraphs (1) and (2) prescribe the conditions that must be met for a partner to be nominated. The scheme member (Person A) and the partner (Person B) are required to make a joint declaration that the following conditions have been met for a continuous period of two years when the nomination is made. Paragraph (3) deals with the situation where it comes to light that the conditions were not satisfied (i.e. the declaration was falsely made by either party). In such circumstances the nomination would have no effect and the Scottish Ministers would have power to reclaim any pension incorrectly paid. Paragraph (4) deals with the circumstances under which a nomination ceases to have effect.

Regulation 47 amends regulation E27 to provide that, if a partner is nominated under regulation E26A, any previous nomination made under regulation E27 of the 2005 Regulations ceases to have effect and no such nomination may be made while the nomination under regulation E26A is current.

Regulations 48, 49, 50 and 51 amend regulations E28, E29, E30 and E31 respectively to provide for short and long-term pensions to be paid to the surviving nominated partner. The service that counts for the purpose of calculating a surviving nominated partner's pension is specified in new paragraph (4B) of regulation E30.

Regulation 52 amends regulation E32 to provide for the calculation of long-term pensions payable to children where a pension is payable to a surviving nominated partner.

Regulation 53 inserts new regulation E32A to provide that if the scheme member has purchased additional pension for survivor partner, (widow, widower, civil partner or surviving nominated partner) purposes, the rate of the survivor pension would be half the rate of the additional pension purchased.

Regulation 54 amends regulation E33 so that survivor pensions are payable for the lifetime of the recipient. Widow, widower and civil partner pensions payable from a date prior to 1st April 2007 will remain liable to cessation on remarriage, civil partnership or cohabitation.

Regulation 55 amends regulation E34 to make new provisions for determining a member's pensionable salary on which benefits are calculated. The effect of the amendments, when taken with section 8(2)(a) of the Pensions (Increase) Act 1971, is that a member's pensionable salary is either the salary in the last 365 days of service or the average of the salary, index linked up to the date when the pensionable salary service ended, for the best 1095 consecutive days of service in the previous ten years. Consequential amendments are made to regulation E18. Under transitional provisions, the existing provisions continue to apply where a member's entitlement to benefits took effect before 1st April 2007. Where a member became entitled to benefits on or after 1st April 2007 but before 1st April 2009, the pensionable salary will either be that calculated under the old provisions or that calculated under the new provisions whichever is the higher.

Regulation 56 inserts regulation E34A which sets out the alternative pensionable salary calculation based on the best 1095 consecutive days of service in the last 10 years, index linked up to the date when the pensionable salary service ended. Paragraphs (4) to (6) determines how this pensionable salary works in conjunction with the Pensions Increase Act 1971 to provide the right level of benefits. Paragraph 7 provides that service need not be continuous but that it may be necessary to look back further than 10 years in order to achieve 1095 days of service. Paragraphs (8) and (9) repeat the leap year clarifications given in new regulations E34(14A) and (14B).

Regulation 57 amends regulation E35 with the effect that there is no longer a restriction on reckonable service at age 60, but overall service limit will be retained.

Regulation 58 amends regulation E36 to provide that any application for benefits must be made in writing. It also makes clear that the applicant and the employer must provide the relevant medical evidence which supports the application.

Regulation 59 amends regulation E37 to provide that no interest is payable on any late payment of phased retirement benefits under regulation E6A and to provide for the date from which interest is payable when ill-health pensions are restored retrospectively.

Regulation 60 amends regulation F1 to clarify that a pension paid to a surviving nominated partner is not a shareable right.

Regulation 61 amends regulation F9 to take account of the increase in normal pension age.

Regulation 62 amends regulation F10 to make clear that the lump sum amounting to three times the annual pension only relates to those credit members with a normal pension age of 60. Regulation 63 inserts new regulation F10A which sets out the process for defining the normal pension age for a pension credit member and also for when the pension debit member has mixed service. Regulation 64 amends regulation F13 to take account of the increase in normal pension age.

Regulation 65 inserts new regulation F13A to allow increased lump sum flexibility for pension credit members in line with those for the pension debit members, by way of commutation.

Regulation 66 amends regulation G1 to provide for the normal pension age of 65 in respect of transfer values as well as normal pension age 60.

Regulation 67 substitutes regulation H3 to make provision for how the employers' contribution rate will be determined. The employer contribution rate is the balance between the overall Scottish valuation scheme cost (the net contribution rate) and the member rate that is set according to revised regulation C3. This amendment also makes provision for the increase in the employers' contribution rate from 12.5% to 13.5% from 1st April 2007.

Regulation 68 inserts new regulations H5A and H5B. Regulation H5A makes provision for the payment of employers' contributions where a teacher has become re-employed and contributions are to be backdated and regulation H5B makes provision for payment of employers' contributions where the employer elects to purchase additional benefits on behalf of a teacher.

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Regulation 69 amends regulation H6(3) in consequence of the removal of PAY.

Regulation 70 amends regulation J1 in respect of “stepping down” elections, which, with the introduction of the new pensionable salary arrangements, will no longer be necessary. The effect of the amendments is that a reduction in salary will have to take place before 1st April 2007 and an election must be made by 1st July 2007 for a member to make use of the current provision.

Regulation 71 amends regulation J2 to extend the winding down scheme to normal pension age of age 65 members and to allow a teacher to have a break of more than 5 years, but allowing only 5 years of any break to count towards the requirement of having 25 years teaching service. Consequently the required 25 years teaching service does not have to be immediately prior to winding down.

Regulation 73 inserts new regulation J6A to introduce a requirement for a declaration to be signed prior to payment of benefits whereby the individual undertakes not to re-cycle any lump sum from the Teachers' Pension Scheme into another pension-savings vehicle. The amendment is consequential on amendments in the Finance Act 2006 to the Finance Act 2004 which provide that from 6th April 2006 where individuals who use their tax-free lump sum, as a result of accessing retirement benefits, to invest in other pension-saving vehicles, except where a low value exemption apply, the lump sum will be an “unauthorised” payment and in consequence subject to tax charges. If no declaration is received, any lump sum which would have been paid as a result of regulation E8 and regulation F10 may be converted to an additional pension. Where the payment would have been a lump sum paid as a result of regulation E6A, or E8A or F13A, then the commutation election will have no effect.

Regulation 74 amends Schedule 1 which deals with interpretation. The amendment includes a definition of “permitted maximum” in relation to the tax-free lump sum by reference to the Finance Act 2004. The amending provision also changes the definition of the ‘appropriate factor’ so that, instead of being set out in tables in Schedule 10, the factors are determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary).

Regulation 75 inserts a new Schedule 2A in Schedule 1 to the Regulations. Paragraphs 2 to 5 of Schedule 2A allow for a member to make an election to buy additional pension either by a lump sum payment or by monthly deductions from salary, and to define the period over which the monthly contributions will be made. This period is limited to either 20 years or the member’s normal pension age, whichever is sooner.

Paragraph 7 provides for an election to be made to purchase additional pension in units of a value determined by the Scottish Ministers. Paragraph 8 provides that the member must make a health declaration when purchasing additional pension to protect the scheme where the member is more likely to access ill health benefits or to have a reduced life expectancy. Paragraphs 11 to 16 allow for the employer of a member to elect to purchase additional pension on his or her behalf by means of a lump sum payment.

Paragraphs 18 to 22 set out the maximum additional pension that can be purchased. This limit is initially £5,000 but will increase annually in line with retail prices and be subject to periodic review by HM Treasury. Paragraph 23, taken together with paragraph 37, provides for the Scottish Ministers to vary the cost of purchasing additional pension and for any changes in the cost to be reflected in the payments made by members.

Paragraphs 25 and 26 allow a member who is paying by monthly contributions to revoke the election that has been made and to be credited with the additional pension having regard to contributions already paid. Paragraph 28 provides that, where a teacher ceases to be in pensionable employment before the end of the payment period, he or she may elect to make a lump sum payment to cover the remainder of the election or to receive additional pension equivalent to the contributions already made.

Paragraph 31 provides for the return of contributions where a teacher becomes eligible for benefits through incapacity within one year of an election to buy added pension benefits. Where the retirement is more than 12 months after the election, the member will be credited with the benefits he or she had elected to purchase.

Paragraphs 34 to 36 provide that, in the event of a teacher's death within one year of making an election, any contributions made by the member will be returned to his or her estate and any contributions from an employer will be returned to the employer. The teacher's dependants will not receive any additional benefits under that election. Where the death occurs after one year, the dependants will be credited with the full amount of the additional pension specified in the election.

Regulation 79 amends Schedule 6. The amendment removes the tables of factors for the payment of additional contributions to purchase pre-6 April 1988 service for widower and civil partner pension purposes from Parts II and IIA of the Schedule and substitutes reference to multipliers to be determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary). A new Part IIB is inserted to enable scheme members who have made a surviving nominated partner nomination and who are in pensionable employment to pay additional contributions to convert service before 1st April 2007. Scheme members wishing to pay additional contributions for surviving nominated partner purposes are required to make a health declaration.

Regulation 81 amends Schedule 9 to provide for normal pension ages of 60 and 65. Regulation 82 omits Schedules 10 and 11 in consequence of the introduction of the definition of "appropriate factor" in regulation 73 and the removal of regulation E14.

Regulation 84 gives effect to the savings and transitional provisions for the 2005 Regulations in Part I of Schedule 2.

Amendment of the 1996 Regulations

Regulations 85 to 103 makes minor textual and consequential amendment to the 1996 Regulations following consolidation of the 2005 Regulations. In addition, the regulations make the following changes of substance:

Regulation 88 omits regulation 6 to remove the allocation provision in line with the changes to the Teachers' Superannuation (Scotland) Regulations 2005.

Regulation 92 amends regulation 10 to make provision for short-term compensation to be payable to surviving nominated partners under paragraph (2). Paragraph (3) inserts new paragraph (3B) to provide that long-term compensation is only subject to cessation upon remarriage, formation of a civil partnership or cohabitation where the compensation pension arose from a death occurring prior to 1st April 2007.

Regulation 100 inserts a new regulation 19B to allow a former employer (as "the compensating authority") to require an individual to sign a declaration stating that the lump sum element to his or her mandatory premature retirement compensation will not be re-cycled into another pension-saving vehicle.

Amendment of the AVC Regulations

Regulations 105 to 110 amend the AVC Regulations.

Regulation 105 amends regulation 2(3) (Interpretation) to insert a definition of normal pension age giving it the same meaning consistent with the 2005 Regulations. Paragraph 1(b) amends regulation 2 so that "dependant" includes a person in whose favour a nomination under regulation E26A of the 2005 Regulations has effect.

Regulation 106 amends regulation 5(4) which stipulates that anyone working beyond age 60 has to elect annually to pay further contributions to the AVC scheme.

Regulation 108 amends regulation 12 to define the term 'relevant date' which enables the benefits from the AVC scheme to be realised separately from the main scheme and any time after reaching the age of 55. The exceptions to this age requirement are when the main scheme benefits have been paid earlier through regulation E6 of the 2005 Regulations (for example in cases of ill-health or premature retirement, when AVC benefits can be paid earlier). Paragraph (5) replaces regulation 12(6) to amend

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the provisions relating to the payment of the balance of a pension after a teacher's death, where the teacher has notified the pension provider that he or she wishes the pension to continue if the teacher dies within 5 years. In place of the current provision whereby the balance is paid as a lump sum (which would be an unauthorised payment under the Finance Act 2004) the method of payment of the balance is at the discretion of the pension provider. Regulation 109 amends regulation 13A to make similar changes in relation to arrangements created through a pension-sharing order.

Regulation 110 amends regulation 16 by introducing a declaration to the application form to access the accumulated AVC fund. To protect the scheme from sanction charges which might otherwise be imposed by HMRC, in respect of an unauthorised payment the declaration will ask the individual to confirm that he or she does not intend to recycle any lump sum into another pension-savings vehicle. It also provides that, where an individual refuses to sign the declaration that the lump sum will not be recycled, any election under the existing regulation 12 for the provision of a lump sum, may have no effect and the whole accumulated fund will then be used to purchase an annuity (pension) and no lump sum element would be made available.