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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 189**

**The Teachers' Superannuation (Scotland)  
Amendment Regulations 2007**

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

**26.** For regulation E6 (entitlement to payment of retirement benefits) substitute—

**“Entitlement to payment of retirement benefits**

**E6.**—(1) A teacher who has qualified for retirement benefits shall be entitled to payment of them if he or she falls within any of paragraphs (2) and (4) to (7).

(2) The teacher has, subject to paragraph (3), attained the normal pension age and has ceased to be in pensionable employment.

(3) Where the teacher is a teacher with mixed service—

- (a) he or she becomes entitled to payment of that part of the retirement pension referred to in regulation E7(2)(c)(i) and the retirement lump sum when he or she attains the age of 60; and
- (b) where an election under regulation C4B has been made in respect of the teacher and, at the time when the election was made the teacher has not ceased to be a pre-2007 entrant by virtue of regulation EA1(4), the teacher becomes entitled to payment of that part of the retirement pension referred to in regulation E7A when he or she attains the age of 60.

(4) The teacher has attained the age of 70 and is in employment which would be pensionable employment but for regulation B6(1).

(5) The teacher—

- (a) has not attained the normal pension age;
- (b) has ceased after 31st March 1972 and before attaining the normal pension age to be in pensionable employment;
- (c) is incapacitated, became so before attaining the normal pension age; and
  - (i) immediately before he or she became incapacitated—
    - (aa) was in pensionable employment; or
    - (bb) was taking a period of unpaid sick leave, maternity, paternity or adoptive leave, which, in each case, followed on immediately after a period of pensionable employment; or
    - (cc) was paying additional contributions under old regulation C8 or regulation C9; or
  - (ii) made an application for payment under regulation E36(1A) such that it was received by the Scottish Ministers before 1st April 2007; or

(iii) (where neither sub-paragraphs (i) or (ii) applies) his or her ability to carry out any work is impaired by more than 90% and is likely permanently to be so.

(6) The teacher—

- (a) has not attained the normal pension age;
- (b) has attained the age of 50, if the teacher is not a post-30th June 2006 entrant and attained that age before 6th April 2010, or the age of 55 in any other case;
- (c) has ceased after attaining that age to be in pensionable employment, or in excluded employment, or in employment which would have been pensionable employment had an election been made under regulation B2, and that teacher's employer has certified in writing to the Scottish Ministers that his or her employment has been terminated as a result of their redundancy or in the interests of the efficient exercise of the employer's functions; and
- (d) has not received, and is not to receive, compensation under Part IIIA of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996<sup>(1)</sup> and that teacher's employer has agreed that he or she should become entitled to retirement benefits under this paragraph.

(7) The teacher—

- (a) has attained the age of 55;
- (b) has ceased on or after 30th June 2002 and before attaining the normal pension age to be in pensionable employment or excluded employment; and
- (c) is not entitled to payment of retirement benefits by virtue of paragraph (5) or (6),

and the conditions specified in paragraph (10) are satisfied.

(8) Entitlement under—

- (a) paragraph (2) and (4) takes effect as soon as the teacher meets the conditions prescribed therein;
- (b) paragraph (5) takes effect—
  - (i) as from the day after the end of pensionable employment; or
  - (ii) if the date of the teacher's application for payment of retirement benefits on grounds of incapacity is later, that date or such other date as the Scottish Ministers, having regard to all the circumstances, think appropriate;
- (c) paragraph (6) takes effect, unless the teacher entitled to receive payment has waived his or her right to such payment in terms of paragraph (9), as from the day after the end of the employment; and
- (d) paragraph (7) takes effect—
  - (i) where, at the time of the application for benefits under regulation E36, the teacher was in pensionable employment or excluded employment, as from the day after the end of the employment; and
  - (ii) in any other case on a date determined by the teacher making the application for benefits under regulation E36 being a date no earlier than 6 weeks after the date of such application.

(9) A teacher entitled to payment of retirement benefits by virtue of paragraph (6), who is also a teacher to whom the provisions of regulation 7 of the Local Government (Education Administration) (Compensation for Redundancy or Premature Retirement on

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(1) S.I.1996/2317; Part IIIA was inserted by S.I. 1997/675, regulation 7.

Reorganisation) (Scotland) Regulations 1995(2) applies, may waive his or her entitlement to such payment under paragraph (6) by notice in writing to his or her employer, but such waiver shall not prejudice his or her entitlement to benefit under any other provision of this regulation.

(10) The conditions referred to in paragraph (7) are—

- (a) where the teacher has a guaranteed minimum pension in respect of employment before 6th April 1997, or an equivalent pension benefit relating to employment undertaken during the period starting on 3rd April 1961 and ending on 5th April 1975 (or both) that the annual rate of the teacher's retirement benefits in the opinion of the Government Actuary is equal to or exceeds the equivalent pension benefit or the value of the guaranteed minimum pension (or if both the aggregate); and
- (b) where, at the time of the application for payment of benefits under regulation E36, the teacher was in pensionable employment or excluded employment that—
  - (i) his or her employer has consented to the application; or
  - (ii) 6 months have elapsed since the date on which the teacher requested his or her employer to give consent and such consent has not been given.

(11) Subject to paragraph (12) 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.

(12) A teacher is not however a post-30th June 2006 entrant (even if he or she falls within paragraph (11)) 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..”.