

**2008 No. 227**

**PENSIONS**

**The Teachers' Superannuation (Scotland) Amendment  
Regulations 2008**

<i>Made</i> - - - -	<i>4th June 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>5th June 2008</i>
<i>Coming into force</i> - -	<i>1st July 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972(a) and all other powers enabling them to do so.

In accordance with section 9(5) of that Act they have consulted with representatives of education authorities and of teachers and representatives of such other persons likely to be affected by these Regulations as appear to them to be appropriate.

In accordance with section 9(1) of that Act these Regulations are made with the consent of the Treasury(b).

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Teachers' Superannuation (Scotland) Amendment Regulations 2008.

(2) These Regulations come into force on 1st July 2008 and have effect from that date except that—

- (a) regulation 16 has effect from 6th April 2006; and
- (b) regulations 3, 4, 7(2), 8, 18 and 27(3) and (5) have effect from 1st April 2008.

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

2. The Teachers' Superannuation (Scotland) Regulations 2005(c) ("the 2005 Regulations") are amended in accordance with regulations 3 to 29.

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(a) 1972 c.11 ("the 1972 Act"). Section 9 of the 1972 Act 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"); section 190 of and paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48); and article 107 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649). Section 12 of the 1972 Act was amended by section 10 of the 1990 Act. Section 24 of the 1972 Act was amended by section 53(1) of and paragraph 37 of Schedule 1 to the Fire and Rescue Services Act 2004 (c.21). The functions of the Secretary of State under sections 9, 12 and 24 of the 1972 Act were transferred to the Scottish Ministers 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 remains exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(c) S.S.I. 2005/393 as amended by S.S.I. 2005/543, 2006/308 and 605 and 2007/189.

- 3.—(1) Regulation C1 (salary on which contributions are payable) is amended as follows.
- (2) In paragraph (5)—
- (a) for “paragraphs (6) and (7)” substitute “regulation C1A”; and
  - (b) omit “in terms of section 590C of the Taxes Act”.
- (3) After paragraph (5) insert—
- “(5A) In this regulation “permitted maximum” has the meaning given to it by regulation 1(2) of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(a).”.
- (4) Omit paragraphs (6), (7) and (8).
4. After regulation C1 insert—

**“Removal of the cap on contributable salary**

- C1A.**—(1) Regulation C1(5) only applies to a teacher—
- (a) who is a relevant teacher; and
  - (b) in respect of whom that regulation has not ceased to apply by virtue of paragraph (2).
- (2) Regulation C1(5) shall cease to apply to a relevant teacher—
- (a) who on or after 1st April 2008 elects in accordance with paragraph (4) for that provision not to apply for the purposes of determining the amount of the teacher’s contributable salary; or
  - (b) who does not make such an election but the circumstances specified in paragraph (6) or (9) apply to that teacher.
- (3) In this regulation a “relevant teacher” is a teacher—
- (a) who is in pensionable employment immediately before 1st April 2008; and
  - (b) who immediately before that date is a person to whom regulation C1(5) applies.
- (4) The election referred to in paragraph (2)(a) must—
- (a) be made by giving written notice to the Scottish Ministers;
  - (b) include a written notice from the relevant teacher’s employer confirming that the employer consents to regulation C1(5) not applying for the purposes of determining the amount of that teacher’s contributable salary; and
  - (c) be received by the Scottish Ministers on or before 31st December 2008.
- (5) A notice received by the Scottish Ministers in accordance with paragraph (4) on or before 31st July 2008 may specify that it is to be deemed to have been received on a date falling between 1st April 2008 and 30th June 2008.
- (6) Subject to paragraph (8), the circumstances are that at any time on or after 1st April 2008 the relevant teacher referred to in paragraph (2)(b) begins a new employment.
- (7) For the purposes of paragraph (6), a teacher is to be treated as beginning a new employment if the teacher—
- (a) begins pensionable employment with an employer who is different from the employer in relation to the pensionable employment referred to in paragraph 3(a); or
  - (b) continues in pensionable employment with the same employer but in a new post under a different contract of employment.
- (8) Paragraph (6) does not apply where the teacher begins pensionable employment with a different employer by reason of a transfer of undertakings.

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(a) S.I. 2006/364.

- (9) The circumstances are that at any time on or after 1st April 2008–
- (a) the contract of employment of the relevant teacher is varied so that the teacher is required to undertake functions which are materially different from those the teacher was required to undertake before the variation was made; and
  - (b) the employer gives written notice to the Scottish Ministers of the variation of the teacher’s contract of employment.

(10) Subject to paragraph (5), in the case of a teacher to whom paragraph (2)(a) applies, regulation C1(5) ceases to apply on the last day of the month in which the notice of election is received by the Scottish Ministers in accordance with paragraph (4).

(11) In the case of a teacher to whom paragraphs (2)(b) and (6) apply, regulation C1(5) ceases to apply immediately before the date on which the teacher begins the new employment referred to in paragraph (6).

(12) In the case of a teacher to whom paragraphs (2)(b) and (9) apply, regulation C1(5) ceases to apply immediately before the date on which the variation in the contract of employment takes effect.”.

5. In paragraphs (1)(a) and (9) of regulation C2 (salary on which contributions are payable) after “paternity” insert “, parental”.

6. For regulation C4B(1) (election in respect of additional benefits) substitute–

“(1) Any teacher in pensionable employment–

- (a) who has not attained the normal pension age; or
- (b) who is a pre-2007 entrant who has attained the age of 60 but has not attained the age of 65,

may at any time elect to pay additional contributions in accordance with Schedule 2A in order to be credited with additional benefits.”.

7.—(1) Regulation D1 (reckonable service generally) is amended as follows.

(2) In paragraph (1) for “regulation D2” substitute “regulations D2 and D5”.

(3) In paragraph (4)(a) after “paternity” insert “, parental”.

8. After regulation D4 insert–

**“Calculation of reckonable service where cap on contributable salary is removed**

**D5.**—(1) This regulation applies for the purposes of determining the length of reckonable service of a teacher–

- (a) who is a relevant teacher within the meaning of paragraph (3) of regulation C1A (removal of the cap on contributable salary); and
- (b) who has made the election referred to in paragraph (2)(a) of that regulation, or is a teacher to whom paragraphs (2)(b) and (6) or (9) of that regulation apply.

(2) The reckonable service of such a teacher is (rounded up to the nearest day)–

$$A + \frac{(B \times C)}{D}$$

Where–

A is the aggregate of periods of uncapped reckonable service;

B is the aggregate of periods of capped reckonable service;

C is the permitted maximum which has effect on the relevant date; and

D is the higher of–

- (a) the amount of the teacher’s contributable salary in the period of 12 months ending on–
  - (i) in a case to which paragraph (2)(a) of regulation C1A applies, the last day of the month in which the notice of the election is received by the Scottish Ministers in accordance with paragraph (4) of that regulation or deemed to be received by the Scottish Ministers in accordance with paragraph (5) of that regulation; or
  - (ii) in a case to which paragraphs (2)(b) and (6) of regulation C1A apply, the last day of the teacher’s pensionable employment referred to in paragraph (3)(a) of that regulation; or
  - (iii) in a case to which paragraphs (2)(b) and (9) of regulation C1A apply, the day immediately before the date on which the variation of the contract of employment takes effect; or
- (b) the permitted maximum.

(3) In this regulation–

- (a) the reference to periods of capped reckonable service is to periods of employment or service which apart from this regulation the teacher would be entitled to count as reckonable service in accordance with the provisions of this Part, and in respect of which–
  - (i) regulation C1(5) applies; or
  - (ii) in the case of transferred-in service, the benefits payable in respect of the employment or service under the relevant pension scheme were subject to the limits imposed by section 590C of the Taxes Act(a) or regulation 4 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(b);
- (b) references to periods of uncapped reckonable service are to any periods which apart from this regulation the teacher would be entitled to count as reckonable service in accordance with the provisions of this Part and which are not periods of capped reckonable service;
- (c) “permitted maximum” has the meaning given in regulation C1(5A);
- (d) in paragraph 3(a)–
  - (i) the reference to transferred-in service is to service which the teacher is entitled to count as reckonable service by virtue of regulation G2(5) (acceptance of transfer values); and
  - (ii) the reference to the relevant pension scheme, in relation to transferred-in service, is to the previous scheme (within the meaning of regulation G2(2));
- (e) the reference to the amount of contributable salary received by the teacher is to the amount of contributable salary calculated in accordance with regulations C1 and C2, but disregarding paragraph (5) of regulation C1; and

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(a) Section 590C was inserted by the Finance Act 1989 (c.26), Schedule 6, paragraph 4(a). Section 590C has subsequently been repealed by the Finance Act 2004 (c.12), Schedule 42, Part 3.

(b) S.I. 2006/364.

- (f) the relevant date is–
  - (i) in the case of a teacher to whom paragraph (2)(a) of regulation C1A applies, the first day of the first month after the date on which the notice of the election is received by the Scottish Ministers in accordance with paragraph (4) of that regulation or deemed to be received by the Scottish Ministers in accordance with paragraph (5) of that regulation; or
  - (ii) in the case of a teacher to whom paragraphs (2)(b) and (6) of regulation C1A apply, the date on which the teacher begins the new employment referred to in paragraph (6) of that regulation; or
  - (iii) in the case of a teacher to whom paragraphs (2)(b) and (9) of regulation C1A apply, the date on which the variation of the contract of employment takes effect.”.

**9.—(1)** Regulation EA1 (meaning of various terms) is amended as follows.

(2) In paragraph (2) after “in paragraph (3)” insert “or the condition in paragraph (3A)”.

(3) After paragraph (3) insert–

“(3A) The condition is that–

- (a) the teacher enters pensionable employment on or after 1st April 2007;
- (b) the teacher enters pensionable employment by virtue of a transfer of undertakings or by virtue of arrangements equivalent to a transfer of undertakings; and
- (c) immediately before entering pensionable employment the teacher was–
  - (i) in employment pensionable under a public service pension scheme; and
  - (ii) entitled under the rules of that scheme to receive benefits on retirement from such employment before or on attaining the age of 60.

(3B) In paragraph (3A)–

- (a) “public service pension scheme” has the same meaning as in section 1 of the 1993 Act except that it does not include an occupational pension scheme established under section 7 of the Superannuation Act 1972; and
- (b) the reference to arrangements equivalent to a transfer of undertakings is to arrangements–
  - (i) which do not constitute a transfer of undertakings; and
  - (ii) under which the parties to the arrangements have agreed that the rights of the teachers whose employments are being transferred should as far as practicable be treated in the same way as they would have been under a transfer of undertakings.

(3C) For the purposes of paragraph (3A)(c)(ii) a teacher is not to be treated as being entitled under the rules of a pension scheme to receive benefits before or on attaining the age of 60, where such entitlement arises by virtue of any scheme rule making special provision–

- (a) as to early retirement on grounds of ill-health, redundancy or otherwise; or
- (b) for benefits to be reduced for early payment.”.

**10.—(1)** Regulation E6 (entitlement to payment of retirement benefits) is amended as follows.

(2) In paragraph (5)(c)(i)(bb) after “paternity” insert “, parental”.

(3) After paragraph (5)(c)(iii) insert–

“and;

- (d) –
  - (i) in the case of a teacher registered or formerly registered with the General Teaching Council for Scotland and who has ceased after 31st March 1997 to be in pensionable employment, has not had his or her name removed from the

Council's register following a direction by the Council's Disciplinary Committee and is not under an investigation which might result in such removal; or

- (ii) in any other case, where a teacher has ceased after 31st March 1997 to be in pensionable employment, has not ceased to be in pensionable employment as a result of dismissal on grounds of misconduct.”.

(4) In paragraph (10)(a) for “Government Actuary” substitute “scheme actuary”.

**11.**—(1) Regulation E7 (amount of retirement pension) is amended as follows.

(2) In paragraph (1) for the words from “together with” to the end of the paragraph, substitute—

“together with—

- (a) the rate specified in regulation E7A where that regulation applies; and  
(b) any amount determined in accordance with paragraph (4B) of regulation E8 where that paragraph applies,

but nothing in this regulation, regulation E7A or regulation E8(4B) shall prevent different parts of a teacher's retirement pension being paid at different times if the teacher becomes entitled to the parts at different times.”.

(3) In paragraph (11) for “Government Actuary” substitute “scheme actuary”.

**12.** After regulation E8(4) (amount of retirement lump sum) insert—

“(4A) Paragraph (4B) applies in any case where, but for paragraph (4), a teacher would be entitled to a lump sum which exceeds the teacher's permitted maximum (“the notional lump sum”).

(4B) The annual rate of the teacher's retirement pension is increased by an amount which represents the value of the amount by which the notional lump sum exceeds the teacher's permitted maximum.

(4C) The increase in the annual rate of the teacher's retirement pension shall be determined by the Scottish Ministers after taking advice from the scheme actuary.”.

**13.** In regulation E8B(2) (teachers aged 75 or over) for “Government Actuary” substitute “scheme actuary”.

**14.**—(1) Regulation E10A (total incapacity benefit where application received on or after 1st April 2007) is amended as follows.

(2) In paragraph (1)(b) after “paternity” insert “, parental”.

(3) In paragraph (2)(b) for “6 months” substitute “12 months”.

**15.** In regulation E13(2) (pension debit member) for “Government Actuary” substitute “scheme actuary”.

**16.**—(1) In paragraph (6) of regulation E26 (family benefits generally) after “adopted child” insert—

“; or

- (b) accepted by him or her as a member of the family and wholly or mainly financially dependent on him or her(a),”.

(2) For paragraph (12)(a) of that regulation substitute—

“(a) in paragraph 6(b) omit “financially”; and”.

(3) Subject to paragraph (4), the amendment made by paragraph (1) applies for the purposes of determining a person's entitlement to a pension under regulations E28 to E33 where the pension is payable at any time on or after 6th April 2006.

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(a) See regulation 16(3) and (4) for application of paragraph (b) between 6th April 2006 and 30th June 2008.

(4) Paragraph (3) does not apply in respect of pensions payable under regulations E28 to E33 to the children of a deceased teacher during the period beginning on 6th April 2006 and ending on 30th June 2008 where—

- (a) one or more payments have been made under those regulations to a child of that teacher during that period; and
- (b) the amount of the pension paid to that child has been determined on the basis of paragraph (6) of regulation E26 having effect without the amendment made by paragraph (1) above.

**17.—(1)** Regulation E29 (amount and duration of short-term family benefits) is amended as follows.

- (2) In paragraph (1)(a) after “paternity” insert “, parental”.
- (3) In paragraph (4) for “E7(4)” substitute “E7(6)”.

**18.—(1)** Regulation E31 (amount of surviving spouse’s, surviving civil partner’s, surviving nominated partner’s or nominated beneficiary’s long-term pension) is amended as follows.

- (2) In paragraph (5) after “paragraphs (4), (6)” insert “, (7C)”.
- (3) In paragraphs (7) to (7B) in each case after “paragraphs (4)” insert “, (7C)”.
- (4) After paragraph (7B) insert—

“(7C) Regulation D5 has effect for the purpose of calculating the length of the family benefit service of a deceased teacher, who was a teacher to whom paragraph (1) of that regulation applied, as that regulation would have had effect for the purpose of calculating the teacher’s reckonable service.

(7D) For the purposes of paragraph (7C)—

- (a) references in regulation D5 to reckonable service shall be taken as references to family benefit service; and
  - (b) references in paragraph (3)(a) and (b) of that regulation to the provisions of Part D shall be taken as references to paragraphs (4) to (7B) of this regulation.”.
- (5) In paragraph (12) for “paragraph (4)” substitute “paragraphs (4) and (7C)”.

**19.** In regulation E34(7)(a) (pensionable salary) after “paternity“ insert “, parental”.

**20.** In regulation E36(1B) (payment of benefits)—

- (a) omit “and” at the end of sub-paragraph (a); and
- (b) after sub-paragraph (b) insert—
  - “(c) where the teacher falls within regulation E6(5)(c)(i)(aa) or (cc), be made within 12 months after the end of the pensionable employment or within 12 months after the last payment of additional contributions under old regulation C8 or regulation C9 as the case may be; and
  - (d) where the teacher falls within regulation E6(5)(c)(i)(bb), be made—
    - (i) where the teacher was on unpaid sick leave, before the period of sick leave ends; and
    - (ii) in any other case, before the date on which, under the arrangements made with the teacher’s employer, the leave is due to end.”.

**21.** For regulation G1(11)(b) (payment of transfer values) substitute—

- “(b) the date on which the teacher attains the normal pension age where—
  - (i) he or she ceased to be employed in pensionable employment or entered excluded employment on a date which falls at least one year before the date on which the applicant attains the normal pension age; and
  - (ii) he or she made his or her application for payment of a transfer value within 6 months of that date.”.



22. In paragraphs (1), (3) and (5) of regulation H2 (actuarial review) for “Government Actuary” substitute “scheme actuary”.

23. In regulation J4(1)(f) (records and information) after “paternity” insert “, parental”.

24. In regulation J6A(4) (declaration where lump-sum payments are made) for “Government Actuary” substitute “scheme actuary”.

25. For regulation J8 (determination of questions) substitute—

“**J8.** The Scottish Ministers shall determine any question concerning any person’s rights or liabilities under these Regulations and their decision shall be final. Any dispute shall be resolved in accordance with the dispute resolution arrangements issued from time to time by the Scottish Ministers in accordance with section 50 of the 1995 Act.”.

26. In regulation J9(4) (commutation of benefits) for “Government Actuary” substitute “scheme actuary”.

27.—(1) Schedule 1 (glossary of expressions) is amended as follows.

(2) In the second column (meaning) of the definitions of the expressions “Actuarial” and “Appropriate Factor” for “Government Actuary” substitute “scheme actuary”.

(3) In the second column (meaning) of the definition of the expression “permitted maximum”, for “Shall be construed” substitute “Except as provided in regulations C1(5A) and D5(2), construe”.

(4) After the definition of ‘the Scheme’ insert—

““Scheme actuary”	Means the actuary appointed from time to time by the Scottish Ministers to provide a consulting service on actuarial matters relevant to these Regulations. ”.
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(5) After the definition of ‘Transfer day’ insert—

““Transfer of undertakings”	Means—
	(a) where the transfer takes place on or after 6th April 2006, a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006(a); and
	(b) where the transfer takes place before that date, a transfer of undertakings within the meaning given by the Transfer of Undertakings (Protection of Employment) Regulations 1981(b). ”.

28.—(1) Schedule 2A (elections in respect of additional benefits) is amended as follows.

(2) In paragraph 4(a)—

(a) after “the normal pension age” insert “unless the teacher falls within sub-paragraph (aa)”; and

(b) omit “and” at the end of that sub-paragraph.

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(a) S.I. 2006/246; amendments are made to that instrument which are not relevant to these Regulations.

(b) S.I. 1981/1794, revoked by S.I. 2006/246 except in relation to transfers of undertakings which took place before 6th April 2006.



(3) After paragraph 4(a) insert—

“(aa) where the election is made by a teacher who is a pre-2007 entrant who has attained the age of 60, the period ends before the teacher attains the age of 65; and”.

(4) In paragraph 27(b) after “the normal pension age” insert “or, where the election is made in respect of a teacher who is a pre-2007 entrant who has attained the age of 60, the age of 65”.

(5) In paragraphs 30 and 37 for “Government Actuary” substitute “scheme actuary”.

**29.** In paragraphs 11(1) and (3), 12B(3), 12C(2), 12E(3) and 12F(2) of Schedule 6 (family benefits) for “Government Actuary” substitute “scheme actuary”.

### **Election in respect of protected benefits payable under the 2005 Regulations**

**30.**—(1) This regulation applies to a person—

- (a) to whom a protected benefit is being paid or may become payable; and
- (b) who is placed in a worse position than the person would have been if a provision made by these Regulations had not applied in relation to the protected benefit.

(2) A protected benefit is one which is being paid, or may become payable, under the 2005 Regulations to, or in respect of, a teacher who was employed in qualifying employment but ceased to be employed, or died before the relevant provision came into effect.

(3) A person to whom this regulation applies may, by giving written notice to the Scottish Ministers before 1st September 2008, elect that the relevant provision shall not apply in relation to the protected benefit.

(4) If the election under paragraph (3) is made in relation to the benefit of a teacher who is in pensionable employment or subsequently becomes re-employed in pensionable employment—

- (a) the election has effect in relation to the benefit only to the extent that it accrues or has accrued by virtue of—
  - (i) periods of reckonable service before the cessation referred to in paragraph (2) (or, if there has been more than one cessation, the last of them before the relevant provision came into effect); or
  - (ii) contributions paid in respect of such periods; and
- (b) in determining entitlement to, or the amount of, the benefit to that extent the teacher is treated as having never re-entered pensionable employment again at any time after the cessation referred to in paragraph (2) (but without prejudice to the application of this paragraph),

and the 2005 Regulations apply accordingly.

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

**31.** The Teachers’ Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995(a) are amended in accordance with regulations 32 to 35.

**32.** In regulation 2(3) (interpretation) after the definition of “normal pension age” insert—

““old regulation C8” of the Superannuation Regulations has the meaning given to it in Schedule 1 to those regulations;”.

**33.** In regulation 12(6) (retirement and dependants’ pensions) for “the period of 5 years” substitute “a period specified in the notice, being a period of no less than 5 years and no more than 10 years”.

**34.**—(1) Regulation 16 (payment by the Scottish Ministers) is amended as follows.

(2) In paragraph (2A) for “regulation 12(1)” substitute “regulation 12(1A)”.

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(a) S.I. 1995/2814, amended by S.I. 2001/3649 and S.S.I. 2000/444, 2001/292, 2005/543, 2006/308 and 605 and 2007/189.

(3) In paragraph (3)(a) omit “12(6); or”.

35. For regulation 19 (determination of questions) substitute—

“19. The Scottish Ministers shall determine any question concerning any person’s rights or liabilities under these Regulations and their decision shall be final. Any dispute shall be resolved in accordance with the dispute resolution arrangements issued from time to time by the Scottish Ministers in accordance with section 50 of the Pensions Act 1995(a).”.

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

36. In regulation 16B (discretion to pay compensation) of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996(b) for “66 weeks’ pay” substitute “104 weeks’ pay”.

St Andrew’s House,  
Edinburgh  
29th May 2008

*JOHN SWINNEY*  
A member of the Scottish Executive

We consent

*CLAIRE WARD*  
*FRANK ROY*  
Two of the Lord’s Commissioners of Her Majesty’s Treasury

4th June 2008

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(a) 1995 c.26.

(b) S.I. 1996/2317, amended by S.I. 1997/675, 1998/719, 1644 and 2208, 1999/442 and S.S.I. 2001/407, 2005/543, 2006/605 and 2007/189.

## 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' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 ("the 1995 Regulations") and the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 ("the 1996 Regulations").

### **Amendment of the 2005 Regulations**

#### *Removal of the cap on contributable salary*

Regulations 3, 4, 7(2), 8, 18 and 27(3) and (5) amend the 2005 Regulations so as to provide for the removal of the cap on contributable salary from the Scottish Teachers' Superannuation Scheme ("STSS") with effect from 1st April 2008. Section 12 of the Superannuation Act 1972 confers express powers to make regulations having retrospective effect.

Regulation 3 amends regulation C1 of the 2005 Regulations. Paragraph (5) of regulation C1 is amended and paragraph (5A) of regulation C1 is inserted to reflect the repeal of section 590C of the Income and Corporation Taxes Act 1988 (c.1) and its replacement for transitional purposes by provisions of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 (S.I. 2006/364). Regulation 3 also amends regulation C1 of the 2005 Regulations to leave out paragraphs (6), (7) and (8). This amendment is consequential on the insertion of regulation C1A into the 2005 Regulations.

Regulation 4 inserts regulation C1A into the 2005 Regulations. Regulation C1A provides for the disapplication in specified circumstances of the cap on contributable salary provided by Regulation C1(5) of the 2005 Regulations.

Regulations 7(2) and 8 make provision which is consequential on the removal by regulation C1A of the 2005 Regulations of the cap on contributable salary. Regulation 8 inserts regulation D5 into the 2005 Regulations. Regulation D5 makes provision for the calculation of reckonable service where the cap on contributable salary ceases to have effect by virtue of regulation C1A of the 2005 Regulations.

Regulation 18 amends regulation E31 of the 2005 Regulations. The amendment provides that adjustments may be made to the calculation of family benefits should the apportionment of service have taken place under regulation D5 of the 2005 Regulations.

Regulation 27(3) and (4) amend the 2005 Regulations to provide for definitions which are necessary to remove the cap on contributable salary.

#### *Election in respect of additional benefits*

Regulations 6 and 28(2) and (3) amend regulation C4B and Schedule 2A of the 2005 Regulations to provide that a "pre-2007 entrant" who has reached the age of 60 but who is still in pensionable employment can elect under regulation C4B of the 2005 Regulations to purchase additional benefits.

#### *Entitlement to retain normal pension age on transfer*

Regulation 9 amends regulation EA1 of the 2005 Regulations which defines the term "pre-2007 entrant" as used in those Regulations. The effect of the amendment is to provide for a teacher to be treated as a pre-2007 entrant if he or she satisfies the condition specified in paragraph (3A) (as inserted by regulation 9). The first element of the condition is that the teacher entered pensionable

employment on or after 1st April 2007 by virtue of a transfer of undertakings or arrangements equivalent to a transfer of undertakings. The second element of the condition is that, immediately before doing so, the teacher was in employment pensionable under a public service pension scheme (as defined in paragraph (3B)) and entitled under the rules of that scheme to receive benefits on retirement from such employment before or on attaining the age of 60.

#### *Amount of retirement lump sum*

Regulations 11(2) and 12 amend regulations E7 and E8 of the 2005 Regulations which relate to the amount of a teacher's pension and lump sum. The amendments relate to the situation where, but for regulation E8(4) of the 2005 Regulations, a teacher would be entitled to a lump sum which exceeds his or her permitted maximum ("the notional lump sum"). In those circumstances, the annual rate of the teacher's retirement pension is increased by an amount which represents the value of the amount by which the notional lump sum exceeds the teacher's permitted maximum.

#### *Payment of benefits*

Regulation 20 amends regulation E36 of the 2005 Regulations to require applications for a pension paid because of a teacher's incapacity to be made within 12 months of leaving pensionable employment or of making a payment under old regulation C8 or regulation C9 of the 2005 Regulations or before the end of certain periods of leave.

#### *Family benefits*

Regulation 16(1) amends the definition of the expression "a teacher's child" in regulation E26(6) of the 2005 Regulations. The amendment reinstates the limb of the definition removed by regulation 5(2) of the Teachers' Superannuation (Scotland) Amendment Regulations 2006 (S.S.I. 2006/308) ("the 2006 Regulations") which now includes a child who is accepted by a teacher as a member of his or her family and who is wholly or financially dependent upon the teacher. The amendment has effect from 6th April 2006 (the date on which the amendment made by regulation 5(2) of the 2006 Regulations had effect from. Section 12 of the Superannuation Act 1972 confers express powers to make regulations having retrospective effect. Paragraphs (3) and (4) contain transitional provisions so that the amendment made by paragraph (1) does not apply to any relevant benefits payable in the period from 6th April 2006 to 30th June 2008, where payments have been made to one or more children on the basis of regulation E26(6) of the 2005 Regulations having effect without the amendment.

#### *Payment of transfer values*

Regulation 21 amends regulation G1 of the 2005 Regulations. The amendment makes provision for transfers to be paid in certain circumstances in respect of normal pension age 65 members who have attained the age of 60.

#### *Minor amendments*

Regulations 5, 7(3), 10(2), 14(2), 17(2), 19 and 23 amend various provisions of the 2005 Regulations to insert references to parental leave (as defined in Schedule 1 of the 2005 Regulations).

Regulation 10(3) amends regulation E6(5) of the 2005 Regulations. It inserts what were previously sub-sub-paragraphs (iv) and (v) of regulation E6(1)(c) of the 2005 Regulations into the 2005 Regulations as regulation E6(5)(d)(i) and (ii). These provisions were omitted in error from the revised regulation by regulation 26 of the Teachers' Superannuation (Scotland) Amendment Regulations 2007 (S.S.I. 2007/189).

Regulations 10(4), 11(3), 13, 15, 22, 24, 26, 27(2) and 29 replace the term ‘Government Actuary’ where it appears in the 2005 Regulations with the term ‘scheme actuary’. Regulation 27(4) inserts a definition of “scheme actuary” in the 2005 Regulations. This means that a member of STSS may appoint an actuary other than the Government Actuary to advise on scheme finances.

Regulation 17(3) amends an incorrect cross reference in regulation E29 of the 2005 Regulations. The cross reference to regulation E7(4) has been corrected to regulation E7(6).

Regulation 25 amends the dispute procedures set out in regulation J8 of the 2005 Regulations which requires that they comply with those set out in the Pensions Act 1995 (c.26).

#### *Transitional provisions*

Regulation 30 makes transitional provision for opting out where rights in relation to former scheme members are adversely affected by the changes made to the 2005 Regulations by these Regulations.

#### **Amendment of the 1995 Regulations**

Regulation 32 inserts a definition of “old Regulation C8” into the 1995 Regulations.

Regulation 33 amends regulation 12 of the 1995 Regulations so that the opportunity for the authorised provider to extend the period of beneficiary payments is to be within the over-arching boundaries specified.

Regulation 34 amends regulation 16 of the 1995 Regulations relating to the options available where a teacher dies within 10 years of accessing benefits.

Regulation 35 amends the dispute procedures set out in regulation 19 of the 1995 Regulations which requires that they comply with those set out in the Pensions Act 1995.

#### **Amendment of the 1996 Regulations**

Regulation 36 amends regulation 16B of the 1996 Regulations to increase the amount of discretionary severance compensation from 66 weeks to 104 weeks.

#### **Impact assessment**

An impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.







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**PENSIONS**

**The Teachers' Superannuation (Scotland) Amendment  
Regulations 2008**

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