
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 190

PUBLIC SERVICE PENSIONS

**The Teachers' Superannuation and Pension Scheme
(Miscellaneous Amendments) (Scotland) Regulations 2023**

<i>Made</i>	- - - -	<i>20th June 2023</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>22nd June 2023</i>
<i>Coming into force</i>	- -	<i>6th October 2023</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9 and 12 of, and schedule 3 of, the Superannuation Act 1972 (“the 1972 Act”)(¹) and sections 1(1) and (2)(d) and 3 of, and paragraph 4(b) of schedule 2 of, the Public Service Pensions Act 2013 (“the 2013 Act”)(²) and all other powers enabling them to do so.

In accordance with section 9(5) of the 1972 Act, the Scottish Ministers consulted with representatives of education authorities and teachers and with such other persons likely to be affected by these Regulations as appeared to them to be appropriate.

In accordance with section 21(1) of the 2013 Act, the Scottish Ministers consulted the representatives of such persons as appeared to them likely to be affected by these Regulations.

In accordance with section 9(1)(3) of the 1972 Act and section 3(5) of the 2013 Act, these Regulations are made with the consent of the Treasury.

Citation, commencement and effect

1. These Regulations may be cited as the Teachers' Superannuation and Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2023, come into force on 6 October 2023 and have effect from 16 August 2023.

(1) 1972 c. 11. Section 9 was relevantly amended by sections 4(1), 8(3) and (4), and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) (“the 1990 Act”), by section 190 of, and paragraph 7 of schedule 8 of the Pension Schemes Act 1993 (c. 48), by article 107 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649) and by paragraph 9 of schedule 8 of the Public Service Pensions Act 2013 (c. 25). Section 12 was amended by section 10 of the 1990 Act. The functions of the Secretary of State 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).

(2) 2013 c. 25. Section 3 was relevantly amended by section 94 of the Public Service Pensions and Judicial Offices Act 2022 (c. 7).

(3) 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.

Amendment of the Teachers' Superannuation (Scotland) Regulations 2005

2. The Teachers' Superannuation (Scotland) Regulations 2005(4) are amended in accordance with regulations 3 to 6.

3. In regulation B5 (accepted school)—

- (a) in paragraph (2) after “this regulation” insert “and regulation B5A”,
- (b) after paragraph (5) insert—

“(5A) In addition, where acceptance of an establishment as an accepted phased withdrawal school takes effect on an agreed date under regulation B5A(4), the establishment ceases to be an accepted school on that date.”.

4. After regulation B5 (accepted school), insert—

“Accepted phased withdrawal school

B5A.—(1) In pursuance of paragraph 17 of schedule 2, subject to paragraph (6) and regulations B6 to B9, a teacher is in pensionable employment while employed in a school which is an accepted phased withdrawal school for the purposes of this regulation.

(2) An establishment is an accepted phased withdrawal school if the Scottish Ministers accept it for the purpose of this regulation by giving its governing body or proprietor a written notice specifying the date on which it becomes an accepted phased withdrawal school.

(3) An establishment may be so accepted only if—

- (a) it is an accepted school, and
- (b) its governing body or proprietor makes a written application to the Scottish Ministers.

(4) An establishment, if so accepted by the Scottish Ministers, becomes an accepted phased withdrawal school from the date agreed between the Scottish Ministers and its governing body or proprietor, which must be the first day of a month after the month in which the application under paragraph (3)(b) is made.

(5) An establishment so accepted by the Scottish Ministers shall cease to be an accepted phased withdrawal school from the date specified in a notice in writing sent by the Scottish Ministers to the governing body or proprietor of the school on or after any of the following events—

- (a) the receipt by the Scottish Ministers of an application in writing by the governing body or proprietor that the school shall cease to be an accepted phased withdrawal school,
- (b) the school ceasing to be registered,
- (c) any default by the governing body or proprietor in the payment of contributions, whether under these Regulations or under the Teachers' Superannuation and Pension Scheme (Additional Voluntary Contributions) (Scotland) Regulations 2017(5),
- (d) failure by the governing body or proprietor to comply within one month with any requirement of the Scottish Ministers to make any report or return, give any information or produce any document, under regulation J4,

(4) S.S.I. 2005/393, relevant amending instruments are S.S.I. 2007/189, S.S.I. 2011/54, S.S.I. 2013/71, S.S.I. 2014/69, S.S.I. 2015/98 and S.I. 2020/354.

(5) S.S.I. 2017/283.

- (e) the closure of the school.
- (6) The service of a teacher in an accepted phased withdrawal school shall not be pensionable employment if the teacher is a proprietor thereof.
- (7) Where an establishment ceases to be an accepted phased withdrawal school—
 - (a) it does not in consequence become an accepted school, but
 - (b) sub-paragraph (a) does not prevent a separate application being made for the establishment to be an accepted school under regulation B5.
- (8) In this regulation—

“accepted phased withdrawal teacher” means—

 - (a) as from the date agreed under paragraph (4), a person who, immediately before that date, is in pensionable employment at the establishment under schedule 2 and is entitled to salary paid in full as indicated in regulation B6(1)(a),
 - (b) as from the date immediately after the end of a period of leave, which—
 - (i) is of a type specified in regulation B6(1)(b), and
 - (ii) has a continuous duration no longer than five years,a person who, immediately before the date agreed under paragraph (4), is in pensionable employment at the establishment but, because of that leave, is not so entitled,
 - (c) as from the date immediately after the end of a period of leave, which—
 - (i) is not of a type specified in regulation B6(1)(b), and
 - (ii) has a continuous duration no longer than five years,a person who, immediately before the date agreed under paragraph (4), is excluded, only in consequence of that leave, from counting as being in pensionable employment at the establishment, or
 - (d) as from the date immediately after the ending of the period of effect of an election under regulation B7, beginning before the date agreed under paragraph (4), a person who during that period is in employment at the establishment that, only because of the application of regulation B7 to that person, is excluded from counting as pensionable employment at the establishment.”.

5. In schedule 1 (glossary of expressions), after the expression “accepted school” in the left hand column and its meaning “Shall be construed in accordance with regulation B5” in the corresponding right hand column, insert the expressions in the left hand column and the meanings in the corresponding right hand column below—

accepted phased withdrawal school	Is to be construed in accordance with regulation B5A
accepted phased withdrawal teacher	Is to be construed in accordance with regulation B5A

6. In schedule 2 (pensionable employment), at the end insert—

“17. Employment as an accepted phased withdrawal teacher in a school which is an accepted phased withdrawal school within the meaning of regulation B5A.”.

Amendment of the Teachers' Pension Scheme (Scotland) (No. 2) Regulations 2014

7. The Teachers' Pension Scheme (Scotland) (No. 2) Regulations 2014⁽⁶⁾ are amended in accordance with regulation 8.

8. In schedule 1 (eligible employment)—

(a) in paragraph 2, after sub-paragraph (4) insert—

“(5) In addition, where acceptance of an establishment as an accepted phased withdrawal school takes effect on an agreed date under paragraph 2A, the establishment ceases to be an accepted school on that date.”,

(b) after paragraph 2 insert—

“Meaning of “accepted phased withdrawal school”

2A.—(1) An establishment is an accepted phased withdrawal school if the scheme manager accepts it for the purpose of this paragraph by giving its governing body or proprietor a written notice specifying the date on which it becomes an accepted phased withdrawal school.

(2) An establishment may be so accepted only if—

- (a) it is an accepted school, and
- (b) its governing body or proprietor makes a written application to the scheme manager.

(3) An establishment, if so accepted by the scheme manager, becomes an accepted phased withdrawal school from the date agreed between the scheme manager and its governing body or proprietor, which must be the first day of a month after the month in which the application under sub-paragraph (2)(b) is made.

(4) An establishment so accepted by the scheme manager ceases to be an accepted phased withdrawal school on such a day as is specified in a notice in writing sent by the scheme manager to the governing body or proprietor of the school on or after any of the following events—

- (a) the receipt by the scheme manager of an application by the governing body or proprietor of the school seeking that it should cease to be an accepted phased withdrawal school,
- (b) the school ceasing to be registered,
- (c) any default by the governing body or proprietor in the payment of contributions, whether under these Regulations or under the Teachers' Superannuation and Pension Scheme (Additional Voluntary Contributions) (Scotland) Regulations 2017⁽⁷⁾,
- (d) failure by the governing body or proprietor to comply within one month with any requirement of the scheme manager to make any report or return, give any information or produce any document under regulation 209,
- (e) failure by the governing body or proprietor to comply with any other provision of these Regulations relating to the employment of teachers who are in eligible employment,
- (f) the closure of the school.

(5) Where an establishment ceases to be an accepted phased withdrawal school—

⁽⁶⁾ S.S.I. 2014/292.

⁽⁷⁾ S.S.I. 2017/283.

- (a) it does not in consequence become an accepted school, but
 - (b) sub-paragraph (a) does not prevent a separate application being made for the establishment to be an accepted school under paragraph 2.
- (6) In this schedule—
- “accepted phased withdrawal teacher” means—
- (a) as from the date agreed under paragraph (3), a person who, immediately before that date, is in pensionable employment at the establishment under schedule 2 and is entitled to salary paid in full as indicated in regulation 22(1)(a),
 - (b) as from the date immediately after the end of a period of leave, which—
 - (i) falls within regulation 22(1)(b) or (c), and
 - (ii) has a continuous duration no longer than five years,a person who, immediately before the date agreed under paragraph (3), is in pensionable employment at the establishment but, because of that leave, is not so entitled,
 - (c) as from the date immediately after the end of a period of family leave or sick leave, which—
 - (i) falls within regulation 22(2), and
 - (ii) has a continuous duration no longer than five years,a person who, immediately before the date agreed under paragraph (3), is not in pensionable service at the establishment but only because of the application of regulation 22(2) to that person, or
 - (d) as from the date immediately after the ending of the period of effect of an opt-out under regulation 27, subject to an opt-out notice received by the scheme manager under that regulation before the date agreed under paragraph (3), a person who is not in pensionable employment at the establishment but only because of the application of regulation 27 to that person, and
 - (e) as from the date immediately after the ending of the period of effect of an opt-out under regulation 30, subject to an opt-out notice received by the scheme manager under that regulation before the date agreed under paragraph (3), a person who is not in pensionable employment at the establishment but only because of the application of regulation 30 to that person.”
- (c) after paragraph 17 insert—
- “**18.**—(1) Subject to sub-paragraph (2), employment as an accepted phased withdrawal teacher in a school which is an accepted phased withdrawal school.
- (2) The service of an accepted phased withdrawal teacher in an accepted phased withdrawal school is not pensionable employment if the teacher is a proprietor of the school.”.

St Andrew’s House,
Edinburgh
20th June 2023

TOM ARTHUR
Authorised to sign by the Scottish Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

We consent

19th June 2023

STUART ANDERSON
STEVE DOUBLE
Two of the Lords Commissioners of
His Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Teachers' Superannuation (Scotland) Regulations 2005 ("the 2005 Regulations") and the Teachers' Pension Scheme (Scotland) (No. 2) Regulations 2014 ("the 2014 Regulations").

Regulations 2 to 6 amend the 2005 Regulations to enable accepted schools to limit coverage of the pension arrangements set out in those Regulations, as at a time given to them by the Scottish Ministers, following application on behalf of the school. This can be to limit coverage of the arrangements to staff who are employed, or absent on particular, limited grounds. Accepted schools are independent schools which participate in those pension arrangements, which previously had to cover all teaching staff. Regulations 7 and 8 make similar amendments to the 2014 Regulations, in relation to accepted schools that participate in the pension arrangements covered by those Regulations.

The effect of the changes to the 2005 Regulations and 2014 Regulations is to exclude from membership of the pension arrangements covered by those Regulations newly employed teachers at accepted schools which become accepted phased withdrawal schools.