

2006 No. 2214

EDUCATION, ENGLAND AND WALES

**The Teachers' Pensions (Miscellaneous Amendments) (No. 2)
Regulations 2006**

<i>Made</i>	- - - -	<i>9th August 2006</i>
<i>Laid before Parliament</i>		<i>21st August 2006</i>
<i>Coming into force</i>	- -	<i>1st October 2006</i>

The Secretary of State for Education and Skills makes these Regulations in exercise of powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a).

In accordance with section 9(5) of that Act he has consulted with representatives of local education authorities and of teachers and with representatives of other persons likely to be affected.

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Teachers' Pensions (Miscellaneous Amendments) (No 2) Regulations 2006 and come into force on 1st October 2006.

(2) Regulation 4(a) to (c) and (f) (and regulation 3 so far as it relates to it) has effect from 1st June 2006.

(3) Regulation 8 (and regulation 3 so far as it relates to it) has effect from 14th June 2006.

(4) Regulation 10 insofar as it inserts paragraph 7 into Schedule 8 to the 1997 Regulations (and regulation 3 so far as relates to it) has effect from 1st October 2005.

(5) In these Regulations "the 1997 Regulations" means the Teachers' Pensions Regulations 1997(c).

(a) 1972 c.11; section 9 was amended by sections 4, 8 and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) and paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and article 107 of S.I.2001/3649; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990. The Secretary of State's functions under sections 9 and 12 of the Superannuation Act 1972 were transferred, in or as regards Scotland, to the Scottish Ministers by virtue of section 63 of the Scotland Act 1998 (c.46) read with article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I.1999/1750).

(b) See S.I. 1981/1670.

(c) S.I..1997/3001; relevant amending regulations are S.I.2000/665, 2004/587 and 2006/736.

Amendment of the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994

2. For Regulation 11(1) and (2) of the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 (a) substitute the following—

“(1) Except as provided in paragraph (2) the Secretary of State shall, on application by a person who has ceased to be a contributor by virtue of regulation 7(2)(b) or (c), pay a transfer value representing the value of investments made under regulation 9(1) or 10(2) to any other registered pension scheme in which the person may be participating (provided that the other pension scheme is willing and able to accept such a transfer value).

(2) A transfer value shall not however be paid pursuant to paragraph (1)—

- (a) in respect of a person who has ceased to be a contributor by virtue of regulation 7(2)(b), if the person ceased to be a contributor before 6th April 2006 and has not become a contributor again since that date, or
- (b) in respect of a person who has ceased to be a contributor by virtue of regulation 7(2)(c) and who ceased to be in pensionable employment before 6th April 2006, unless a transfer value is payable in respect of that person under regulation F1 or F1A of the 1997 Regulations.”.

Amendment of the Teachers' Pensions Regulations 1997

3. The 1997 Regulations are amended as follows.

4. In regulation C1—

(a) for paragraph (1) (a) substitute—

“(a) the amounts payable by his employer under any pay order for the time being in force,”,

(b) omit “and” at the end of paragraph (1)(c) and insert “and” at the end of paragraph (1)(d),

(c) after paragraph (1)(d) insert the following sub-paragraph—

“(e) an amount equal to any part of the person's salary which he has given up the right to receive, pursuant to a salary sacrifice arrangement ”,

(d) omit “and” at the end of paragraph (2)(b) and insert “and” at the end of paragraph (2)(c),

(e) after paragraph (2) (c) insert the following sub-paragraph—

“(d) any amount mentioned in paragraph (1)(e).”,

(f) after paragraph (11) insert the following paragraph—

“(12) In this regulation—

“pay order” means any order under section 122 of the 2002 Act or any document referred to in such an order, and

“salary sacrifice arrangement” means—

(a) in relation to a person to whom paragraph (1) applies, an arrangement specified in any pay order for the time being in force under which the person gives up the right to receive part of his gross salary in return for the employer's agreement to provide him with benefits in kind as specified in the pay order, and

(b) in relation to any other person, an arrangement of the type specified in sub-paragraph (a) in which the employer's agreement is to provide benefits in kind of an identical description to those specified in any pay order for the time being in force.”.

5. In regulation C2—

(a) S.I. 1994/2924 ;relevant amending regulations are S.I.2005/2198 and 2006/736.

- (a) in paragraph (1)(a) after “reduced” insert “before 1st October 2006”,
- (b) in paragraph (1)(b) after “(“employer A”)” insert “before 1st October 2006”.

6. In regulation E4 —

- (a) in paragraph (4) before “in cases where the pensionable employment ceased on or after 1st April 1997” insert “, subject to paragraph (4A),”,
- (b) after paragraph (4) insert the following paragraph—

“(4A) If the Secretary of State has exercised, or is considering the exercise of, his powers under section 142 of the 2002 Act on the grounds mentioned in subsection (4)(b) of that section to direct that the person may not carry out work to which that section applies but is satisfied that there are exceptional circumstances relating to the person which make it appropriate that he should fall within case C, he may determine that, despite the provisions in paragraph (4), the person (provided that he satisfies the conditions in subparagraphs (a) to (d) of paragraph (4)) falls within Case C.”.

7. In regulation E13 after paragraph (1) insert the following paragraph—

“(1A) This regulation also applies where a person’s entitlement to payment of a teacher’s pension by virtue of regulation E4(6) of the 1988 Regulations took effect under regulation E4(9) of those regulations before 1st April 1997 and the person ceases to be incapacitated.”.

8. In regulation E19—

- (a) in paragraph (1) omit “in respect of so much of it as exceeds the person’s guaranteed minimum”,
- (b) for paragraph (2) substitute—

“(2) The lump sum is an amount equal to five times the annual rate of the retirement pension.”.

9. In Schedule 1—

- (a) in the definition of “Retirement lump sum” omit “and (except in regulations E2, E6 and E6A) includes any supplementary retirement lump sum payable under regulation E6A”,
- (b) in the definition of “Retirement pension” omit “and (except in regulations E2, E5 and E6A) includes any supplementary retirement pension payable under regulation E6A”.

10. In Schedule 8 after paragraph 6 insert—

“7. A period of employment which a person would be entitled to count as reckonable service under regulation D1(1)(b) together with the agreed terms of the bulk transfer referred to in F4A, in circumstances where—

- (a) the person was given the opportunity to transfer past service pension rights under regulation F4A, but
- (b) no transfer value has been accepted in respect of that person.

8. A period of employment which is pensionable employment within the meaning of the National Health Service Pension Scheme Regulations 1995(a) not falling within paragraph 7 where—

- (a) Part VI of Schedule 10 applies to the person, but
- (b) no transfer value has been accepted in respect of that person.”.

11. In Schedule 10 omit paragraph 38.

(a) S.I. 1995/300.

27th July 2006

Andrew Adonis
Parliamentary-Under Secretary of State
Department for Education and Skills

We consent

Kevin Brennan
Claire Ward
Two of the Lords Commissioners of Her Majesty's Treasury

9th August 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 ("the 1994 Regulations") and the Teachers Pensions Regulations 1997 ("the 1997 Regulations").

Amendment of the 1994 Regulations

Regulation 2 amends regulation 11 to extend the circumstances under which an outward transfer value may be paid.

Amendment of the 1997 Regulations

Regulation 4 amends regulation C1 to provide that, where a person has given up the right to receive part of his salary under a salary sacrifice arrangement as defined, the amount given up counts as contributable salary. Under the power in section 12(1) of the Superannuation Act 1972, this provision, to the extent that it relates to a person who is a schoolteacher for the purposes of section 122 of the Education Act 2002, has effect from 1st June 2006.

Regulation 5 amends regulation C2, which allows a person aged 50 or above whose salary is reduced or who takes up employment at a lower salary to elect that contributions should continue to be paid on the salary before the reduction. The effect of the amendment is that regulation C2 only applies where the reduction in salary, or the taking up of employment at a lower salary, occurs before 1st October 2006.

Regulation 6 amends regulation E4 to provide that the Secretary of State can determine that, in exceptional circumstances, a person in respect of whom a direction has been given under section 142 of the Education Act 2002 on the basis that the person is unsuitable to work with children can still be entitled to a pension under Case C (incapacity).

Regulation 7 amends regulation E13, which makes provision for a teacher's pension to cease to be payable if a person who was entitled to a pension on the basis of incapacity ceases to be incapacitated, to make explicit provision for a person whose entitlement to a pension took effect before 1st April 1997.

Regulation 8 amends regulation E19 so that, where a pension is commuted in exceptional circumstances of serious ill health, the whole pension, rather than so much of it as exceeds the person's guaranteed minimum, is commuted. Under the power in section 12(1) of the Superannuation Act 1972, this regulation has effect from 14th June 2006.

Regulation 9 corrects drafting errors in Schedule 1.

Regulation 10 amends Schedule 8 to provide that certain types of employment make up "qualifying periods" in circumstances where an inward transfer of past service pension rights could have been made but the person has decided not to transfer those rights. Under the power in section 12 (1) of the Superannuation Act 1972, this provision has effect from 1st October 2005. The provision also replaces provisions which were contained in paragraph 38 of Schedule 10, which is omitted by regulation 11.

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