

2006 No. 736

EDUCATION, ENGLAND AND WALES

**The Teachers' Pensions (Miscellaneous Amendments)
Regulations 2006**

<i>Made</i>	- - - -	<i>13th March 2006</i>
<i>Laid before Parliament</i>		<i>16th March 2006</i>
<i>Coming into force</i>	- -	<i>6th April 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 she 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) Regulations 2006 and come into force on 6th April 2006.

(2) In these Regulations—

“the 1994 Regulations” means the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994(c); and

“the 1997 Regulations” means the Teachers' Pensions Regulations 1997(d).

Amendment of the 1994 Regulations

2. The 1994 Regulations are amended in accordance with regulations 3 to 13.

3. In regulation 2—

(a) in paragraph (2)—

(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. 2001/3647; 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. 1994/2924; relevant amending regulations are S.I.1995/2004,1997/3001,2000/666, 2000/3028 and 2005/2198.

(d) S.I. 1997/3001; relevant amending regulations are S.I. 2000/665,2004/587 and 2005/2198.

- (i) omit “references to the Taxes Act are references to the Income and Corporation Taxes Act 1988”;
 - (ii) for “and references to the 1989 Regulations are references to the Teachers’ Superannuation (Additional Voluntary Contributions) Regulations 1989” substitute “, references to the 1989 Regulations are references to the Teachers’ Superannuation (Additional Voluntary Contributions) Regulations 1989(a) and references to the 2004 Act are references to the Finance Act 2004(b).”.
- (b) in paragraph (3)—
- (i) omit the definition of “approved scheme”;
 - (ii) omit the definition of “free-standing additional voluntary contributions scheme”;
 - (iii) in the definition of “the Index” for “the Central Statistical Office of the Chancellor of the Exchequer” substitute “the Office for National Statistics”;
 - (iv) in the definition of “pensionable employment” omit “as amended by the Teachers’ Superannuation (Amendment) Regulations 1995”;
 - (v) after the definition of “reckonable service” insert the following definition—
““registered pension scheme” has the same meaning as in section 150(2) of the 2004 Act;”
 - (vi) omit the definition of “personal pension scheme”;
 - (vii) omit the definition of “retirement benefits scheme”.

4. In regulation 3(2) omit sub-paragraphs (a) and (b).

5. In regulation 8 omit paragraph (3).

6. In regulation 10 for paragraph (1) substitute the following paragraph—

“(1) Where a person in pensionable employment has paid contributions to a registered pension scheme that person, whether or not he becomes a contributor (within the meaning of these Regulations) may give written notice to the Secretary of State that he wishes the Secretary of State to accept from the trustees or managers of that scheme a transfer value representing the value of the investments from his contributions.”.

7. In regulation 11—

(a) For paragraph (1) substitute the following paragraph—

“(1) The Secretary of State shall, on application by a person who has ceased to be a contributor by virtue of regulation 7(2)(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).”;

(b) at the beginning of paragraph (2) insert “Where the person has ceased to be a contributor before 6th April 2006,”.

8. In regulation 12—

(a) in paragraph (1) for “a retirement pension and one or more dependants’ pensions” substitute “a retirement pension, one or more dependants’ pensions or a lump sum which is a pension commencement lump sum for the purposes of Part 1 of Schedule 29 to the 2004 Act”;

(b) in paragraph (5) omit “and” at the end of sub-paragraph (d)(iv), insert “and” at the end of sub-paragraph (e) and after sub-paragraph (e) insert the following sub-paragraph—

“(f) whether a pension commencement lump sum is to be paid, and if so, the amount of such sum.”.

(a) S.I.1989/946
(b) 2004 c.12

- (c) For paragraph (7) substitute the following paragraph—
- “(7) Subject to paragraphs (9) and (10), upon receipt of the notice of election the Secretary of State shall, as soon as is reasonably practicable, realise the investments made under regulation 9(1) or 10(2) and—
- (a) out of the amount obtained make any payment of a pension commencement lump sum in accordance with the election, and
 - (b) apply the balance of the amount obtained to the purchase of a pension policy from an authorised provider chosen by the participator to provide the benefits specified in the election.”.
- (d) for paragraph (11) substitute the following paragraph—
- “(11) The authorised provider may discharge the liability for payment of the benefits under the pension policy by payment of a lump sum representing their capital value if such a lump sum would be a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to the 2004 Act.”.

9. In regulation 13A—

- (a) insert “and” at the end of sub-paragraph (7)(e) and omit “and” at the end of sub-paragraph (7)(f);
- (b) omit sub-paragraph (7)(g).

10. Omit regulation 14.

11. In regulation 15(2) for “section 598 of the Taxes Act” substitute “section 205 of the 2004 Act”.

12. In regulation 16—

- (a) after paragraph (2) insert the following paragraph—

“(2A) Lump sums payable as mentioned in regulation 12(1) shall be paid by the Secretary of State to the participator.”;
- (b) omit paragraphs (4) to (6));
- (c) in paragraph (7) for “the Taxes Act” substitute “the 2004 Act”.

13. Omit the Schedule.

Amendment of the 1997 Regulations

14. The 1997 Regulations are amended in accordance with regulations 15 to 22.

15. In regulation C13(2), in the definition of “C”, and in regulation C14(6) for “section 598 of the Taxes Act” substitute “section 205 of the Finance Act 2004”.

16. In regulation E4—

- (a) for sub-paragraph (5) (a) substitute the following sub-paragraph—

“(a) has attained the age of 55 if he is a post-5th April 2006 entrant or the age of 50 in any other case .”;
- (b) after paragraph (5) insert the following paragraphs—

“(5AA) Subject to paragraph (5AB) a person is a post-5th April 2006 entrant if—

 - (a) he enters pensionable employment for the first time after 5th April 2006, or
 - (b) he enters pensionable employment after 5th April 2006 having previously been in pensionable employment where—
 - (i) the previous period of pensionable employment ended on or before 5th April 2006, and

- (ii) a cash equivalent transfer value or a transfer value under Part F had been paid in respect of that employment, or the person has been repaid the balance of his contributions relating to that pensionable employment under regulation C12.

(5AB) A person is not however a post-5th April 2006 entrant (even if he falls within paragraph (5AA)) if—

- (a) he was in comparable British service on or before 5 April 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 Secretary of State) nor has the balance of his contributions relating to that service been repaid.”.

17. In regulation E19A—

- (a) For paragraphs (1) and (2) substitute the following paragraphs—

“(1) Where a person has become entitled to a retirement pension, and the capital value of that pension and of any benefits that might otherwise have become payable on that person’s death would be a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to the Finance Act 2004, the Secretary of State may pay to that person a lump sum representing such capital value.

(2) No payment may be made under paragraph (1) if the pension includes a guaranteed minimum unless the person to whom it is paid has reached state pensionable age or any pension in respect of the guaranteed minimum is otherwise payable.”

- (b) Omit paragraphs (3) and (5).

18. In regulation E22—

- (a) in paragraph (5)—

- (i) omit “or” at the end of sub-paragraph (a), and
- (ii) omit sub-paragraph (b).

- (b) in paragraph (6)(b) after “having attained that age” insert “but not having attained the age of 23”;

- (c) for paragraph (6)(c) substitute the following paragraph—

“(c) was, at the date of death of the person referred to in paragraph (5), dependent on that person because he was incapacitated.”;

- (d) after paragraph (9) insert the following paragraphs—

“(10) In relation to—

- (a) a child who was entitled to a pension under regulations E24 to E30 on 5th April 2006, and
- (b) provision to or for the benefit of a child of a person who was entitled to payment of retirement benefits under regulation E4 on 5th April 2006,

paragraphs (5) and (6) shall have effect with the modifications specified in paragraph (11).

(11) The modifications are—

- (a) in paragraph (5) at the end insert “or accepted by him as a member of the family and wholly or mainly dependent on him”;
- (b) in paragraph (6)—
 - (i) omit “but not having attained the age of 23” in sub-paragraph (b), and
 - (ii) for sub-paragraph (c) substitute the following sub-paragraph—

“(c) having ceased while incapacitated to fall within sub-paragraph (a) or (b), he continues to be incapacitated.”.

19. In regulation F1—

- (a) for paragraph (1) substitute the following paragraphs—

“(1) Subject to paragraphs (1A) to (7) a transfer value is to be paid in respect of a person who has ceased to be in pensionable employment and has become subject to another registered pension scheme (“the receiving scheme”)

(1A) A transfer value may only be paid in respect of a person who has become subject to a personal pension scheme if the person ceased to be in pensionable employment after 31st December 1985”.

(b) in paragraphs (5) and (6)(b) for “an approved” substitute “a registered”.

20. In regulation F4—

(a) for paragraph (1) substitute the following paragraph—

“(1) Subject to paragraphs (3) to (6) and to regulation F4A a transfer value offered to the Secretary of State by the scheme managers of a registered pension scheme (“the previous scheme”) in respect of a person who has entered pensionable employment may be accepted.”;

(b) omit paragraph (2);

(c) in paragraph (6) omit “or” at the end of sub-paragraph (a), insert “or” at the end of sub-paragraph (b) and after sub-paragraph (b) insert the following sub-paragraph—

“(c) the previous scheme was a money purchase arrangement as defined in section 152 of the Finance Act 2004 to which the person’s employer was not a contributor and which provided benefits additional to those provided by a scheme to which he was a contributor.”.

(d) In paragraph (7) for “Paragraph (6) does not apply” substitute “Sub-paragraphs (a) and (b) of paragraph (6) do not apply”.

21. In Schedule 1—

(a) omit the definition of “Approved pension scheme”;

(b) in the definition of “club scheme” for “An approved superannuation scheme” substitute “A registered pension scheme”;

(c) for the definition of “Personal pension scheme” substitute the following definition—

““Personal pension scheme”	A personal pension scheme within the meaning of section 1 of the 1993 Act which is a registered pension scheme.”
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(d) after the definition of “reckonable service” insert the following definition—

““Registered pension scheme”	Construe in accordance with section 150 of the Finance Act 2004.”
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(e) at the end of the definition of “Retirement lump sum” insert “and, (except in regulations E2, E6 and E6A) includes any supplementary retirement lump sum payable under regulation E6A.”;

(f) at the end of the definition of “Retirement pension” insert “and (except in regulations E2, E5 and E6A) includes any supplementary retirement pension payable under regulation E6A.”.

22.—(1) In paragraphs 2(b), 3(a) and 4(a) of Schedule 12 for “an approved” substitute “a registered”.

(2) In paragraph 9(1)(b) of Schedule 12, for “a personal pension scheme or an approved pension scheme” substitute “a registered pension scheme”.

(3) For paragraph 11(a) of Schedule 12 substitute the following sub-paragraph—

“(a) the previous scheme was—

- (i) on or before 5th April 2006, approved under Chapter 1 of Part XIV of the Taxes Act and did not fall within section 591(2)(h) of that Act, or
 - (ii) immediately before 1st November 1988, an approved superannuation scheme for the purposes of Part IV of the 1976 Regulations, or
 - (iii) on or before 5th April 2006, a relevant statutory scheme defined by section 611A of the Taxes Act
- and was not a club scheme, and”.

Election in respect of protected benefit

23. 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 he 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 1994 Regulations or the 1997 Regulations to, or in respect of, a person who was employed in qualifying employment but ceased to be employed, or died, before 6th April 2006.

(3) A person to whom this regulation applies may, by giving written notice to the Secretary of State before 6th July 2006, 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 person who is in pensionable employment or who subsequently becomes re-employed in pensionable employment—

- (a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued by virtue—
 - (i) of 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 6th April 2006), or
 - (ii) of contributions paid in respect of such periods of reckonable service, and
- (b) in determining entitlement to, or the amount of, the benefit to that extent he shall be treated as if he had 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 1994 and 1997 Regulations shall apply accordingly.

(5) In paragraph (2) “qualifying employment”, in relation to the 1994 Regulations means pensionable employment within the meaning of those regulations and in relation to the 1997 Regulations means pensionable employment or excluded employment within the meaning of those regulations.

10th March 2006

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

We consent

13th March 2006

Vernon Coaker
Tom Watson
Two of the Lords Commissioners of Her Majesty’s Treasury

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") in connection with the new provisions for the taxation of pension schemes contained in the Finance Act 2004.

Amendment of the 1994 Regulations

Regulation 4 amends regulation 3(2) of the 1994 Regulations to remove the constraints on accepting an election relating to the level of contributions and benefits. Regulation 5 omits regulation 8(3) of the 1994 Regulations which imposed a limit on contributions. Regulations 10 and 13 omit, respectively, regulation 14 of, and the Schedule to, the 1994 Regulations which imposed limits on benefits.

Regulation 7 provides that regulation 11(2) of the 1994 Regulations, which provides that a transfer value can only be paid if one is also payable under the 1997 Regulations, only applies to a person who has ceased to be a contributor before 6th April 2006.

Regulation 8(a),(b), (c) and 12(a) amend, respectively, regulations 12 and 16 of the 1994 Regulations to provide that a person can elect to take part of his benefit as a lump sum if it is a "pension commencement lump sum" as defined in the Finance Act 2004.

The other amendments are all minor amendments consequential on the new taxation provisions and the provisions referred to above. These include—

- (a) amendments changing references to schemes approved under various provisions of the Income and Corporation Taxes Act 1988 ("the Taxes Act") to references to registered pension schemes; in consequence the provisions relating to transfers are simplified (Regulations 3, 6, and 7), and
- (b) amendments reflecting the provisions in the Finance Act 2004 under which small pensions can be commuted to a lump sum (Regulations 8(d) and 9).

Amendment of the 1997 Regulations

Regulation 16 amends regulation E4 of the 1997 Regulations to increase the age at which a person can retire early on the basis of redundancy or in the interests of the efficient discharge of his employer's functions from 50 to 55 where the person is a "post-5th April 2006 entrant" as defined.

Regulation 18 amends regulation E22 of the 1997 Regulations so as to change the meaning of "child". The effect of regulation 18(d) is that these changes do not apply where the child is in receipt of benefits under the 1997 Regulations on 5th April 2006 or to the child of a person who had retired on or before 5th April 2006.

Again, the other amendments are minor amendments consequential on the new taxation provisions and the provisions specified above. These include—

- (a) amendments referring to provisions in the Finance Act 2004 under which small pensions can be commuted to a lump sum (regulation 17), and
- (b) amendments changing references to schemes approved under various provisions of the Taxes Act to references to a registered pension scheme; this has meant some simplification to provisions relating to transfers (regulations 19, 20 and 22) including an express provision preventing the acceptance of a transfer value from certain schemes which are money purchase arrangements and which provide additional benefits (regulation 20 (c) and (d)).

General

Regulation 23 makes provision for persons to be able to elect that the amendments made by these regulations do not apply if the effect is that the person is placed in a worse position.

STATUTORY INSTRUMENTS

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