

2011 No. 42

PENSIONS

**The Teachers' Superannuation (Scotland) Amendment
Regulations 2011**

Made - - - - *25th January 2011*

Laid before the Scottish Parliament *28th January 2011*

Coming into force - - *1st March 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9 and 12 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 the Scottish Ministers have consulted with representatives of education authorities, teachers and 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 the Treasury has approved the making of these Regulations(b).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Teachers' Superannuation (Scotland) Amendment Regulations 2011.

(2) These Regulations come into force on 1st March 2011 and have effect from that date except that—

- (a) regulation 2 has effect from the dates specified in sub-paragraphs (b) to (e) so far as relevant to the regulations referred to in those sub-paragraphs;
- (b) regulations 13 and 15 have effect from 6th April 2006;
- (c) regulations 9, 10 and 12 have effect from 1st April 2007;
- (d) regulations 8 and 11 have effect from 1st April 2010; and

(a) 1972 c.11 ("the 1972 Act"). Section 9 was amended by sections 4(1), 8(3) and (4), 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) and was modified by article 5 of, and Schedule 2(2), paragraph 27 of, the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158). 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).

(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.

(e) regulations 5 to 7 and 17 have effect from 6th April 2010(a).

Amendment of the Teachers' Superannuation (Scotland) Regulations 2005

2. The Teachers' Superannuation (Scotland) Regulations 2005(b) are amended in accordance with regulations 3 to 17.

Amendment of regulation C12

3. In regulation C12(2) (calculation for the purposes of regulation C11) for "Finance Act 2004" substitute "2004 Act".

Amendment of regulation C13

4. In regulation C13(6) (return of certain contributions paid for family benefits) for "Finance Act 2004" substitute "2004 Act".

Substitution of regulation E1

5. For regulation E1 (overriding provisions as to guaranteed minimum pension) substitute—

"Guaranteed minimum pensions

E1.—(1) Where a teacher who has a guaranteed minimum reaches GMP age, the weekly rate of any relevant pension must not be less than the teacher's guaranteed minimum under sections 14 to 16 of the 1993 Act.

(2) Where no relevant pension becomes payable to a teacher who has a guaranteed minimum within 5 years after he or she reaches GMP age, a guaranteed minimum pension (the weekly rate of which is his or her guaranteed minimum under sections 14 to 16 of the 1993 Act) is payable to that teacher.

(3) Paragraph (2) does not apply—

- (a) while the teacher consents to the application of that paragraph being postponed;
- (b) from the date on which a relevant pension becomes payable; or
- (c) where paragraph (4) applies.

(4) This paragraph applies where—

- (a) a teacher who has a guaranteed minimum exercises his or her right to a cash equivalent;
- (b) the pension scheme into which the teacher's rights to benefits under these Regulations are transferred does not accept a transfer of the teacher's accrued rights to guaranteed minimum pensions; and
- (c) the teacher's accrued rights to guaranteed minimum pension are not transferred elsewhere.

(5) Where paragraph (4) applies, a guaranteed minimum pension, the weekly rate of which is the teacher's guaranteed minimum under sections 14 to 16 of the 1993 Act, is payable to that teacher for life from the date on which he or she reaches GMP age.

(6) Where a teacher who has a guaranteed minimum dies leaving a widow, widower or civil partner the pension payable to the widow, widower or civil partner under regulations E26 to E33 must be paid for any period required by or under section 17 of the 1993 Act at a weekly rate which is not to be less than the widow's, widower's or civil partner's guaranteed minimum (as set out in that section).

(a) Retrospective effect is permitted by section 12(1) of the 1972 Act.

(b) S.S.I. 2005/393 as amended by S.S.I. 2005/543, 2006/308 and 605, 2007/189 and 2008/227.

- (7) In this regulation—
“accrued rights to guaranteed minimum pensions” must be construed in accordance with section 20 of the 1993 Act;
“GMP age” means 65 in the case of a man or 60 in the case of a woman; and
“relevant pension” means a phased retirement pension or retirement pension which becomes payable in respect of contracted-out employment before 6th April 1997.
- (8) This regulation is subject to—
(a) regulation E18 (abatement of retirement pension);
(b) regulation E22 (forfeiture of benefits);
(c) regulation E23 (commutation: exceptional circumstances of ill-health); and
(d) regulation J9 (commutation of benefits),
but overrides any other provision in these Regulations which is inconsistent.”.

Revocation of regulations E2 and E3

6. Omit regulations E2 (residual liability for guaranteed minimum pensions and for section 9(2B) rights) and E3 (revaluation of guaranteed minimum in certain cases).

Amendment of regulation E6

7. For regulation E6(6)(b) (entitlement to payment of retirement benefits) substitute—
“(b) has attained the age of 55;”.

Amendment of regulation E6A

8. In regulation E6A (eligibility for payment of phased retirement benefit)—
(a) in paragraphs (2)(b) and (3)(d) for “25%” substitute “20%”; and
(b) for paragraph (6) substitute—
“(6) Where in the 12 month period following the reduction in contributable salary a teacher receives an increase in remuneration in excess of the standard increase as defined in regulation E34(13)(c) such as to give that teacher remuneration equal to 80% or more of his or her salary prior to the reduction, then a phased retirement pension ceases to be payable.”.

Amendment of regulation E7A

9. In regulation E7A(3) (retirement pension when election has been made under regulation C4B) for “(RI-RE)” substitute “(RI/RE)”.

Amendment of regulation E23

10. In regulation E23 (commutation: exceptional circumstances of ill-health)—
(a) in paragraph (1) for “Finance Act 2004” substitute “2004 Act”; and
(b) for paragraph (2) substitute—
“(2) The lump sum is—
(a) a sum equal to 5 times the annual rate of the retirement pension and any total incapacity pension; and
(b) a sum equal to (A-B) times the annual rate of any phased retirement pension where—
(i) A is 5; and

- (ii) B is the period (in years and fractions of a year) from the date on which the phased retirement pension was first paid until the date of the application (and accordingly if this period is 5 years or more no lump sum is payable in respect of a phased retirement pension).

(3) Where the teacher is eligible to apply under regulation E8A (lump sum in place of part of pension) he or she is to be treated as applying under that regulation to receive the largest permissible lump sum in place of part of the pension.”.

Insertion of regulation F10B

11. After regulation F10A (normal pension age) insert—

“Pension credit benefits before attaining normal benefit age (with actuarial reduction)

F10B.—(1) Subject to paragraph (2), a pension credit member is entitled to the payment of the pension credit benefit described in regulation F10 (appropriate rights and pension credit benefits under the Scheme) on or after attaining normal minimum pension age but before attaining normal pension age, where the corresponding debit member was in pensionable employment or excluded employment on or after 1st July 2002.

(2) The pension and the lump sum (if any) described in paragraph (1) will be reduced by such amount as the Scottish Ministers, after taking the advice of the scheme actuary, may determine.”.

Amendment of regulation F13

12. After regulation F13(3) (commutation: exceptional ill-health) insert—

“(4) Where the teacher is eligible to apply under regulation E8A (lump sum in place of part of pension) he or she is to be treated as applying under that regulation to receive the largest permissible lump sum in place of part of the pension.

(5) The reference in this regulation to the annual rate of the pension is to the annual rate reduced in accordance with regulation E8A.”

Insertion of regulation G1A

13. After regulation G1 (payment of transfer values) insert—

“Reduction in transfer value: lifetime allowance charge

G1A.—(1) This regulation applies where—

- (a) the lifetime allowance charge under section 214 (lifetime allowance charge) of the 2004 Act arises on the payment of a cash equivalent or a transfer value in respect of a teacher to a qualifying recognised overseas pension scheme; and
- (b) the teacher and the Scottish Ministers are jointly and severally liable to the charge.

(2) The Scottish Ministers must pay the charge.

(3) The cash equivalent or transfer value which, apart from this regulation, would be payable must be reduced to reflect the amount of the charge in such manner as the Scottish Ministers determine, after taking advice from the scheme actuary.

(4) In this regulation “qualifying recognised overseas pension scheme” has the same meaning as in Part 4 of the 2004 Act.”.

Amendment of regulation J6A

14. In regulation J6A(2) (declaration where lump-sum payments are made) for “Finance Act 2004” substitute “2004 Act”.

Insertion of regulation J6B and J6C

15. After regulation J6A (declaration where lump-sum payments are made) insert—

“Reduction of benefits: lifetime allowance charge

J6B.—(1) This regulation applies where—

- (a) the lifetime allowance charge arises because a benefit becomes payable to a teacher; and
- (b) the teacher and the Scottish Ministers are jointly and severally liable to the charge.

(2) The Scottish Ministers must pay the charge.

(3) The amount of the benefit must be reduced to reflect the amount of the charge in such manner as the Scottish Ministers may determine, after taking advice from the scheme actuary.

General prohibition on unauthorised payments

J6C. Nothing in these Regulations requires or authorises the making of any payment which, if made, would be an unauthorised payment^(a) for the purpose of Part 4 of the 2004 Act unless the Scottish Ministers determine otherwise (in the case of a particular payment).”.

Amendment of regulation J9

16. In regulation J9 (commutation of benefits)—

- (a) in paragraph (1) for “Finance Act 2004” substitute “2004 Act or falls within regulation 11 (de minimis rule for pension schemes) or 12 (payments by larger pension schemes) of the Registered Pension Schemes (Authorised Payments) Regulations 2009^(b)”; and
- (b) in paragraph (3) for “Finance Act 2004” substitute “2004 Act”.

Amendment of Schedule 1

17. In Schedule 1 (glossary of expressions)—

- (a) after the definition of “The 1999 Act” insert—

““The 2004 Act”

The Finance Act 2004” ; and

(a) The term “unauthorised payment” is defined for the purpose of Part 4 of the Finance Act 2004 in section 160(5) of that Act.
(b) S.I. 2009/1171. Regulation 12 was amended by paragraph 17 of Schedule 20 to the Finance Act 2007 (c.11).

(b) for the definition of “state pensionable age” substitute—

““State pensionable age”

must be construed in accordance with
section 126 of, and Part 1 of
Schedule 4 to, the 1995 Act.”.

St Andrew’s House,
Edinburgh
10th January 2011

JOHN SWINNEY
A member of the Scottish Executive

We consent

JEREMY WRIGHT
MICHAEL FABRICANT
Two of the Lords Commissioners of Her Majesty’s Treasury

25th January 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Teachers' Superannuation (Scotland) Regulations 2005 ("the principal Regulations").

Regulations 3 and 4 make technical amendments as a consequence of regulation 17(a) which defines "The Finance Act 2004".

Regulation 5 substitutes new provisions for regulation E1 so as to provide for the equalisation of state pension age from 6th April 2010 and the fact that GMP age remains 60 for women and 65 for men.

Regulation 6 omits regulations E2 and E3 which are now superfluous.

Regulation 7 amends regulation E6 to clarify that the minimum pension age for all teachers is 55 with effect from 6 April 2010.

Regulation 8 amends regulation E6A to reduce (from 25% to 20%) the minimum amount by which a teacher's contributable salary must reduce to enable a phased retirement election to be made and clarifies that if the teacher receives an increase in contributable salary within 12 months (greater than the standard increase), the phased retirement pension will cease.

Regulation 9 corrects a drafting error in the formula in regulation E7A. It has effect from 1st April 2007.

Regulation 10 amends regulation E23 and regulation 12 amends regulation F13 so that where a teacher with a short life expectancy chooses to commute his or her retirement pension, he or she will be deemed to have elected to commute the maximum at the 12:1 rate. The balance will be paid as a multiple of 5.

Regulation 11 inserts a new regulation to provide for pension credit members to draw benefits early from age 55 on an actuarially reduced basis if the pension debit member is also able to do so.

Regulation 13 inserts a new regulation G1A to give the Scottish Ministers power to reduce a teacher's transfer value if the teacher has exceeded HMRC's lifetime allowance and incurred a charge. In such an event, HMRC require the Scottish Teachers' Superannuation Scheme ("the STSS") to pay the charge therefore it is necessary to provide the Scottish Ministers with power to deduct the charge.

Regulation 14 makes a technical amendment as a consequence of regulation 17(a) which defines "The Finance Act 2004".

Regulation 15 inserts two new regulations J6B and J6C. Regulation J6B is necessary to give the Scottish Ministers power to reduce a teacher's benefits if the teacher has exceeded HMRC's lifetime allowance and incurred a charge. In such an event, HMRC require the STSS to pay the charge therefore it is necessary to provide the Scottish Ministers with power to deduct the charge. Regulation J6C is a general protection against the STSS making an unauthorised payment and incurring a tax surcharge. However, there might be cases where an unauthorised payment is unavoidable, therefore, the regulation gives the Scottish Ministers power to deal with such exceptional cases.

Regulation 16 amends regulation J9 to make provision for the changes made in the Registered Pension Schemes (Authorised Payments) Regulations 2009 (S.I. 2009/1171) and makes a technical amendment as a consequence of regulation 17(a) which defines "The Finance Act 2004".

Regulation 17 amends Schedule 1 to amend the definition of state pensionable age to take account of the equalisation of state pension age and to add a definition of the Finance Act 2004.