

1978 No. 351

EDUCATION

**The Teachers' Superannuation (Amendment No. 2) Regulations
(Northern Ireland) 1978**

Made 16th November 1978

Coming into operation 29th December 1978

The Department of Education(a) in exercise of the powers conferred upon it by Articles 11 and 14 of and Schedule 3 to the Superannuation (Northern Ireland) Order 1972(b) and of every other power enabling it in that behalf, and after consultation with representatives of education and library boards, teachers and with such representatives of other persons likely to be affected by the regulations as appeared to it to be appropriate as required by Article 11(5) of the said Order, and with the consent of the Department of the Civil Service(c), hereby makes the following regulations:—

Citation and commencement

1.—(1) These regulations may be cited as the Teachers' Superannuation (Amendment No. 2) Regulations (Northern Ireland) 1978.

(2) These regulations shall come into operation on 29th December 1978 and shall have effect—

(a) for the purposes of regulations 4, 18 and 24, as from that date;

(b) for all other purposes, as from 6th April 1978.

Interpretation

2.—(1) In these regulations a reference to the principal regulations is a reference to the Teachers' Superannuation Regulations (Northern Ireland) 1977(d) as amended by the Teachers' Superannuation (Amendment) Regulations (Northern Ireland) 1978(e).

(2) In paragraph (1) of regulation 2 of the principal regulations (Interpretation) after the definition of the expression "full salary" there shall be inserted the following definitions:—

"guaranteed minimum allowance" and "guaranteed minimum pension" have the meanings assigned to them by regulation 7A;

"insured pensionable age" means, in the case of a man, the age of 65 and, in the case of a woman, the age of 60;"

Guaranteed minimum allowance or pension

3. After regulation 7 of the principal regulations (Modification for National Insurance) there shall be inserted the following regulation:—

(a) Formerly Ministry: 1973 c. 36 s. 40 and Sch. 5 para. 8(1)

(b) S.I. 1972/1073 (N.I. 10)

(c) Formerly a function of the Department of Finance: S.R. 1976 No. 281 (II, p. 1339) Article 3 and Sch. 1

(d) S.R. 1977 No. 260 (II, p. 1375)

(e) S.R. 1978 No. 147

“Guaranteed minimum allowance or pension

7A.—(1) In relation to a widow’s pension the expression “guaranteed minimum pension” has the meaning assigned to it by Article 28(2) of the Social Security Pensions (Northern Ireland) Order 1975(f) and in relation to an annual allowance the expression “guaranteed minimum allowance” shall have a corresponding meaning.

(2) The reference in Article 37(6) of the said Order of 1975 to any period for which an earner’s guaranteed minimum pension is postponed shall be construed as a reference to any period—

- (a) for which a teacher continues to be employed in reckonable service after he attains insured pensionable age and expiring on his attaining the age of compulsory retirement, and
- (b) in respect of which payments on account of his annual allowance are not made, or made at a weekly rate less than that of his guaranteed minimum allowance, by reason of regulation 50(1) or of the abatement of his allowance under regulation 70.

(3) For the purpose of determining whether or not an annual allowance or widow’s pension shall be calculated by reference to the guaranteed minimum allowance or pension, a weekly amount shall be taken to be the annual amount divided by 52, the result being rounded to the nearest whole penny, taking one half-penny as nearest to the whole penny above.”

Repayment on cessation of employment

4. At the end of paragraph (3) of regulation 42 of the principal regulations (Repayment on cessation of employment) there shall be added the following provisions:—

“(4) No payment shall be made in pursuance of this regulation to a teacher who has not attained the age of 60 except on written application to the Department supported by such particulars as it may require.

(5) For the purposes of paragraph (1), a woman who ceases to be employed in reckonable service wholly or partly because of pregnancy or confinement shall be treated, so long as she enjoys the right to return to work conferred by Articles 28 and 29 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(g), as if she remained so employed and, if she exercises that right, as not having ceased to be so employed.”

Calculation of repayment under regulations 42 to 44

5. In paragraph (1) of regulation 45 of the principal regulations (Calculation of repayment under regulations 42 to 44) after the words “regulations 42 to 44” there shall be inserted the words “(which shall have effect subject to the provisions of Article 48 of the Social Security Pensions (Northern Ireland) Order 1975)”.

Limited repayments to pensioners

6.—(1) For the heading to regulation 47 of the principal regulations (Repayment to pensioners after further service) there shall be substituted the heading “*Limited repayments to pensioners*”.

(2) Regulation 47 shall be renumbered 47(1) and, at the end of the said regulation 47(1) there shall be added the following provision:—

(f) S.I. 1975/1503 (N.I. 15)

(g) S.I. 1976/2147 (N.I. 28)

“(2) Where—

(a) a teacher entitled to, or qualified for, allowances by virtue only of regulation 48(1)(a)(iii) would otherwise be entitled to a repayment under regulation 42 or 43, and

(b) his reckonable service includes periods of service (other than such subsequent service as is mentioned in paragraph (1)(c)) disregarded for the purposes of calculating the said allowances,

he shall be entitled to a repayment under the regulation in question but in calculating the amount thereof account shall only be taken of contributions paid in respect of such periods of service as aforesaid and regulation 46(1)(a) and (b) shall be construed accordingly.”

Entitlement to allowances

7.—(1) At the end of paragraph (1)(a) of regulation 48 of the principal regulations (Entitlement to allowances) there shall be inserted the following provision:—

“(iii) not being such a teacher as aforesaid, has been employed in reckonable service during a period in respect of which he has an earner’s guaranteed minimum (within the meaning of Article 37 of the Social Security Pensions (Northern Ireland) Order 1975) being a period in respect of which, in pursuance of Article 44 of that Order, a contributions equivalent premium cannot be, or is not, paid by the Department; or”

(2) At the end of paragraph (4) of regulation 48 there shall be added the following provision:—

“(5) Where a teacher’s entitlement to benefit by virtue of paragraph (1)(a)(iii) is extinguished by the payment of a contributions equivalent premium, he shall be treated for the purposes of these regulations as never having been so entitled.”

Application of regulation 48 in certain cases of premature retirement

8. In sub-paragraph (b) of paragraph (3) of regulation 48A of the principal regulations (Application of regulation 48 in certain cases of premature retirement) for the words “sub-paragraph (c)” there shall be substituted the words “sub-paragraphs (a)(iii) and (c)”.

Amount of annual allowance

9.—(1) After paragraph (2) of regulation 49 of the principal regulations (Amount of annual allowance) there shall be inserted the following provision:—

“(2A) In calculating an annual allowance payable to a teacher by virtue only of regulation 48(1)(a)(iii) no account shall be taken of any reckonable service before 6th April 1978 which is not continuous with reckonable service on or after that date.”

(2) At the end of paragraph (6) of regulation 49 there shall be added the following provision:—

“(7) Where, in the case of a teacher employed in reckonable service after 5th April 1978, the weekly rate of his allowance, calculated as aforesaid, would be less than the weekly rate of the aggregate of—

(a) his guaranteed minimum allowance, and

(b) where his reckonable service includes a period of such service after 2nd April 1961 which was non-participating employ-

ment (within the meaning of the National Insurance Act (Northern Ireland) 1966(h)), the benefit required in respect of that period to constitute equivalent pension benefits for the purposes of that Act, then the preceding provisions of this regulation shall not apply but the annual allowance payable to him shall be payable at the last-mentioned weekly rate."

Duration of annual allowance

10. At the end of paragraph (1) of regulation 50 of the principal regulations (Duration of annual allowance) there shall be inserted the following:—

"Provided that, where the allowance does not begin to accrue as aforesaid before the teacher attains the age of compulsory retirement in the case of a man, or of 65, in the case of a woman, so much thereof as constitutes his guaranteed minimum allowance shall begin to accrue on the day that he attains that age."

Amount of additional allowance

11. After paragraph (3) of regulation 51 of the principal regulations (Amount of additional allowance) there shall be inserted the following provision:—

"(3A) In calculating an additional allowance payable to a teacher by virtue only of regulation 48(1)(a)(iii) no account shall be taken of any reckonable service before 6th April 1978 which is not continuous with reckonable service on or after that date."

Short service gratuities

12.—(1) For sub-paragraph (a) of paragraph (1) of regulation 52 of the principal regulations (Short service gratuities) there shall be substituted the following provision:—

"(a) is not entitled to any allowances by virtue of regulation 48 other than allowances the aggregate value of which is less than the amount first mentioned in paragraph (2); and"

(2) For paragraph (2) of the said regulation 52 there shall be substituted the following provisions:—

"(2) A short service gratuity shall be of an amount calculated by multiplying one-twelfth of the teacher's salary by the number of years of his reckonable service except that there shall be deducted therefrom the amount which is the aggregate value of any allowances to which he is entitled by virtue of regulation 48.

(2A) For the purposes of this regulation the aggregate value of an annual allowance and an additional allowance shall be the aggregate of the actuarial value of the annual allowance and the amount of the additional allowance."

Interpretation of section B

13. After paragraph (c) of regulation 57 of the principal regulations (Interpretation of section B) there shall be added the following provision:—

“(d) in the case of a teacher who has not been employed in reckonable service after 5th April 1978, the references to his widow do not include references to a woman whom he married after the day on which he was last employed in reckonable service.”.

Entitlement to long term pension

14.—(1) In paragraph (1) of regulation 59 of the principal regulations (Entitlement to long term pension) for the words “any teacher who was employed in reckonable service on or after 1st April 1972 and whose service to which this regulation applies amounts to at least five years” there shall be substituted the words “any such teacher as is mentioned in paragraph (2)”.

(2) For paragraph (2) of the said regulation 59 there shall be substituted the following provisions:—

“(2) The teacher referred to in paragraph (1) is a teacher who was employed in reckonable service on or after 1st April 1972 where—

(a) his reckonable service on or after that date, when aggregated with any such service before that date in respect of which he elected to pay contributions under any previous provision relating to family benefits, amounted to at least five years, or

(b) his reckonable service includes service on or after 6th April 1978 in respect of which a contributions equivalent premium is not paid by the Department in pursuance of Article 44 of the Social Security Pensions (Northern Ireland) Order 1975.

(3) Where a person's entitlement to benefit under this regulation by virtue of paragraph (2)(b) is extinguished by the payment of a contributions equivalent premium, he shall be treated for the purposes of these regulations as never having been so entitled.”.

Amount of pension for widow or adult nominated beneficiary

15.—(1) At the beginning of paragraph (2) of regulation 61 of the principal regulations (Amount of pension for widow or adult nominated beneficiary) there shall be inserted the words “Save as provided in paragraph (4A),”.

(2) After paragraph (4) of the said regulation 61 there shall be inserted the following provision:—

“(4A) In the case of the widow of a teacher (employed in reckonable service after 5th April 1978) where they married after the day on which he was last employed in reckonable service, the reckonable service of the teacher counting for benefit for the purposes of this regulation is his reckonable service after 5th April 1978.”.

(3) At the end of the said regulation 61 there shall be added the following provision:—

“(6) Where, in the case of a teacher employed in reckonable service after 5th April 1978, the weekly rate of his widow's pension, calculated as aforesaid, would be less than the weekly rate of her guaranteed minimum pension, then the preceding provisions of this regulation shall not apply but the pension payable to his widow shall be payable at the last-mentioned weekly rate.”.

Amount of child's pension

16.—(1) At the beginning of paragraph (1) of regulation 62 of the principal regulations (Amount of child's pension) there shall be inserted the words “Subject to paragraph (6),”.

(2) At the end of the said regulation 62 there shall be added the following provisions:—

“(6) Where the teacher is survived by a widow whom he married after the day on which he was last employed in reckonable service but his surviving children include a child of an earlier marriage contracted on or before that day (“the previous marriage”) then, so long as there is a child of the previous marriage, paragraph (7) shall apply to the exclusion of paragraph (1) for the purposes of calculating the pension in respect of his children.

For the purposes of this paragraph and paragraph (7), a child who was the teacher’s child at the inception of the previous marriage, or became such, by adoption or otherwise, during the subsistence of that marriage, shall be treated as if he were a child of that marriage.

(7) Where and so long as the child’s pension falls to be calculated in accordance with this paragraph it shall be calculated—

- (a) for so long as there are two or more children of the previous marriage, by multiplying $1/160$ th of the teacher’s average salary by the number of years of his service which would count for benefit for the purposes of regulation 61 if paragraph (4A) were omitted therefrom;
- (b) for so long as there is only one child of the previous marriage, by multiplying $1/320$ th of the teacher’s average salary by the said number and, where there are one or more other children, adding to that product $1/320$ th of the teacher’s average salary multiplied by the number of years of his service which actually counts for benefit for the purposes of regulation 61.”

Duration of pensions

17. For paragraph (4) of regulation 65 of the principal regulations (Duration of pensions) there shall be substituted the following provisions:—

“(4) Where a person to whom such a pension as is mentioned in paragraph (1) is payable marries then, unless the Department otherwise directs and subject to paragraph (4B)—

- (a) in the case of a pension payable to a widow who has attained insured pensionable age, being the widow of a teacher who was employed in reckonable service after 5th April 1978, so much of the pension as exceeds her guaranteed minimum pension shall cease to be payable;
- (b) in the case of any other pension, the whole pension shall cease to be payable.

(4A) Where a person to whom such a pension as is mentioned in paragraph (1) is payable cohabits with a person to whom he or she is not married then, unless the Department otherwise directs and subject to paragraph (4B)—

- (a) in the case of a pension payable to the widow of a teacher who was employed in reckonable service after 5th April 1978, so much of the pension as exceeds her guaranteed minimum pension shall cease to be payable and, in respect of any period before she has attained insured pensionable age for which she is so cohabiting, the balance of the pension shall also not be payable;
- (b) in the case of any other pension, the whole pension shall cease to be payable.

(4B) Any pension which has ceased to be payable under paragraph (4) or (4A), in whole or in part, shall, if the Department so directs, again become payable, or wholly payable, in a case coming within paragraph 4, upon the pensioner's marriage terminating (by death or divorce) or, in a case coming within paragraph 4A, upon his ceasing to cohabit."

Counting reckonable service for benefit

18. For sub-paragraph (c)(ii) of regulation 67 of the principal regulations (Counting reckonable service for benefit) there shall be substituted the following provision:—

"(ii) contributions paid by the teacher have been repaid, or are required to be repaid (where regulation 42(4) applies, the teacher having applied therefor), in pursuance of Section D of Part II or of previous provisions to the like effect, save that for the purposes hereof contributions returned to the Department in pursuance of regulation 16 or a previous provision to the like effect shall be treated as if they had not been repaid; or".

Avoidance of duplicate pensions

19. In paragraph (1) of regulation 71 of the principal regulations (Avoidance of duplicate pensions) after the words "subject to paragraph (3)" there shall be inserted the words "and to regulation 73A".

Deferment, suspension or reduction of benefits

20. In regulation 73 of the principal regulations (Deferment, suspension or reduction of benefits):—

(a) there shall be inserted at the beginning the words "Subject to regulation 73A," and

(b) for the words "in respect of" there shall be substituted the word "to".

Limitation on regulations 71 and 73

21. After the said regulation 73 there shall be added the following regulations:—

"Limitation on regulations 71 and 73

73A.—(1) This regulation shall apply to an annual allowance payable to a teacher employed in reckonable service after 5th April 1978.

(2) Notwithstanding anything in regulation 71 or 73 but subject to paragraph (3), for any period beginning on or after the teacher attains insured pensionable age the allowance shall be payable at a rate not less than that of his guaranteed minimum allowance.

(3) Paragraph (2) shall not apply where the allowance is deferred, suspended or reduced under regulation 73 by reason of the teacher having been convicted of an offence of treason or under the Official Secrets Acts 1911 to 1939(i).

Teacher with guaranteed minimum under Article 35 of the Social Security Pensions (Northern Ireland) Order 1975

73B.—(1) For the purposes of satisfying regulation 2 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976(j) it is hereby declared, without prejudice to the express provisions of

(i) 1911 c. 28; 1920 c. 75; 1939 c. 121

(j) S.R. 1976 No. 29 (L, p. 114)

these regulations serving that purpose (in particular, those of regulations 49(7) and 61(6)), that if a teacher has a guaranteed minimum under Article 35 of the Social Security Pensions (Northern Ireland) Order 1975—

- (a) the weekly rate of his annual allowance at insured pensionable age shall be not less than that guaranteed minimum, and
- (b) the weekly rate of pension payable to his widow shall be not less than half that guaranteed minimum;

and for the purposes hereof a weekly amount of an allowance or pension shall be taken to be the annual amount thereof divided by 52, the result being rounded to the nearest whole penny, taking one half-penny as nearest to the whole penny above.

(2) The provisions of this regulation shall be construed as overriding all such provisions of these regulations, if any, as are not in accordance with the provisions of the Social Security Pensions (Northern Ireland) Order 1975.”

Payment of transfer values

22. For paragraph (1) of regulation 75 of the principal regulations (Payment of transfer values) there shall be substituted the following provisions:—

“75.—(1) Where a former teacher, having ceased to be employed in reckonable service, becomes subject to an approved superannuation scheme, being (subject to paragraph (1A)) a contracted-out scheme (within the meaning of the Social Security Pensions (Northern Ireland) Order 1975), then, on an application being made with his consent—

- (a) within the period specified in paragraph (2),
- (b) by the person responsible for the management of the approved superannuation scheme,

the Department may pay to that person a transfer value (calculated in accordance with Part I of Schedule 6) in respect of the teacher.

(1A) The approved superannuation scheme need not be a contracted-out scheme if the teacher—

- (a) has less than five years reckonable service; or
- (b) ceased to be employed in such service before 6th April 1978; or
- (c) is a married woman or widow who, by virtue of an election made or treated as made for the purposes of regulations under Article 5 of the Social Security Pensions (Northern Ireland) Order 1975, is either liable to pay primary Class 1 contributions or Class 2 contributions (within the meaning of the Social Security (Northern Ireland) Act 1975(k) at a reduced rate prescribed by such regulations or is exempt from liability to pay Class 2 contributions.”

Payment of benefits

23. At the end of paragraph (5) of regulation 88 of the principal regulations (Payment of benefits) there shall be added the following provision:—

“(6) Where, by virtue of regulation 48(1)(a)(iii) or of regulation 59(2)(b), a person’s entitlement to benefit is conditional on a contributions equivalent premium not being paid by the Department, then, notwithstanding the preceding provisions of this regulation, for such period as is requisite for the purpose of determining whether or not the entitlement

will be extinguished by the payment of such a premium, payments on account of the benefit shall be withheld; but if the entitlement is not so extinguished the payments previously withheld shall be made as soon as is reasonably practicable."

Transfer values

24.—(1) In paragraph 1 of Part I of Schedule 6 to the principal regulations (Transfer values) after the words "any teacher shall" there shall be inserted the words "subject to paragraph 1A".

(2) At the end of the said paragraph 1 there shall be inserted the following provision:—

"1A. Where a contributions equivalent premium (within the meaning of Article 44 of the Social Security Pensions (Northern Ireland) Order 1975) is paid in respect of the teacher, the transfer value, calculated as aforesaid, shall be reduced by the amount of that premium."

Sealed with the Official Seal of the Department of Education for Northern Ireland on 16th November 1978.

(L.S.)

E. J. Kirkpatrick

Assistant Secretary

The Department of the Civil Service hereby consents to the foregoing regulations.

Sealed with the Official Seal of the Department of the Civil Service for Northern Ireland on 16th November 1978.

(L.S.)

J. S. H. Gaw

Assistant Secretary.

EXPLANATORY NOTE

(This note is not part of the regulations but is intended to indicate their general purport.)

Members of the teachers' superannuation scheme in Northern Ireland have been contracted-out of the upper-tier of the state pension scheme which commenced on 6th April 1978. The purpose of these regulations is to amend the Teachers' Superannuation Regulations (Northern Ireland) 1977 and the Teachers' Superannuation (Amendment) Regulations (Northern Ireland) 1978 so that they meet the requirements of the Social Security Pensions (Northern Ireland) Order 1975 and thereby comply with the contracting-out requirements of Part IV of that Order.

Amendments in the regulations provide:—

- (1) entitlement to a guaranteed minimum allowance and pension (which are substitutes for the state's additional pension) for teachers and for teachers' widows (Regulation 21);
- (2) pensions for the widows of teachers who marry after retirement (Regulations 13 and 15);
- (3) allowances for late entrants who may not be able to complete 5 years service before the normal retirement age (Regulation 7) and pensions for the widows of late entrants (Regulations 14 and 15);
- (4) for the payment of transfer values to schemes not contracted-out where there is less than 5 years reckonable service or the teacher ceased service before 6th April 1978 and in all other cases to contracted-out schemes only (Regulation 22).

Other consequential amendments are made:—

- (5) repayment of contributions will not be automatic before the age of 60 unless the teacher requests it (Regulation 4);
- (6) where superannuation contributions are repaid and the Department has paid a "contributions equivalent premium" to the state scheme under the Social Security Pensions (Northern Ireland) Order 1975 in order to restore a period of service to that scheme a proportion of that premium is recoverable out of the contributions (Regulation 5);
- (7) where a teacher is employed during a period for which no allowances are payable, contributions for that period may be repaid (Regulation 6);
- (8) where a teacher has qualified for allowances under these regulations any service prior to 6th April 1978 which is not continuous with the service which entitles the teacher to allowances will be excluded and contributions in respect of that service will be repaid (Regulations 9 and 11);
- (9) the guaranteed minimum allowance must accrue at age of compulsory retirement for a man or age 65 for a woman (Regulation 10);
- (10) a teacher cannot receive both short service gratuity and allowances (Regulation 12);
- (11) the rights of children of earlier marriages are preserved (Regulation 16);
- (12) a teacher's widow who remarries or cohabits with a man is entitled to a guaranteed minimum pension from age 60 (Regulation 17);

(13) reductions in pension in certain circumstances must not result in an allowance of less than the guaranteed minimum (Regulations 19, 20 and 21).

Minor and consequential amendments are also included (Regulations 8, 18, 23 and 24).

These regulations except Regulations 4, 18 and 24 have retrospective effect to 6th April 1978 as authorised by Article 14(1) of the Superannuation (Northern Ireland) Order 1972.