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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 189**

**PENSIONS**

**The Teachers' Superannuation (Scotland)  
Amendment Regulations 2007**

<i>Made</i>	- - - -	<i>5th March 2007</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>8th March 2007</i>
<i>Coming into force</i>	- -	<i>1st April 2007</i>

The Scottish Ministers, in exercise of the powers conferred by sections 9, 12 and 24 of the Superannuation Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, after consulting with representatives of education authorities and of teachers and with such representatives of other persons likely to be affected by these Regulations as appear to them to be appropriate, in accordance with section 9(5) of that Act, and with the consent of the Treasury<sup>(2)</sup>, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Teachers' Superannuation (Scotland) Amendment Regulations 2007 and shall come into force on 1st April 2007.

**Amendment of the Teachers' Superannuation (Scotland) Regulations 2005**

2. The Teachers' Superannuation (Scotland) Regulations 2005<sup>(3)</sup> shall be amended in accordance with regulations 3 to 83 of these Regulations.

3. In regulation B1 (full time service), B4 (continuing employment) and B5(1) (accepted school) for "B9" substitute "B8".

4.—(1) Regulation B2 (part-time service) is amended as follows.

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(1) 1972 c. 11; section 9 was amended by sections 4(1), 8(3), (4) and (6), and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) ("the 1990 Act"), by section 190, Schedule 8, paragraph 7 of the Pension Schemes Act 1993 (c. 48) and by article 107 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I.2001/3649), and 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) 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 is still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(3) S.S.I. 2005/393 as amended by S.S.I. 2005/543 and 2006/308.

(2) In paragraph (1) for “B9” substitute “B8”.

(3) After paragraph (5) insert–

“(5A) Where the election is made by a teacher with mixed service and, pursuant to paragraph (5), has effect from a date earlier than that referred to in paragraph (4) all pensionable employment during the back period shall be treated as having occurred after the post-break employment start.

(5B) Where the election is made by a 2007 or later entrant and, pursuant to paragraph (5), has effect from a date earlier than that referred to in paragraph (4) all pensionable employment during the back period shall be treated as having occurred on or after 1st April 2007.”.

5.—(1) Regulation B6 (employment not pensionable) is amended as follows.

(2) In paragraph (1) for “under 70” substitute “under 75”.

(3) For paragraph (5) substitute–

“(5) This paragraph applies to a teacher who, between 1st April 1997 and 30th September 2001–

(a) was entitled to be paid a teacher’s pension, including cases where the annual rate of pension had been reduced to zero in accordance with regulation E18; and

(b) commenced employment (“the further employment”) which would, apart from regulation B5(5) of the 1992 Regulations have been pensionable employment.

(6) A teacher to whom paragraph (5) applies is not in pensionable employment in respect of the further employment unless he or she makes an election under regulation B8.”.

6. In regulation B7 (election for employment not to be pensionable) after paragraph (2) insert–

“(2A) If the teacher is, or expects to become, a party to more than one contract of employment, then each employment shall cease to be pensionable employment and shall be excluded employment.”.

7.—(1) Regulation B8 (resumption of pensionable status) is amended as follows.

(2) After paragraph (1) insert–

“(1A) A teacher to whom regulation B6(5) applies or has applied who is in employment which would otherwise have been pensionable employment may at any time, by giving written notice to the Scottish Ministers, make an election under this regulation.”.

(3) In paragraph (3) after “paragraph (1)(a)” insert “or, subject to paragraph (4A), paragraph (1A)”.

(4) After paragraph (4) insert–

“(4A) Where the teacher making the election falls within paragraph (1A) and is in the same employment as he or she was in immediately before 1st April 2007 the election may, provided that the contributions payable under regulation C4A and H5A are paid, have effect on such date earlier than that specified in paragraph (3) as the employer agrees.

(4B) The earlier date referred to in paragraph (4A) may not however be a date before 1st October 2001 or the date on which the further employment commenced, if that was after 1st October 2001.

(4C) Where the election under paragraph (1A) is made by a teacher with mixed service and the election has effect, pursuant to paragraph (4A), on a date earlier than that specified in paragraph (3) all pensionable employment before the date specified in paragraph (3) shall be treated as having occurred–

(a) after the post-break employment start, where the election is made by a person with mixed service; or

(b) on or after 1st April 2007, where the election is made by a 2007 or later entrant.”.

8. Omit regulation B9 (further employment).

9.—(1) Regulation C2 (salary on which contributions are payable – election) is amended as follows.

(2) In paragraph (6)(c)(i) for “regulation C8 or C9” substitute “regulation C9”.

(3) Omit paragraph (11).

(4) For paragraph (12) substitute–

“(12) Paragraph (1) shall not apply where a teacher was in pensionable employment (before 2nd December 2006) by virtue of regulation B9 as it had effect before 1st April 2007.”.

10. For regulation C3 (ordinary contributions) substitute–

**“Ordinary contributions**

C3.—(1) In this regulation “relevant period” is to be construed in accordance with regulation H2(6).

(2) Subject to paragraph (3), a teacher who is in pensionable employment is to pay contributions of–

(a) 6% of his or her contributable salary for the time being in respect of any period before 1st April 2007;

(b) 6.4% of his or her contributable salary for the time being in respect of the relevant period starting on 1st April 2007; and

(c) X% of his or her contributable salary for the time being in respect of any subsequent relevant period, where X has the same value as that determined by the Secretary of State from time to time in accordance with regulation C3(2)(c) of the Teachers' Pensions Regulations 1997(4).

(3) A teacher who has made an election under regulation C2(1) shall, in addition to the contributions referred to in paragraph (2), pay contributions of the required percentage of the difference between the teacher’s actual contributable salary and the contributable salary at the rate referred to in regulation C2(4) to the extent that such contributions are not paid by any employer referred to in regulation H4 under an election mentioned in that regulation.

(4) No contributions are to be paid by a teacher in respect of any reckonable service beyond a total of 45 years.”.

11. After regulation C4 (contributions where an election under regulation B2(4) has been made) insert–

**“Contributions where an election under regulation B8(1A) is to take effect from an earlier date**

C4A.—(1) This regulation applies where–

(a) a teacher has elected under regulation B8(1A) that his or her further employment should be pensionable; and

- (b) his or her employer has agreed under regulation B8(4A) that the election should have effect from a date earlier than the first day of the month after that in which the notice was given.
- (2) Where this regulation applies the teacher shall—
  - (a) pay the contributions calculated in accordance with regulation C3(2) and treated as due on the last day of each month for the period starting with such earlier date and ending immediately before the first day of the month after that in which the notice was given; and
  - (b) pay interest on each such contribution at 7% per annum, compounded with monthly rests from the eighth day after the end of the month in which that contribution was due to the date of its payment.

**Election in respect of additional benefits**

**C4B.**—(1) Any teacher in pensionable employment who has not attained the normal pension age may at any time elect to pay additional contributions in accordance with Schedule 2A in order to be credited with additional benefits.

(2) The employer of a teacher in pensionable employment may at any time elect to pay additional contributions in accordance with Schedule 2A in order for that teacher to be credited with additional benefits.

(3) Where, pursuant to an election under this regulation and Schedule 2A, a teacher is credited with an increased retirement pension that pension—

- (a) is to be paid to him or her in accordance with regulation E7A when he or she becomes entitled to retirement benefits in accordance with regulation E6; and
- (b) is to be paid to him or her in accordance with regulation E6A if he or she is eligible for phased retirement benefits.

(4) Where, pursuant to an election under this regulation and Schedule 2A, a teacher is credited with increased benefits for his or her dependents, those benefits are to be paid in accordance with regulation E32A.”.

**12.** Omit regulations C5 (additional contributions to purchase past added years) and C6 (additional contributions to purchase past added years in the case of a deceased teacher).

**13.** For regulation C7 (additional contributions to purchase past added years under earlier provisions) substitute—

**“Additional contributions to purchase added years under earlier provisions**

**C7.**—(1) Schedule 4 has effect where immediately before 1st April 2007 a teacher had elected to pay additional contributions under old regulation C5 and additional contributions remain to be paid.

(2) Schedule 5 has effect where immediately before 1st October 2005 additional contributions remained to be paid by virtue of regulations 22 to 26 of the 1977 Regulations.”.

**14.** Omit regulation C8 (additional contributions to purchase current added years).

**15.**—(1) Regulation C9 (additional contributions for current period: service in a reserve force) is amended as follows.

(2) For paragraph (3)(a) substitute—

- “(a) the same percentage of the notional salary for so much of the period as falls within that financial year as would be paid if the teacher was liable to pay contributions under regulation C3(2); and”.
- (3) In paragraph (3)(b) for “regulation C3(2)” substitute “regulation C3(3)”.
- (4) In paragraph (6)(b) for “regulation C5” substitute “old regulation C5”.
- 16.** In regulation C10 (additional contributions for family benefits) after paragraph (3) insert—
- “(4) Parts IIB and III of Schedule 6 have effect for enabling family benefit contributions to be paid in order to secure, or to increase, family benefits for a surviving nominated partner in respect of reckonable service which is not relevant service as mentioned in regulation E30(4B).”.
- 17.**—(1) Regulation C11 (return of contributions) is amended as follows.
- (2) In paragraph (1)(d) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”.
- (3) In paragraph (6) for “70th birthday” substitute “75th birthday”.
- 18.** In paragraph (3)(a) of regulation C12 (calculation for the purposes of regulation C11) for “regulations C3, C5 and C7 to C10” substitute “regulations C3, C4B, regulations C9 to C10, under Part I of Schedule 4, as a result of an election under old regulation C5 or old regulation C8”.
- 19.**—(1) Regulation C14 (repayment of returned contributions) is amended as follows.
- (2) In paragraph (1)(a) after “pensionable employment” insert “other than a teacher who was entitled to be paid a teacher’s pension and, after becoming entitled to payment of a teacher’s pension, re-entered pensionable employment”.
- (3) In paragraph (8) for “regulation C8” substitute “old regulation C8”.
- (4) Omit paragraph (9).
- 20.**—(1) Regulation C15 (deduction, payment and recovery of contributions) is amended as follows.
- (2) In paragraph (1)(a) for “regulation C3(1)” substitute “regulation C3(2)”.
- (3) In paragraph (1)(b) for “regulation C3(2)” substitute “regulation C3(3)”.
- (4) After paragraph (1)(b) insert—
- “(ba) any additional contributions payable as a result of an election under regulation C4B;”.
- (5) Omit paragraph (1)(c).
- (6) After paragraph (1) insert—
- “(1A) The employer of a teacher in pensionable employment by virtue of an election made under regulation B8(1A) who has agreed under regulation B8(4A) that the election should have effect from a date earlier than the first day of the month after that in which the notice was given shall collect the contributions and interest payable under regulation C4A no later than 6 weeks after the date on which such agreement was given; and the remaining paragraph of this regulation do not apply to the sums collected under this paragraph.”
- (7) In paragraph (7) for “regulation C4, C8 or C14” substitute “regulation C4, C9 or C14 or old regulation C8”.
- 21.** In regulation D4 (current added years for which additional contributions have been paid)—
- (a) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”; and
- (b) in paragraph (a) for “regulation C8” substitute “old regulation C8”.

22. Before regulation E1 (overriding provisions as to guaranteed minimum pension) insert the following regulation—

**“Meaning of various terms**

**EA1.**—(1) In these Regulations the expressions set out in paragraphs (2), (5), (7), (8), (9) and (10) have the meanings specified in those paragraphs.

(2) A “pre-2007 entrant” means a teacher who satisfies one of the conditions in paragraph (3).

(3) The conditions are—

- (a) that the teacher was in pensionable employment before 1st April 2007 but is not in such employment on or at any time after that date; or
- (b) that the teacher was in pensionable employment before 1st April 2007 and is also in pensionable employment at any time on or after that date but does not cease to be a pre-2007 entrant by virtue of paragraph (4).

(4) A teacher ceases to be a pre-2007 entrant if he or she takes up pensionable employment again (“the new employment”) after 31st March 2008 after a relevant break of service.

(5) A “relevant break of service” means a period ending after 31st March 2008 (and where there is more than one such period, the first of them) when a teacher is not in pensionable employment such that the interval between the first day of the new employment and the last day of the most recent previous period of pensionable employment is more than 5 years, and it is immaterial whether the last day of the most recent previous period of pensionable employment was before 1st April 2007 or not.

(6) For the purposes of determining the interval referred to in paragraph (5) any period of employment is ignored unless—

- (a) the employment is pensionable employment of at least 60 days (which need not be continuous); or
- (b) the employment which the teacher is entitled to count as reckonable service amounts to at least 30 days,

(in either case) in a period of 12 months starting at any time in the year.

(7) “Post-break employment start” means the start of the new employment after a relevant break of service, and for the purposes of this definition any periods of employment which are ignored for the purposes of determining the interval referred to in paragraph (5) are treated as having taken place before the start of the new employment.

(8) A “teacher with mixed service” means a teacher who was in pensionable employment before 1st April 2007 but who has ceased to be a pre-2007 entrant by virtue of paragraph (4).

(9) A “2007 or later entrant” means anyone other than a pre-2007 entrant or a teacher with mixed service who is or has been in pensionable employment.

(10) The “normal pension age” means the age of 60 in the case of a pre-2007 entrant and the age of 65 in any other case (except in relation to a pension credit member whose normal pension age is determined in accordance with regulation F10A).

(11) Where a teacher has been in comparable British Service before entering pensionable employment the comparable British Service shall, for the purposes of this regulation, be treated as if it were pensionable employment provided that neither a cash equivalent transfer value nor a transfer value has been paid in respect of the comparable British Service (other than a cash equivalent transfer value or transfer value accepted by the Scottish Ministers)

nor has the balance of the teacher's contributions relating to the comparable British Service been repaid.

(12) For the purposes of this regulation—

- (a) a teacher is treated as being in pensionable employment during any period for which he or she is paying additional contributions under old regulation C8 or regulation C9; and
- (b) “comparable British Service” does not include service which is pensionable under a superannuation scheme for teachers in public employment in the Channel Islands or the Isle of Man.”

23. In regulation E2(2)(b) (residual liability for guaranteed minimum pensions and for section 9(2B) rights) for “the age of 60” substitute “the normal pension age”.

24. For regulation E4 (nature of retirement benefits) substitute the following—

**“Nature of retirement benefits**

**E4.** Retirement benefits consist of—

- (a) a retirement pension;
- (b) a retirement lump sum where regulation E8 applies; and
- (c) where applicable, a lump sum in place of part of a retirement pension (in accordance with regulation E8A),

calculated in accordance with this Part.”.

25. In regulation E5(3) (qualification for retirement benefits) for “If a teacher was in pensionable employment by virtue of regulation B9” substitute “If a teacher was entitled to be paid a teacher's pension and has re-entered pensionable employment”.

26. For regulation E6 (entitlement to payment of retirement benefits) substitute—

**“Entitlement to payment of retirement benefits**

**E6.**—(1) A teacher who has qualified for retirement benefits shall be entitled to payment of them if he or she falls within any of paragraphs (2) and (4) to (7).

(2) The teacher has, subject to paragraph (3), attained the normal pension age and has ceased to be in pensionable employment.

(3) Where the teacher is a teacher with mixed service—

- (a) he or she becomes entitled to payment of that part of the retirement pension referred to in regulation E7(2)(c)(i) and the retirement lump sum when he or she attains the age of 60; and
- (b) where an election under regulation C4B has been made in respect of the teacher and, at the time when the election was made the teacher has not ceased to be a pre-2007 entrant by virtue of regulation EA1(4), the teacher becomes entitled to payment of that part of the retirement pension referred to in regulation E7A when he or she attains the age of 60.

(4) The teacher has attained the age of 70 and is in employment which would be pensionable employment but for regulation B6(1).

(5) The teacher—

- (a) has not attained the normal pension age;

- (b) has ceased after 31st March 1972 and before attaining the normal pension age to be in pensionable employment;
  - (c) is incapacitated, became so before attaining the normal pension age; and
    - (i) immediately before he or she became incapacitated–
      - (aa) was in pensionable employment; or
      - (bb) was taking a period of unpaid sick leave, maternity, paternity or adoptive leave, which, in each case, followed on immediately after a period of pensionable employment; or
      - (cc) was paying additional contributions under old regulation C8 or regulation C9; or
    - (ii) made an application for payment under regulation E36(1A) such that it was received by the Scottish Ministers before 1st April 2007; or
    - (iii) (where neither sub-paragraphs (i) or (ii) applies) his or her ability to carry out any work is impaired by more than 90% and is likely permanently to be so.
- (6) The teacher–
- (a) has not attained the normal pension age;
  - (b) has attained the age of 50, if the teacher is not a post-30th June 2006 entrant and attained that age before 6th April 2010, or the age of 55 in any other case;
  - (c) has ceased after attaining that age to be in pensionable employment, or in excluded employment, or in employment which would have been pensionable employment had an election been made under regulation B2, and that teacher’s employer has certified in writing to the Scottish Ministers that his or her employment has been terminated as a result of their redundancy or in the interests of the efficient exercise of the employer’s functions; and
  - (d) has not received, and is not to receive, compensation under Part IIIA of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996<sup>(5)</sup> and that teacher’s employer has agreed that he or she should become entitled to retirement benefits under this paragraph.
- (7) The teacher–
- (a) has attained the age of 55;
  - (b) has ceased on or after 30th June 2002 and before attaining the normal pension age to be in pensionable employment or excluded employment; and
  - (c) is not entitled to payment of retirement benefits by virtue of paragraph (5) or (6), and the conditions specified in paragraph (10) are satisfied.
- (8) Entitlement under–
- (a) paragraph (2) and (4) takes effect as soon as the teacher meets the conditions prescribed therein;
  - (b) paragraph (5) takes effect–
    - (i) as from the day after the end of pensionable employment; or
    - (ii) if the date of the teacher’s application for payment of retirement benefits on grounds of incapacity is later, that date or such other date as the Scottish Ministers, having regard to all the circumstances, think appropriate;

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(5) S.I. 1996/2317; Part IIIA was inserted by S.I. 1997/675, regulation 7.

- (c) paragraph (6) takes effect, unless the teacher entitled to receive payment has waived his or her right to such payment in terms of paragraph (9), as from the day after the end of the employment; and
  - (d) paragraph (7) takes effect—
    - (i) where, at the time of the application for benefits under regulation E36, the teacher was in pensionable employment or excluded employment, as from the day after the end of the employment; and
    - (ii) in any other case on a date determined by the teacher making the application for benefits under regulation E36 being a date no earlier than 6 weeks after the date of such application.
- (9) A teacher entitled to payment of retirement benefits by virtue of paragraph (6), who is also a teacher to whom the provisions of regulation 7 of the Local Government (Education Administration) (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995<sup>(6)</sup> applies, may waive his or her entitlement to such payment under paragraph (6) by notice in writing to his or her employer, but such waiver shall not prejudice his or her entitlement to benefit under any other provision of this regulation.
- (10) The conditions referred to in paragraph (7) are—
- (a) where the teacher has a guaranteed minimum pension in respect of employment before 6th April 1997, or an equivalent pension benefit relating to employment undertaken during the period starting on 3rd April 1961 and ending on 5th April 1975 (or both) that the annual rate of the teacher's retirement benefits in the opinion of the Government Actuary is equal to or exceeds the equivalent pension benefit or the value of the guaranteed minimum pension (or if both the aggregate); and
  - (b) where, at the time of the application for payment of benefits under regulation E36, the teacher was in pensionable employment or excluded employment that—
    - (i) his or her employer has consented to the application; or
    - (ii) 6 months have elapsed since the date on which the teacher requested his or her employer to give consent and such consent has not been given.
- (11) Subject to paragraph (12) a teacher is a post-30th June 2006 entrant if—
- (a) he or she enters pensionable employment for the first time after 30th June 2006; or
  - (b) he or she enters pensionable employment after 30th June 2006 having previously been in pensionable employment where—
    - (i) the previous period of pensionable employment ended on or before 30th June 2006, and
    - (ii) a cash equivalent transfer value or a transfer value under Part G had been paid in respect of that employment, or the person has been repaid the balance of his or her contributions relating to that pensionable employment under regulation C11.
- (12) A teacher is not however a post-30th June 2006 entrant (even if he or she falls within paragraph (11)) if—
- (a) he or she was in comparable British service on or before 30th June 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 Scottish Ministers) nor has the balance of his or her contributions relating to that service been repaid..”.

27. After regulation E6 (entitlement to payment of retirement benefits) insert–

**“Eligibility for payment of phased retirement benefits**

**E6A.**—(1) In these Regulations, “phased retirement benefits” means retirement benefits to which a teacher may be eligible under this regulation.

(2) A teacher in pensionable employment who is qualified for retirement benefits is eligible to receive a part of his or her retirement benefits before he or she becomes entitled to payment of those benefits if–

- (a) he or she has attained the age of 55; and
- (b) the teacher’s employer at the time of an election under paragraph (4) has certified that the teacher will continue in pensionable employment such as to result in a reduction of contributable salary of at least 25% as compared with the average annual rate of his or her contributable salary for the six months prior to the end of his or her previous employment from the first day of pensionable employment at the reduced contributable salary.

(3) A teacher who is qualified for retirement benefits is also eligible to receive a part of his or her retirement benefits before he or she becomes entitled to payment of those benefits if–

- (a) he or she has attained the age of 55;
- (b) after attaining that age he or she ceases to be in pensionable employment;
- (c) within six months of the last day of that employment he or she has–
  - (i) secured further pensionable employment; or
  - (ii) secured further employment, otherwise than as a teacher, in an establishment in which employment as a teacher would by virtue of Schedule 2 be pensionable employment; and
- (d) his or her employer in the further employment has certified that there has been a reduction of the teacher’s salary of at least 25% as compared with the average annual rate of his or her contributable salary for the six months prior to the end of his or her previous employment from the first day of the further employment at the reduced salary.

(4) Eligibility to phased retirement benefits pursuant to this regulation is conditional upon–

- (a) the teacher making a maximum of two elections for such benefits, with each election being accompanied by certification as prescribed in paragraph (2)(b) or (3)(d); and
- (b) the election being made within three months of starting employment as referred to in paragraph (2)(b) or securing further employment as referred to in paragraph (3)(c).

(5) Subject to paragraph (7) the election shall specify a percentage (“the election percentage”), not exceeding 75% by reference to which retirement benefits are to be calculated in accordance with paragraphs (8) to (10).

(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 75% or more of

his or her salary prior to the reduction, then any election made pursuant to this regulation ceases to have effect.

(7) Where the teacher is a teacher with mixed service the election may specify that it only applies to the part of the teacher's effective reckonable service which was before the start of the new employment after the relevant break of service or only applies to the part of the teacher's effective service which was after the start of the new employment after the relevant break of service.

(8) Where the election is the first or only election the phased retirement benefits are calculated on the basis specified in regulation E7(2) and (where applicable) E8(2) but—

- (a) the teacher's pensionable salary is calculated as if his or her pensionable salary service ended immediately at the date of the change in employment; and
- (b) the teacher's effective reckonable service is the election percentage of his or her reckonable service up to the date of the change in employment.

(9) Where the election is the second election, phased retirement benefits are calculated on the basis specified in regulation E7(2) and (where applicable) E8(2) but—

- (a) the teacher's pensionable salary is calculated in the manner specified in paragraph (8); and
- (b) the teacher's effective reckonable service is—
  - (i) the election percentage of the teacher's reckonable service up to the date of the second change in employment; less
  - (ii) the amount of reckonable service calculated in accordance with paragraph (8)(b).

(10) Phased retirement benefits calculated in accordance with paragraph (8) or (9) are adjusted by multiplication by the appropriate factor, (in the case of retirement pension the adjustment is effected) in the same way as is specified in regulation E7(6).

(11) A teacher who has elected to pay additional contributions under regulation C4B and who has elected for phased retirement benefits, may elect also for payment in full of those additional benefits to which he or she is entitled under that regulation, multiplied by the appropriate factor in the same way as is specified in regulation E7A(6).

(12) In calculating the factor by which additional benefits referred to in paragraph (11) are to be multiplied pursuant to regulation E7A(3) or (4)—

- (a) RI is the retail prices index for the second month before the month in which the change in pensionable employment occurred; and
- (b) the definition of X has effect as if for "the date on which the teacher became entitled to payment of retirement benefits" there were substituted "the date of the change in pensionable employment".

(13) Where the employer referred to in paragraph (3)(d) is unable to certify as prescribed in that paragraph because the previous employer has not provided them with the necessary information, the Scottish Ministers may determine nevertheless whether the teacher shall be entitled to phased retirement benefits.

(14) In this regulation "date of change in pensionable employment", where the teacher falls within paragraph (2), is the date before the date on which contributable salary is reduced, and where the teacher falls within paragraph (3) is the date of leaving previous pensionable employment."

**28.** For regulation E7 (amount of retirement pension) substitute—

**“Amount of retirement pension**

**E7.—**(1) The annual rate of a teacher’s retirement pension is the rate specified in paragraph (2) together with the rate specified in regulation E7A where that regulation applies (but nothing in this regulation or regulation E7A shall prevent different parts of a teacher’s retirement pension being paid at different times if the teacher becomes entitled to the parts at different times).

- (2) Subject to paragraphs (4) and (6) to (13) and regulations E8A to E12, the rate is—
- (a) in the case of a pre-2007 entrant, 1/80th of his or her pensionable salary multiplied by his or her effective reckonable service;
  - (b) in the case of a 2007 or later entrant, 1/60th of his or her pensionable salary multiplied by his or her effective reckonable service; and
  - (c) in the case of a teacher with mixed service the aggregate of—
    - (i) 1/80th of his or her pensionable salary multiplied by that part of his or her effective reckonable service which was before the post-break employment start; and
    - (ii) 1/60th of his or her pensionable salary multiplied by that part of his or her effective reckonable service which was after the post-break employment start.

(3) For the purposes of paragraph (2) reckonable service is to be expressed in years and fractions of a year.

- (4) If—
- (a) the teacher is entitled to count a period as reckonable service by virtue of regulation D3; and
  - (b) by reason of regulation E35(4) part of that period does not count in calculating his or her retirement lump sum,

the annual rate calculated in accordance with paragraph (2) is, in respect of each year comprised in that part, increased by 1/350th of his or her pensionable salary.

(5) In paragraphs (6) to (9) “the basic rate” is the rate calculated in accordance with paragraphs (2) and (4) and, where appropriate, regulation E9 or E11 (but disregarding the effect of regulation E12).

- (6) Subject to paragraphs (7) to (9), where—
- (a) a teacher who has become entitled to payment of retirement benefits by virtue of regulation E6(6) has ceased to be in pensionable employment or excluded employment on or after 1st September 1997; or
  - (b) a teacher has become entitled to payment of retirement benefits by virtue of regulation E6(7),

the basic rate is adjusted as specified in paragraph (7).

- (7) The adjustments are—
- (a) in the case of a pre-2007 entrant, multiplication of the annual rate of such pension by the appropriate factor for a teacher with a normal pension age of 60;
  - (b) in the case of a 2007 or later entrant, multiplication of the annual rate of such pension by the appropriate factor for a teacher with a normal pension age of 65;
  - (c) in the case of a teacher with mixed service who has not attained the age of 60, multiplication of that part of the annual rate of such pension referred to in paragraph (2)(c)(i) by the appropriate factor for a teacher with a normal pension age of 60 and multiplication of that part of the annual rate of such pension referred

to in paragraph (2)(c)(ii) by the appropriate factor for a teacher with a normal pension age of 65; and

- (d) in the case of a teacher with mixed service who has attained the age of 60, multiplication of that part of the annual rate of such pension as is mentioned in paragraph (2)(c)(ii) by the appropriate factor for a teacher with a normal pension age of 65.

(8) Where the teacher falls within paragraph (6)(a) and—

- (a) the teacher has a guaranteed minimum in relation to employment up to 6th April 1997; and  
(b) A exceeds B, where

A is the annual equivalent of his or her guaranteed minimum pension together with that of any equivalent pension benefits, and

B is the basic rate, where applicable, adjusted in accordance with paragraphs (6) and (7),

the annual rate of his or her retirement pension is A.

(9) Where a 2007 or later entrant or a teacher with mixed service has effective reckonable service which has occurred after he or she attained the age of 65 the basic rate is adjusted as specified in paragraph (10).

(10) The adjustments are—

- (a) in the case of a 2007 or later entrant, multiplication of the annual rate of that part of his or her retirement pension which relates to effective reckonable service before the teacher attained the age of 65, by the relevant enhancement factor; and  
(b) in the case of a teacher with mixed service, multiplication of that part of his or her retirement pension which relates to the part of his or her effective reckonable service before the teacher reached the age of 65 but after the post-break employment start, by the relevant enhancement factor.

(11) In paragraph (10) “the relevant enhancement factor” means a factor (related to the length of the period which has elapsed between the teacher’s 65th birthday and the date (after the teacher’s 65th birthday) on which he or she became entitled to retirement benefits) determined from time to time for the purpose of this regulation by the Scottish Ministers after taking advice from the Government Actuary.

(12) If a contributions equivalent premium has been paid in respect of the teacher and has not been refunded (and his or her entitlement to a guaranteed minimum pension is therefore extinguished) the annual rate of his or her retirement pension is reduced by the annual equivalent of the guaranteed minimum pension to which he or she would otherwise have been entitled.

(13) Where a teacher has received phased retirement benefits the teacher’s effective reckonable service is reduced by the amount of reckonable service (determined under regulation E6A(8) and, where applicable, E6A(9)) taken into account in calculating phased retirement benefits.”

29. After regulation E7 (amount of retirement pension) insert the following—

**“Retirement pension when election has been made under regulation C4B**

**E7A.—**(1) This regulation applies where one or more elections under regulation C4B have been accepted by the Scottish Ministers and have not ceased to have effect.

(2) Where this regulation applies the annual rate of a teacher's retirement pension is (in addition to the annual rate specified in regulation E7(2)) the aggregate of the annual rates with which the teacher has been credited pursuant to each election and Schedule 2A, multiplied by the factor specified in paragraph (3) and divided by the factor (if it is greater than one) specified in paragraph (4).

(3) The increase is  $(RI-RE)/$  where—

RI is the retail prices index for the second month before the month in which the teacher becomes entitled to the part of his or her retirement pension referred to in this regulation; and

RE is the retail prices index for the month which includes the start date, as defined in paragraph 1 of Schedule 2A, for the election in question.

(4) The factor in this paragraph is  $X/Y$  where—

X is the amount which would have been the annual rate of the teacher's retirement pension calculated in accordance with the combined effect of paragraphs (2) and (3) (as if in paragraph (2) the words "and divided by the factor (if it is greater than one) specified in paragraph (4)" had been omitted) and any increases affected by the 1971 Act up to the date on which the teacher became entitled to payment of retirement benefits, and

Y is the amount which would have been the annual rate of the teacher's retirement pension calculated in accordance with paragraphs (2) and (3) if in paragraph (2) the words "and divided by the factor (if it is greater than one) specified in paragraph (4)" had been omitted and if the 1971 Act did not apply.

(5) Where regulation E7(6) applies the annual rate of the person's retirement pension calculated in accordance with paragraphs (2) and (3) shall be adjusted as specified in paragraph (6).

(6) The adjustments are—

(a) in the case of a pre-2007 entrant, multiplication of the annual rate of such pension by the appropriate factor for a teacher with a normal pension age of 60;

(b) in the case of a 2007 or later entrant, multiplication of the annual rate of such pension by the appropriate factor for a teacher with a normal age of 65;

(c) in the case of a teacher with mixed service such as is referred to in regulation E6 (3)(b) who has not attained the age of 60, multiplication of the annual rate of such pension by the appropriate factor for a teacher with a normal pension age of 60; and

(d) in the case of a teacher with mixed service other than a teacher such as is referred to in regulation E6(3)(b), multiplication of the annual rate of such pension by the appropriate factor for a teacher with a normal pension age of 65.

(7) In this regulation "the 1971 Act" means the Pensions (Increase) Act 1971(7).".

**30.** For regulation E8 (amount of retirement lump sum) substitute the following—

**"Amount of retirement lump sum**

**E8.—**(1) This regulation applies to a pre-2007 entrant and a teacher with mixed service.

(2) Subject to paragraphs (4) to (7) and regulations E9 and E10, the amount of retirement lump sum for a teacher to whom this regulation applies is  $A \times (B+C)$  where—

A is 3/80ths of the teacher's pensionable salary;

B is, in the case of a pre-2007 entrant, his or her effective reckonable service or, in the case of a teacher with a mixed service, that part of his or her effective reckonable service which was before the post-employment break start (except, in either case, any service falling within C); and

C is any period which the teacher is entitled to count as reckonable service by virtue of regulation D3 (past added years for which additional contributions have been paid).

(3) For the purposes of paragraph (2) reckonable service is to be expressed in years and fractions of a year.

(4) A teacher's retirement lump sum cannot exceed his or her permitted maximum.

(5) Where—

(a) a teacher to whom this regulation applies who has become entitled to the payment of retirement benefits by virtue of regulation E6(6) before attaining the age of 60 has ceased to be in pensionable or excluded employment on or after 1st September 1997; or

(b) a teacher to whom this regulation applies has become entitled to payment of retirement benefits by virtue of regulation E6(7) before attaining the age of 60,

the amount of the teacher's retirement lump sum shall be the amount calculated in accordance with paragraph (2) multiplied by the appropriate factor.

(6) A teacher who has reached the age of 75 or over is not entitled to a lump sum.

(7) Where a teacher has received phased retirement benefits the teacher's effective reckonable service is calculated in accordance with regulation E7(13).

(8) Where an election to receive phased retirement benefits ceases to have effect by virtue of regulation E6A(6), the amount of a teacher's retirement lump sum on entitlement to payment of retirement benefits is reduced by the amount of any lump sum which the teacher has already received pursuant to that election.”.

**31.** After regulation E8 insert the following—

**“Lump sum in place of part of pension**

**E8A.**—(1) Subject to paragraph (4), a teacher may, by an election made with the application for payment under regulation E36(1A), elect to receive a further lump sum of such amount as is specified in the election (subject to paragraph (2)) in place of part of his or her retirement pension.

(2) The amount of such lump sum must be a multiple of £12 and cannot exceed—

(a) in the case of a 2007 or later entrant, his or her permitted maximum; and

(b) in the case of a pre-2007 entrant or a teacher with mixed service, his or her permitted maximum less his or her retirement lump sum.

(3) Where a lump sum is paid under this regulation the annual rate of the teacher's retirement pension is reduced by £1 for every £12 of lump sum.

(4) This regulation does not apply to a teacher who is a pre-2007 entrant and falls within regulation EA1(3)(a).

(5) Paragraph (6) applies where—

(a) a teacher has elected to receive phased retirement benefits and has also made an election pursuant to this regulation (“the first election”) to receive a further lump sum in place of part of the retirement pension comprised in the phased retirement benefits, but

(b) the election to receive phased retirement benefits ceased to have effect by virtue of regulation E6A(6).

(6) Where this paragraph applies the teacher is treated, on becoming entitled to payment of retirement benefits, as having elected pursuant to this regulation to receive a further lump sum of the appropriate amount, and the appropriate amount is then reduced by the lump sum which had been paid to the teacher pursuant to the first election.

(7) Paragraph (8) applies where a teacher to whom regulation E19 applies made an election pursuant to this regulation (“the first election”) to receive a further lump sum in place of part of the first pension.

(8) Where this paragraph applies the teacher is treated, on becoming entitled to payment of retirement benefits pursuant to regulation E19(2) or (4), as having elected pursuant to this regulation to receive a further lump sum of the appropriate amount, and the appropriate amount is then reduced by the lump sum which had been paid to the teacher pursuant to the first election.

(9) In this regulation—

- (a) “the appropriate amount” is the amount (rounded to the nearest £12) such that the proportion which the rate of retirement pension forgone bears to the rate of retirement pension to which the teacher is entitled is the same as the proportion which the rate of retirement pension forgone pursuant to the first election bore to—
- (i) the rate of retirement pension to which the teacher was eligible pursuant to the election made under regulation E6A, where the teacher falls within paragraph (5), or
  - (ii) the rate of the first pension, where the teacher falls within paragraph (7),
- (b) “the first pension” has the same meaning as in regulation E19(1)(a).

### **Teachers aged 75 or over**

**E8B.**—(1) Where a teacher would be entitled to a retirement lump sum but for regulation E8(6), the annual rate of that teacher’s retirement pension shall be increased by an amount which represents the value of the retirement lump sum to which the teacher would have been entitled, payable from the date when the teacher’s application made under regulation E36 is received by the Scottish Ministers.

(2) The increase in the annual rate of the teacher’s retirement pension is to be determined by the Scottish Ministers after taking advice from the Government Actuary.”

**32.** In regulation E9(6) (limitation of retirement benefits in certain cases) for “E7(4) or E8(3)” substitute “E7(6) or E8(5)”.

**33.**—(1) At the end of the heading to regulation E10 (enhancement of retirement benefits in case of incapacity) insert “**where application is received before 1st April 2007**”.

(2) In regulation E10—

(a) in paragraph (1)—

- (i) after “in pensionable employment” insert “and whose application for payment under regulation E36(1A) is received by the Scottish Ministers before 1st April 2007”; and
- (ii) for “E6(1)(c)” where it occurs substitute “E6(5)”;

(b) in paragraph (4)(b) for “E6(1)(e)”, “E6(1)(c)” and “B9” substitute “E6(7)”, “E6(5)” and “B1” or “B2” respectively; and

(c) in paragraph (9) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”.

(3) After regulation E10 insert the following—

**“Total incapacity benefit where application received on or after 1st April 2007**

**E10A.—**(1) This regulation applies to a teacher who has become entitled to payment of retirement benefits by reason of that teacher having become incapacitated and where immediately before he or she became incapacitated—

- (a) he or she was in pensionable employment; or
- (b) he or she was taking a period of unpaid sick leave, maternity, paternity or adoptive leave, which, in each case, followed on immediately after a period of pensionable employment; or
- (c) he or she was paying additional contributions under old regulation C8 or regulation C9,

and whose application for payment under regulation E36(1A) is received by the Scottish Ministers on or after 1st April 2007 and who satisfies the condition in paragraph (2)(a) and either of the conditions in paragraphs (2)(b) or the condition in (2)(c).

(2) The conditions are—

- (a) that (in addition to being incapacitated) the teacher’s ability to carry out any work is impaired by more than 90% and is likely permanently to be so; and
- (b) where the teacher falls within paragraph (1)(a) or (1)(c), that the application for payment required by regulation E36(1A) is made within 12 months after the end of the pensionable employment or within 6 months after the last payment of additional contributions under old regulation C8 or regulation C9 as the case may be; or
- (c) where the teacher falls within paragraph (1)(b) that the application for payment required by regulation E36(1A) is made—
  - (i) where the teacher was on unpaid sick leave, before the period of sick leave ends; and
  - (ii) in any other case before the date on which, under the arrangements made with the teacher’s employer, the leave is due to end.

(3) The teacher becomes entitled (subject to regulation E35(2)) to payment of a total incapacity pension and (where applicable) a total incapacity lump sum calculated in accordance with regulation E7 or (where applicable) E8 but with the amount of effective reckonable service calculated in accordance with paragraph (4).

(4) The effective reckonable service is  $(X-Y)/2$  where—

X is the amount which would have been the teacher’s reckonable service if he or she had ceased to be in pensionable employment on his or her attaining the normal pension age; and

Y is the amount specified in paragraph (5).

(5) The amount specified in this paragraph is—

- (a) the actual amount of the teacher’s effective reckonable service where—
  - (i) immediately before the teacher became incapacitated he or she was in excluded employment;
  - (ii) immediately before the teacher became incapacitated he or she was paying additional contributions under old regulation C8 or regulation C9; or
  - (iii) immediately before the teacher became incapacitated he or she was in pensionable employment and entitlement to retirement benefits took effect

under regulation E6(8) at the same time as he or she ceased to be in pensionable employment; or

- (b) the amount which would have been the teacher's effective reckonable service if he or she had remained in pensionable employment until the date on which entitlement to retirement benefits took effect under regulation E6(8)(b) in any other case.

(6) Where the teacher is a teacher with mixed service, the effective reckonable service specified in paragraph (4) shall be treated as having occurred after the relevant break of service.

(7) The entitlement to payment of a total incapacity pension and (where applicable) lump sum takes effect on the same day as the entitlement to payment of the retirement pension and lump sum."

34. In regulation E11(4) (avoidance of duplicate pensions) before "regulation C8" insert "old".
35. Omit regulation E14 (allocation of part of retirement pension).
36. In regulation E16(6) (suspension and resumption of incapacity pensions) for "E6(1)(a)" substitute "E6(2)".
37. In regulation E17 (withdrawal of incapacity pension)—
- (a) at the end of the heading to regulation E17 insert "where application for payment was received before 1st April 2007";
- (b) for "regulation E6(1)(c)" substitute "regulation E6(5) and whose application for payment under regulation E36(1A) was received by the Scottish Ministers before 1st April 2007"; and
- (c) for "regulation E6(1)(c)" where it second occurs substitute "regulation E6(5)".
38. After regulation E17 insert—

**"Withdrawal of incapacity pension where application for payment was received on or after 1st April 2007"**

**E17A.—(1)** This regulation applies where a teacher is entitled to a payment of a retirement pension by virtue of regulation E6(5) and the teacher's application for payment was received by the Scottish Ministers on or after 1st April 2007.

(2) Paragraph (4) has effect where the teacher was entitled to a total incapacity pension under regulation E10A but the teacher subsequently ceases to satisfy the condition contained in regulation E10A(2)(a).

(3) For the purposes of paragraph (2) a teacher is treated as having ceased to satisfy the condition in regulation E10A(2)(a) if he or she takes up any employment unless—

- (a) he or she takes up any employment other than employment in a capacity described in Schedule 2;
- (b) he or she provides the Scottish Ministers with a certificate from a registered medical practitioner that in the opinion of the medical practitioner he or she still meets the condition; and
- (c) the Scottish Ministers determine that he or she still meets the condition.

(4) Subject to paragraph (5), on the date on which the teacher ceases to satisfy the condition contained in regulation E10A(2)(a) the total incapacity pension referred to in regulation E10A ceases to be payable.

(5) Where however the teacher satisfies the requirements of subparagraphs (a), (b) and (c) of paragraph (3) and satisfies the requirements of subparagraphs (b) and (c) of that

paragraph after he or she has taken up the employment the total incapacity pension is payable again as from the date on which the teacher took up the employment.

(6) Paragraph (8) has effect where the teacher subsequently ceases to be incapacitated.

(7) For the purposes of paragraph (6) a teacher is treated as having ceased to be incapacitated if he or she takes up employment in a capacity described in Schedule 2.

(8) On the date on which the teacher ceases to be incapacitated the teacher's retirement pension ceases to be payable, but any equivalent pension benefits continue to the payable.

(9) Where paragraph (8) had effect the retirement pension becomes payable again (subject to paragraph (10) and to regulation E36(1A))—

- (a) from the date on which the teacher attains his or her normal pension age; or
- (b) if earlier, from the start of any renewed incapacity.

(10) Paragraph (9) does not apply if the teacher has been in pensionable employment at any time after he or she first became entitled to payment of the retirement pension.

(11) If the pension becomes payable again under paragraph (9)(a) it is to be treated for purposes of regulation E18 as a pension to which the person has become entitled by virtue of regulation E6(2).”.

**39.**—(1) Regulation E18 (abatement of retirement pension) is amended as follows.

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

“(1) Subject to paragraph (7), this regulation applies while a teacher who has become entitled to payment of a teacher's pension is employed—

- (a) in pensionable employment, comparable British service or employment which would have been pensionable but for—
  - (i) the teacher having made an election under regulation B7; and
  - (ii) the teacher not having attained the age of 75; or
- (b) in full-time employment which is not pensionable employment by reason of the fact that the employment commenced on or after 1st April 1997 and the teacher falls within regulation B6(5) and has not made an election under regulation B8(1A).”.

(3) In paragraph (2), in both places where it occurs, omit “-E”.

(4) In paragraph (3)—

(a) for the definition of “C” substitute the following—

“C is the salary of reference determined in accordance with paragraph (3A), (3B) or (3C);”;

(b) in the definition of “D” for “the pension” substitute—

“(i) where the salary of reference is determined in accordance with paragraph (3A), the pension; and

(ii) where the salary of reference is determined in accordance with paragraph (3B), the last day of employment at that salary.”; and

(c) omit the definitions of “E” and “F”.

(5) After paragraph (3) insert the following—

“(3A) The salary of reference for a teacher whose most recent entitlement to payment of a teacher's pension arose before 1st April 2007 is, or where the previous employment was part-time is the full-time equivalent of, the highest annual rate of contributable salary that was payable to the teacher during the 3 years ending immediately before he or she became

entitled to payment of the pension, or, if applicable, the highest annual rate of contributable salary that was payable to him or her during the 3 years ending immediately before he or she ceased to be employed in any pensionable employment entered into by the teacher after he or she became entitled to payment of the pension, whichever is greater.

(3B) The salary of reference for a teacher whose most recent entitlement to payment of a retirement pension arises on or after 1st April 2009 is—

- (a) where the teacher’s pensionable salary was the amount specified in regulation E34(2)(a), the highest annual rate of contributable salary that was payable to him or her during the 365 days ending immediately before he or she became entitled to payment of the pension, or, if applicable, the highest rate of contributable salary that was payable to him or her during the 365 days ending immediately before he or she ceased to be employed in any pensionable employment entered into by him or her after he or she became entitled to payment of the pension, whichever is the greater; and
- (b) where the teacher’s pensionable salary was the amount specified in regulation E34(2)(b) or (3A), the highest annual rate of contributable salary that was payable to him or her during his or her pensionable salary service or, if applicable, the highest rate of contributable salary that was payable to him or her during any period of pensionable employment entered into by him or her after he or she became entitled to payment of pension, whichever is the greater,

or, in either case, where the previous employment was part-time, the full-time equivalent of such salary.

(3C) The salary of reference for a teacher whose most recent entitlement to payment of a retirement pension arises on or after 1st April 2007 but before 1st April 2009 is the salary referred to in paragraph (3A) or (3B) whichever is the higher.”.

(6) In paragraph (7) for “regulation E6(1)(e)” substitute “regulation E6(7) or regulation E6A”.

**40.** In regulation E19 (retirement benefits on cessation of further employment which began on or before 30th September 2001)—

- (a) in paragraph (1)(b) omit “(other than further employment to which regulation B9(1) applies)”;
- (b) omit paragraph (6);
- (c) in paragraph (8) for “regulation E6(1)(c) nor regulation E6(1)(d)” substitute “regulation E6(5) nor regulation E6(6)”;
- (d) in paragraph (10) for “E6(1)(d)” substitute “E6(6)”.

**41.** In regulation E20 (retirement benefits on cessation of further employment which began on or after 1st October 2001)—

- (a) for the heading substitute “**Retirement benefits on cessation of further employment where regulation E19 does not apply**”;
- (b) for paragraph (1) substitute—

“(1) This regulation applies to a teacher, other than a teacher to whom regulation E19 applies, who—

- (a) was entitled to be paid a teacher’s pension;
- (b) has, after becoming entitled to a teacher’s pension, re-entered pensionable employment (“the further employment”); and
- (c) ceases to be in the further employment.”;

(c) in paragraph (3) for “regulation E6(1)(a) or (b)” substitute “regulation E6(2) or (4)”;

- (d) in paragraph (4) for “E6(1)(c)” and “E6(2)(b)” substitute “E6(5)” and “E6(8)(b)” respectively;
  - (e) in paragraph (5) for “E6(1)(d)” and “E6(2)(c)” substitute “E6(6)” and “E6(8)(c)” respectively;
  - (f) in paragraph (6) for “E6(1)(e)” and “E6(2)(d)” substitute “E6(7)” and “E6(8)(d)” respectively; and
  - (g) in paragraph (7) for “further employment which is pensionable by virtue of regulation B9” substitute “further employment such as is mentioned in paragraph (1)(b)”.
- 42.** In regulation E23(1) (commutation: exceptional circumstances of ill-health) for “E6(1)(c)” substitute “E6(5)”.
- 43.** In regulation E24 (death grants)–
- (a) in paragraph (1)(b) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”;
  - (b) for paragraph (2) substitute–
    - “(2) The amount of the death grant payable under paragraph (1) is–
    - (a) in the case of a death occurring on or after 1st April 1998 but before 1st April 2007, twice his or her pensionable salary; or
    - (b) in the case of a death occurring on or after 1st April 2007, three times his or her pensionable salary.”;
  - (c) in paragraph (5) for “E6(1)(a)” substitute “E6(2)”;
  - (d) in paragraph (6)(b) after “a surviving civil partner” insert “, surviving nominated partner”;
  - (e) for paragraph (7)(a) substitute the following–
    - “(a) if the deceased is survived by one widow, a widower, a surviving civil partner or a surviving nominated partner, to that person,”; and
  - (f) in paragraph (7)(c) for “or surviving civil partner” substitute “, surviving civil partner or surviving nominated partner”.
- 44.** In regulation E25 (deficiency grants)–
- (a) for paragraph (8)(a) substitute–
    - “(a) if the deceased is survived by one widow, a widower, a surviving civil partner or a surviving nominated partner, to that person,”; and
  - (b) in paragraph (8)(c) for “or surviving civil partner” substitute “, surviving civil partner or surviving nominated partner.”.
- 45.** In regulation E26 (family benefits generally)–
- (a) in paragraph (1) after “surviving civil partners,” insert “surviving nominated partners”;
  - (b) for paragraph (2) substitute–
    - “(2) Where a teacher was entitled to be paid a teacher’s pension and, after becoming so entitled re-entered pensionable employment (“the further employment”), in calculating the benefits paid under regulations E28 to E33, the further employment shall not be taken into account but those regulations shall apply separately to the further employment if they apply to any other pensionable employment.”; and
  - (c) in paragraph (3)(a) and (b) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”.
- 46.** After regulation E26 insert the following–

**“Nomination of partner**

**E26A.**—(1) A teacher (A) may nominate another person (B) to receive a pension by giving to the Scottish Ministers a declaration signed by both A and B that the condition in paragraph (2) has been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(2) The condition is that—

- (a) A is able to marry, or form a civil partnership with, B;
- (b) A and B are living together as if they were husband and wife or as if they were civil partners;
- (c) neither A nor B is living with a third person as if they were husband and wife or as if they were civil partners; and
- (d) either B is financially dependent on A or A and B are financially interdependent.

(3) A nomination has no effect if the condition in paragraph (2) has not been satisfied for a continuous period of at least 2 years which includes the day on which the declaration is signed.

(4) A nomination ceases to have effect if—

- (a) either A or B gives written notice of revocation to the Scottish Ministers;
- (b) A makes a subsequent nomination under this regulation;
- (c) either A marries, forms a civil partnership or lives with a third person as if they were husband and wife or as if they were civil partners; or
- (d) B dies.

(5) B is A’s surviving nominated partner if—

- (a) the nomination has effect at the date of A’s death; and
- (b) B satisfies the Scottish Ministers that the condition in paragraph (2) was satisfied for a continuous period of at least 2 years immediately prior to A’s death.

(6) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.”.

**47.** In regulation E27 (nomination of beneficiaries)—

- (a) for the heading substitute “**Nomination of other adult beneficiaries**”;
- (b) in paragraph (2) after “a previous nomination under this regulation” insert “or regulation E26A”; and
- (c) in paragraph (4)(b) after “appointer” insert “makes a nomination under regulation E22A.”

**48.**—(1) Regulation E28 (entitlement to short-term family benefits) is amended as follows.

(2) In paragraph (1)(b) “regulation C8 or C9” substitute “old regulation C8 or regulation C9”.

(3) For paragraph (2)(a) substitute the following—

- “(a) subject to paragraph (4), to the deceased’s surviving spouse, surviving civil partner, surviving nominated partner or nominated beneficiary, and”.

(4) Omit paragraph 4(b).

(5) In paragraph (4)(c) after “surviving civil partner”, insert “surviving nominated partner”.

**49.**—(1) Regulation E29 (amount and duration of short-term family benefits) is amended as follows.

(2) In paragraph (1)(b) before “regulation C8(7)” insert “old”.

(3) In paragraph (2) for “surviving spouse or surviving civil partner” substitute “surviving spouse, surviving civil partner or surviving nominated partner”.

(4) In paragraph (3) and the Table for “spouse, civil partner”, in both places where it occurs, substitute “surviving spouse, surviving civil partner, surviving nominated partner”.

**50.**—(1) Regulation E30 (entitlement to long-term family benefits) is amended as follows.

(2) After paragraph (2) insert the following—

“(2A) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.”.

(3) In paragraph (3)—

(a) after “male teacher not falling within paragraph (4A)” insert “or (4B)”;

(b) in sub paragraph (b) for “regulation C8 or C9” substitute “old regulation C8 or C9”; and

(c) in sub paragraph (c) for “regulation C5 or C7(1)” substitute “old regulation C5 or regulation C7(1)”.

(4) In paragraph (4)—

(a) after “paragraph (3) or (4A)” insert “or 4B”;

(b) in sub paragraph (b) for “regulation C5 or C7(1)” substitute “old regulation C5 or regulation C7(1)”;

(c) in paragraph (4)(c) omit “and”;

(d) in paragraph (d) after “transfer value”—

(i) insert “(other than one mentioned in subparagraph (e))”; and

(ii) for “receipt of the transfer value” substitute “the acceptance of the transfer value”.

(e) after paragraph 4(d) insert—

“(e) where a transfer value has been accepted in respect of comparable British service—

(i) any period which consists of, or is attributable to, service after 5th April 1988; and

(ii) any other period which would, immediately before its acceptance, have counted in the relevant pension scheme for the payment of a pension to the deceased’s widower.”.

(5) In paragraph (4A)—

(a) in sub paragraph (b) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”; and

(b) in sub paragraph (c) for “regulation C5 or C7(1)” substitute “old regulation C5 or regulation C7(1)”.

(6) After paragraph (4A) insert the following—

“(4B) In the case of a teacher who dies and is survived by a surviving nominated partner, the teacher’s relevant service comprises, subject to paragraph (2)—

(a) any period of pensionable employment after 31st March 2007;

(b) any period beginning after 31st March 2007 in respect of which additional contributions have been paid under old regulation C8 or regulation C9;

- (c) any period of reckonable service in respect of which family benefit contributions have been paid under Part IIB of Schedule 6 or are treated as having been paid under Part III of Schedule 6 in respect of an election made under Part IIB;
- (d) where a transfer value has been accepted in respect of comparable British service, any period which consists of or is attributable to service which would, immediately before its acceptance, have counted in the relevant pension scheme for the payment of a pension to a person (other than the deceased's surviving spouse or surviving civil partner) with whom at the date of his or her death the deceased was living as if they were husband and wife or as if they were civil partners; and
- (e) where the deceased entered pensionable employment after 31st March 2007 and a transfer value (other than one mentioned in subparagraph (d)) has been accepted, any period counting as reckonable service by virtue of the acceptance of the transfer value.”.

(7) In paragraph (5)(a) for “any surviving spouse or any surviving civil partner” substitute “any surviving spouse, surviving civil partner or surviving nominated partner”.

(8) In paragraph (9) for “surviving spouse or surviving civil partner” substitute “surviving spouse, surviving civil partner or (where the teacher's relevant service under paragraph (4B) includes service prior to 6th April 1997) surviving nominated partner”.

**51.**—(1) Regulation E31 (amounts of surviving spouses', surviving civil partners' or nominated beneficiaries' long-term pensions) is amended as follows.

(2) For the heading substitute “**Amount of surviving spouse's, surviving civil partner's, surviving nominated partner's or nominated beneficiary's long-term pension**”.

(3) In paragraph (1) after “surviving civil partner” insert “, surviving nominated partner”.

(4) In paragraph (3) after “surviving civil partner” insert “, surviving nominated partner”.

(5) After paragraph (7A) insert the following—

“(7B) If the pension is payable to a surviving nominated partner, the deceased's family benefit service, subject to paragraphs (4) and (9) to (11), comprises the relevant service described in regulation E30(4B).”.

(6) In paragraph (9)(b) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”.

(7) In paragraph (10) for “paragraphs (4) to (7A)”, in both places where it occurs, substitute “paragraphs (4) to (7B)”.

(8) In paragraph (12)—

(a) in sub paragraph (b) for “regulation C5” substitute “old regulation C5”; and

(b) in sub paragraph (c) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”.

**52.**—(1) Regulation E32 (amounts of children's long-term pensions) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) after “surviving civil partner” insert “, surviving nominated partner”; and

(b) for “E31(7)” substitute “E31(9)”.

**53.** After Regulation E32 insert the following—

**“Additional dependant’s pension where election made under regulation C4B**

**E32A.**—(1) Where an election (other than one which has ceased to have effect) was made under paragraph 5(b) or 12(b) of Schedule 2A by, or in respect of, the deceased, the annual rate of the pension referred to in regulation E29(1), E31(1), E32(1) and E32(1A) must be increased by half the additional pension.

(2) The additional pension is the annual rate with which the deceased had been credited, increased as specified in regulation E7A(3).”

**54.**—(1) Regulation E33 (commencement and duration of long-term family pensions) is amended as follows.

(2) In paragraph (1) after “surviving civil partner” insert “, surviving nominated partner”.

(3) In paragraph (3A) after “does not apply” insert “to any pension payable following the death of a teacher who was in pensionable employment after 31st March 2007 or who was paying or had paid additional contributions under old regulation C8 or regulation C9 in respect of a period after that date or”.

(4) In paragraph (4)(a) after “surviving civil partner” insert “, surviving nominated partner”.

**55.**—(1) Regulation E34 (pensionable salary) is amended as follows.

(2) For paragraphs (1) to (5) substitute the following—

“(1) A teacher’s pensionable salary is either that specified in paragraph (2) or calculated in accordance with regulation E34A.

(2) Where—

(a) the teacher’s full salary in the last 365 days of the teacher’s pensionable salary service is greater than the salary determined under regulation E34A(3); or

(b) the teacher has a pensionable salary service of 365 days or less,

the teacher’s pensionable salary is (subject to paragraph (11)) the teacher’s full salary in the last 365 days of the teacher’s pensionable salary service.

(3) Where the salary determined under regulation E34A(3) is greater than

the teacher’s full salary in the last 365 days of the teacher’s pensionable salary service the pensionable salary is that specified in regulation E34A.

(4) Pensionable salary service comprises—

(a) any period spent by the teacher in pensionable employment;

(b) any period counting as reckonable service by virtue of regulation D4;

(c) any period of comparable British service which began before 1st April 1974 and has not been followed by a period of pensionable employment and for which a transfer value has not been accepted;

(d) any period of a kind described in Schedule 8; and

(e) any period counting as reckonable service by virtue of regulation C9.

(5) For the purposes of paragraphs (2), (3) and (11) periods when the teacher was not in pensionable employment shall be disregarded and accordingly the periods of 365 days and 1095 days referred to in those paragraphs may be discontinuous.”

(3) In paragraph (6) for “(2), (3)(a)” substitute “(4)(a)”.

(4) In paragraph (7)—

(a) in sub-paragraphs (a) to (e) for “(3)” substitute “(4)”; and

- (b) in sub-paragraph (c) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”.
- (5) In paragraph (10) for “the material part of his or her terminal service” substitute “the last 365 days of his or her pensionable salary service”.
- (6) After paragraph (10) insert the following—
  - “(10A) Paragraph (11) applies where (disregarding the effect of that paragraph) a teacher’s pensionable salary service would be that specified in paragraph (2).”.
- (7) In paragraph (11) for “where at any time during the material part of a teacher’s terminal service a teacher has received” substitute “where at any time during the last 1095 days of his or her pensionable salary service a teacher to whom this paragraph applies has received”.
- (8) In paragraph (12)(a) for “E6(1)(c)” substitute “E6(5)”.
- (9) In paragraph (14)(a) after “lump sum payment” insert “(where regulation E8 applies to the teacher)”.
- (10) After paragraph (14) insert the following—
  - “(14A) For the purposes of this regulation, in computing periods consisting of numbers of days, no account shall be taken of a leap year day (29th February) except as provided by paragraph (14B).
  - (14B) Where however a teacher’s pensionable salary service ends in a leap year on or after the leap year day that leap year day shall be included in the period of 365 days referred to in paragraph (2).”.
- (11) In paragraph (15) for “the material part of his or her terminal service” substitute “his or her last 365 days of pensionable salary service”.

**56.** After regulation E34 insert the following—

**“Pensionable salary – supplemental**

**E34A.**—(1) This regulation has effect for the purpose of determining a teacher’s salary where regulation E34(3A) applies (“the alternative pensionable salary”).

(2) In this regulation “salary period” is each period in which the teacher’s salary rate is unchanged.

(3) The average of the teacher’s full salary for the best consecutive 1095 days of pensionable salary service (increased as specified in paragraph (4)) during the period of 10 years ending on the last day of the teacher’s pensionable salary service shall first be determined.

(4) For the purposes of paragraph (3) the teacher’s full salary for each salary period is increased by the amount (if any) by which, immediately before the end of the teacher’s pensionable salary service, it would have increased if it had been the annual rate of an official pension within the meaning of section 5(1) of the 1971 Act beginning, and first qualifying for increases under that Act, on the same day as the salary period ended.

(5) The alternative pensionable salary is the average of the actual full salary for the 1095 days which, resulting from and in accordance with the determination under paragraph (3), are the best consecutive 1095 days of pensionable salary service, multiplied by A/B.

(6) In paragraph (5)—

“A” is the annual rate of retirement pension to which the teacher would have been entitled by virtue of these Regulations if—

- (a) in calculating the teacher’s full salary for each salary period the teacher’s full salary for that period had in fact been increased as specified in paragraph (4); and

(b) the 1971 Act did not apply; and

“B” is the annual rate of retirement pension to which the teacher would have been entitled by virtue of the combined effect of these Regulations and the increase effected by the 1971 Act up to the last day of the teacher’s pensionable salary service, if the teacher’s pensionable salary had been the amount determined under paragraph (5) without the multiplication by A/B.

(7) For the purposes of paragraph (3) periods when the teacher was not in pensionable employment shall be disregarded, except in relation to the period of 10 years, and accordingly the 1095 days referred to in paragraphs (3) and (5) may be discontinuous.

(8) In computing the period of 1095 days referred to in paragraphs (3) and (5) no account shall be taken of a leap year day (29th February).

(9) Where however a teacher’s pensionable salary service ends in a year on or after the leap year day that leap year day shall be included in the period of 1095 days referred to in paragraphs (3) and (5).

(10) In this regulation “full salary” has the same meaning as in regulation E34.”.

**57.** In regulation E35 (effective reckonable service)–

(a) for paragraph (2) substitute–

“(2) Subject to paragraph (3), effective reckonable service does not include any reckonable service in excess of 45 years.”;

(b) in paragraph (3) for “E6(1)(d)” substitute “E6(6)”; and

(c) in paragraph (5) for “regulation E6(1)(c) or (d)” substitute “E6(5) or (6)”.

**58.** After regulation E36(1) (payment of benefits) insert–

“(1A) No benefit is to be paid unless a written application for payment has been made and paragraph (1B), if applicable, has been complied with.

(1B) Where the application for payment is made on the basis that the teacher is entitled to retirement benefits under regulation E6(5), the application shall–

(a) where the teacher falls within regulation E6(5)(c)(i)(aa) and (bb), be signed by, or on behalf of, the teacher’s employer; and

(b) shall be accompanied by all medical evidence necessary to determine whether the teacher falls within regulation E6(5) and, where applicable, that the teacher’s ability to carry out any work is impaired by more than 90% and is likely permanently to be so.

(1C) If the Scottish Ministers notify the teacher in writing that they so require, the applicant is to provide any relevant information (including further medical evidence such as is mentioned in paragraph (1B)) specified by them that is in the applicant’s possession or that he or she can reasonably be expected to obtain.”.

**59.** After regulation E37(4) (interest on late payment of certain benefits) insert–

“(4A) Where, pursuant to regulation E17A(5) a total incapacity pension is payable again as from the date on which the teacher took up employment the teacher shall, for the purposes of this regulation, be treated as having become entitled to the total incapacity pension again on the date on which the Scottish Ministers determine that the teacher still meets the condition specified in regulation E10A(2)(a).”.

**60.** In regulation F1(2) (pension sharing mechanism in the scheme: shareable rights) after “surviving civil partner” insert “, surviving nominated partner”.

**61.** In regulation F9(5)(b) (failure to discharge liability in respect of pension credit within the implementation period – death of ex-spouse or ex-civil partner within period) for “the age of 60” substitute “normal pension age”.

**62.**—(1) Regulation F10 (appropriate rights and pension credit benefits under the scheme) is amended as follows.

(2) In paragraph (1) after “shall consist only of a pension,” insert “(where paragraph (3) applies)”.

(3) After paragraph (2) insert—

“(2A) Paragraph (3) applies where the pension credit member’s normal pension age is 60.”.

(4) At the beginning of paragraph (3) insert “Where this paragraph applies”.

(5) In paragraphs (4) and (5), for “normal retirement age”, in both places where it occurs, substitute “normal pension age”.

**63.** After regulation F10 insert—

**“Normal pension age**

**F10A.**—(1) For the purposes of this Part a pension credit member’s normal pension age is, subject to paragraph (2), the normal pension age of the corresponding debit member.

(2) Where—

(a) the corresponding debit member is a person with mixed service; and

(b) at the time when the relevant arrangement referred to in section 28 of the 1999 Act took effect the corresponding debit member had not ceased to be a pre-2007 entrant by virtue of regulation EA1(4),

the pension credit member’s normal pension age shall be 60.”.

**64.**—(1) Regulation F13 (commutation: exceptional ill-health) is amended as follows.

(2) In paragraph (1) for “normal benefit age” and “normal retirement age” substitute “normal pension age”.

(3) In paragraph (3) for “he had already reached the normal retirement age” substitute “he or she had already reached the normal pension age”.

**65.** After regulation F13 insert—

**“Commutation on election by pension credit member**

**F13A.**—(1) A pension credit member may, by an election made with the application for payment under regulation E36(1A), elect to receive a further lump sum of such amount as is specified in the election (subject to paragraph (2)) in place of part of his or her pension.

(2) The amount of such lump sum must be a multiple of £12 and cannot exceed—

(a) in the case of a pension credit member with a normal pension age of 65, his or her permitted maximum; and

(b) in the case of a pension credit member with a normal pension age of 60, his or her permitted maximum less the lump sum paid under regulation F10(3).

(3) Where a lump sum is paid under this regulation the annual rate of the pension credit member’s pension is reduced by £1 for every £12 of lump sum paid under paragraph (2).”.

**66.**—(1) Regulation G1 (payment of transfer values) is amended as follows.

- (2) In paragraph (2) for the words from “before attaining” to the end substitute—  
“before attaining—
- (a) in the case of a pre-2007 entrant or a teacher with mixed service in respect of his or her service before 1st April 2007, the age of 60 years or, where paragraph (5) applies, the age of 59 years; or
  - (b) in any other case, the age of 65 years or, where paragraph (5) applies, the age of 64 years.”.
- (3) In paragraph (4)(a) after “the age of 60 years” insert “in a case falling under paragraph (2) (a) or the age of 65 in any other case”.
- (4) In paragraph (4)(b) after “the age of 59 years” insert “in a case falling under paragraph (2) (b) or the age of 64 years in any other case”.
- 67.** For regulation H3 (employers'contributions) substitute the following—

**“Employers' contributions**

**H3.—(1)** In this regulation—

- (a) “relevant period” is to be construed in accordance with regulation H2(6);
  - (b) the “net contribution rate” for any relevant period is the aggregate of the percentage specified for that period under regulation H2(6) and any percentage specified for that period under regulation H2(10) less any percentage specified for that period under regulation H2(11);
  - (c) an education authority is deemed to be the employer of every person employed in or in connection with a school under their management, other than of a person who is in the employment of an employment business; and
  - (d) “employment business” has the meaning assigned to it by section 13(3) of the Employment Agencies Act 1973(8).
- (2) Subject to paragraph (5) the employer of a teacher in pensionable employment shall during every relevant period pay contributions of the required percentage of the teacher’s contributable salary for the time being.
- (3) The required percentage for the relevant period starting on 1st April 2007 is 13.5%.
- (4) The required percentage for any subsequent relevant period shall be  $A \times X$ , where A is the net contribution rate as defined in paragraph (1)(b) and X is the percentage determined in accordance with regulation C3.
- (5) No contributions are to be payable in respect of anyone to whom regulation E35(2) has become applicable.
- (6) Where a teacher commences employment by virtue of regulation J2 and that teacher either simultaneously or subsequently commences employment at reduced salary by virtue of regulation J1 the employer of that teacher shall pay the contributions payable under paragraphs (1) and (2) and regulation C3 on the amount determined by paragraph (7).
- (7) The amount referred to under paragraph (6) shall be the difference between—
- (a) the contributable salary which would be payable under regulation J2 if employment at reduced salary by virtue of regulation J1 had not been commenced; and
  - (b) the contributable salary payable where employment has been commenced under both regulation J1 and J2.”.

68. After regulation H5 (employers contributions – part-time elections) insert–

**“Employers' contributions in respect of further employment**

**H5A.** Where regulation C4A (contributions where an election under regulation B8(1A) is to take effect from an earlier date) applies, the employer of the teacher in pensionable employment shall–

- (a) pay contributions calculated in accordance with regulation H3 (employers' contributions) and treated as due on the last day of each month for the period starting with the earlier date agreed under regulation B8(1A) and ending immediately before the first day of the month after that in which the notice was given;
- (b) pay interest on such contributions which have accrued at 7% per annum compounded with monthly rests from the 8th day after the end of the month in which the contributions were due to the date of payment of the contributions; and
- (c) pay such contributions and interest together with the amounts collected under regulation C15(1A) to the Scottish Ministers no later than 6 weeks after the date on which the employer gave his agreement under regulation B8(1A).

**Employers' contributions in respect of additional benefits**

**H5B.** Where an employer has elected under regulation C4B (election in respect of additional benefits) to pay additional contributions in respect of a teacher, payment to the Scottish Ministers of the lump sum referred to in paragraph 12 of Schedule 2A shall be made within the period referred to in paragraph 27(a) of that Schedule.”.

69. In regulation H6(3) (payment by employers to Scottish Ministers), after “elected under” insert “old”.

70.—(1) Regulation J1 (modified application in case of employment at reduced salary) is amended as follows.

(2) For paragraph (1)(a) substitute–

“(a) a teacher who has been in pensionable employment either–

- (i) continues to be employed by the same employer at a reduced rate of contributable salary, where the reduced rate of contributable salary had effect before 31st March 2007; or
- (ii) ceases to be employed before 31st March 2007 and is re-employed before 1st April 2007 (whether by the same or a different employer) at a reduced rate of contributable salary, and”.

(3) For paragraph (1)(f) substitute–

“(f) where he or she is not now in pensionable employment by virtue of paragraph B9 as it had effect immediately before 1st April 2007.”.

71.—(1) Regulation J2 (winding down employment) is amended as follows.

(2) For paragraph (1)(a) substitute–

“(a) have elected to wind down no earlier than 4 years prior to normal pension age;”.

(3) For paragraph (1)(c) substitute–

“(c) subject to sub-paragraph (b) have a minimum of 25 years' teaching service prior to commencing winding down employment, which period may include for qualifying purposes a maximum period of 5 years during any break in teaching service; and”.

72. In regulation J6(3) (repayment of contributions where an election is not made under regulation H6(5)) after “regulation C3,” where it occurs insert “old”.

73. After regulation J6 insert the following—

**“Declaration where lump-sum payments are made**

**J6A.**—(1) The Scottish Ministers may, before paying any lump sum under regulations E2(2)(b), E6A, E8, E8A, E19, E23, E34(14), F10, F13, F13A or J9 require the teacher to whom the payment is to be made to provide a declaration as specified in paragraph (2) by a date determined by the Scottish Ministers.

(2) The declaration is a declaration, in a form specified by the Scottish Ministers, signed by that teacher, to the effect that paragraph 3A of Schedule 29 to the Finance Act 2004(9) (recycling of lump sums) does not apply.

(3) Where no such declaration is received by the Scottish Ministers by the date referred to in paragraph (1)—

- (a) where the payment in question would otherwise have been a lump sum under regulation E6A, E8A or F13A the Scottish Ministers may treat the election under regulation E6A, E8A or F13A, as the case may be, as being of no effect;
- (b) where the payment in question would otherwise have been a lump sum under regulation E8, E34(14) or F10 the Scottish Ministers may, in place of the lump sum, pay an additional pension representing the value of the lump sum; and
- (c) where the payment in question would otherwise have been a lump sum under regulation J9, the Scottish Ministers need not pay the lump sum.

(4) The amount of the additional pension referred to in paragraph (3)(b) shall be determined by the Government Actuary.”.

74.—(1) Schedule 1 (glossary of expressions) is amended as follows—

(2) Omit the definition of “normal retirement age”.

(3) Insert the following definitions at the appropriate place in alphabetical order—

““2007 or later entrant”	Shall be construed in accordance with regulation EA1.”;
““Normal pension age”	Shall be construed in accordance with regulation EA1 except in Part F, where it shall be construed in accordance with regulation F10A.”;
““Old regulation C5”	Regulation C5 as it had effect immediately before 1st April 2007.”;

(9) 2004 c. 12; paragraph 3A of Schedule 29 was inserted by the Finance Act 2006 (c. 25), section 159.

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

““Old regulation C6”	Regulation C6 as it had effect immediately before 1st April 2007.”;
““Old regulation C8”	Regulation C8 as it had effect immediately before 1st April 2007.”;
““Permitted maximum”	Shall be construed in accordance with paragraph 2 of Schedule 29 to the Finance Act 2004.”;
““Phased retirement benefits”	Shall be construed in accordance with regulation E6A.”;
““Post-break employment start”	Shall be construed in accordance with regulation EA1.”;
““Pre-2007 entrant”	Shall be construed in accordance with regulation EA1.”;
““Relevant break of service”	Shall be construed in accordance with regulation EA1.”;
““Retail prices index”	The index of retail prices published by the Office for National Statistics.”; and
““Surviving nominated partner”	Shall be construed in accordance with regulation E26A.”.

(4) For the definition of “appropriate factor” substitute—

““Appropriate factor”	A factor from time to time specified in relation to the age of a teacher by the Scottish Ministers after taking advice from the Government Actuary and different factors may be specified— (a) for teachers with a normal pension age of 60, for teachers with a normal pension age of 65, and for teachers to whom Part V of Schedule 9 applies, and (b) for different provision of these Regulations.”.
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**75.** After Schedule 2 (pensionable employment) insert, as Schedule 2A, Schedule 1 to these Regulations.

**76.** In Schedule 3 (maximum purchase of added years)—

- (a) omit paragraphs 1 and 2; and
- (b) in paragraph 3(1)—

- (i) in sub paragraph (a) before “regulation C5” insert “old”; and
- (ii) for “E6(1)(d)” substitute “E6(6)”.

**77.** In Schedule 4 (additional contributions to purchase past added years)–

- (a) before “regulation” wherever it occurs insert “old”;
- (b) in paragraph 3, omit “Subject to paragraphs 4 and 6”;
- (c) omit paragraphs 4 and 5; and
- (d) omit paragraph 14.

**78.** In Schedule 5 (additional contributions to purchase added years under earlier provisions)–

- (a) in paragraph 1(1) for “Subject to sub-paragraphs (2) to (6) and paragraphs 2 and 3” substitute “Subject to paragraph 3” and for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”;
- (b) omit paragraphs 1(3) to (6) and 2;
- (c) in paragraph 3 omit “or 2” and before “regulation C5” insert “old”;
- (d) in paragraph 4(2)(b) before “regulation C8” insert “old”; and
- (e) omit paragraph 5(2).

**79.**—(1) Schedule 6 (family benefits) is amended as follows.

(2) In paragraph 9(1)(b) for “C5, C7, C8 or C9” substitute “old regulation C8, regulation C9 or Schedules 4 or 5”.

(3) For paragraph 11(1) substitute–

“(1) Subject to sub-paragraph (2) and except as otherwise provided in Part III, where payment is to be made by Method A, the payment period (in years) is  $A/B \times C$ , where–

A is the period (in years) specified under paragraph 10(1)(b),

B is the rate specified under paragraph 10(1)(d), and

C is the multiplier determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary) for the purpose of this Part.

(1A) The multiplier determined for the purpose of this Part may differ depending on whether the election is made under paragraph 9(1) or 9(2).”.

(4) Omit Table 5.

(5) In paragraph 11(2)–

- (a) omit “(“the Table period”); and
- (b) for “in which the Table period ends” substitute “in which that period ends”.

(6) For paragraph 11(3) substitute–

“(3) Where payment is to be made by Method B, the lump sum payable, which must be paid within 3 months after its amount is notified by the Scottish Ministers, is  $A \times B \times C$ , where

A is the multiplier determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary) for the purpose of this Part,

B is the period (in years) in respect of which the election was made, and

C is the appropriate amount.”.

(7) In paragraph 12A(4)(a) for regulation “B6” substitute “B7”.

(8) For paragraph 12B(3) substitute–

“(3) Except as otherwise provided in Part III, the payment period (in years) is  $A/B \times C$ , where

A is the period (in years) specified under paragraph 12A(5),

B is the percentage rate specified under paragraph 12A(6), and

C is the multiplier determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary) for the purpose of this Part for a person of the same sex as the qualifying teacher.”.

(9) Omit Table 5A.

(10) In paragraph 12C(2) for “A is 1.9% if the qualifying teacher is a man and 1.7% if the qualifying teacher is a woman,” substitute “A is the multiplier determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary) for the purpose of this Part for a person of the same sex as the qualifying teacher.”.

(11) After Part IIA insert—

## “PART IIB

### CONTRIBUTIONS: SURVIVING NOMINATED PARTNERS

**12D.**—(1) A teacher (other than a teacher who has previously made an election under sub-paragraph (2)) who has nominated a person under regulation E26A is a qualifying teacher for the purposes of this Part while—

- (a) the nomination continues to have effect, and
- (b) he or she is in pensionable employment.

(2) A qualifying teacher may by giving notice in writing to the Scottish Ministers before the end of the election period elect to pay family benefit contributions attributable to a period of his or her reckonable service which is not relevant service as mentioned in regulation E30(4B).

(3) An election under sub-paragraph (2) must be accompanied by a declaration signed by the qualifying teacher that he or she is in normal health.

(4) If a qualifying teacher dies before the end of the election period without making an election under sub-paragraph (2), his or her surviving nominated partner may by giving notice in writing to the Scottish Ministers within 3 months of the qualifying teacher’s death elect to pay family benefit contributions attributable to a period of the qualifying teacher’s reckonable service which is not relevant service as mentioned in regulation E30(4B).

(5) The election period begins on the day on which the qualifying teacher makes the nomination and ends on the earlier of the day on which—

- (a) any election he or she makes under regulation B7 has effect,
- (b) he or she has been a qualifying teacher for a period of 6 months in relation to that nomination.

(6) The teacher who makes an election under this paragraph must specify in the notice the period in respect of which the election is made, which must be either the whole of the qualifying teacher’s reckonable service which is not relevant service as mentioned in regulation E30(4B) or such part of such service as consists of one or more whole years.

(7) Where an election is made under sub-paragraph (2), the qualifying teacher must state in the notice whether family benefit contributions are to be paid by Method 1 (monthly payments) or by Method 2 (lump sum) and, if the former, must specify the percentage rate of his or her

contributable salary at which they are to be paid, which must comply with paragraphs 13(2) and (3).

(8) Where a qualifying teacher's pensionable employment is part-time, for the purpose of specifying (under sub-paragraph (7)) a percentage rate at which family benefit contributions are to be paid or varying (under paragraph 13(4)) that rate, sub-paragraph (7) and paragraph 13(2) have effect as if the reference to the qualifying teacher's contributable salary were to his or her full-time equivalent salary.

(9) Except as provided in paragraph 13(4), an election under this paragraph is irrevocable.

**12E.**—(1) This paragraph applies where—

- (a) the qualifying teacher states under paragraph 12D(7) (in accordance with an election made under paragraph 12D(2)) that family benefit contributions are to be paid by Method 1, and
- (b) the payment period exceeds a year.

(2) Where this paragraph applies, except as otherwise provided in Part III, the qualifying teacher must pay family benefit contributions to the Scottish Ministers by way of monthly payments from his or her contributable salary at the percentage rate specified under paragraph 12D(7) or, where the rate is varied under paragraph 13(4), at the specified higher rate for the duration of the payment period.

(3) Except as otherwise provided in Part III, the payment period (in years) is  $A/B \times C$ , where—

- A is the period (in years) specified under paragraph 12D(6),
- B is the percentage rate specified under paragraph 12D(7), and
- C is the multiplier determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary) for the purpose of this Part for a teacher of the same sex as the person nominated under regulation E26A.

(4) Where the payment period would (apart from this sub-paragraph) end on a day other than the last day of a month, the payment period ends with the last day of the month in which it would otherwise end.

**12F.**—(1) Except where paragraph 12E applies, the teacher who makes an election under paragraph 12D must pay family benefit contributions to the Scottish Ministers by way of a lump sum calculated in accordance with the Method 2 formula in sub-paragraph (2) within 3 months of receiving written notice of the amount of the lump sum.

(2) The Method 2 formula is  $A \times B \times C$ , where—

- A is the multiplier determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary) for the purpose of this Part for a teacher of the same sex as the person nominated under regulation E26A,
- B is the period (in years) specified under paragraph 12D(6), and
- C is the annual rate of the qualifying teacher's contributable salary."

(12) In paragraph 13(1)(c) after "paragraph 12B (Method 1)" insert "or paragraph 12D (Method 1)".

(13) In paragraph 13(3) for "regulation C5 or C7" substitute "Schedules 4 or 5".

(14) In paragraph 13(7) before "regulation C8" insert "old".

(15) In paragraph 13(10)(b) before "regulation C8" insert "old".

(16) In paragraph 14—

- (a) in sub-paragraph (2) for “the age of 60” and “E6(1)(c)” substitute “the normal pension age” and “E6(5)” respectively;
  - (b) in sub-paragraph (2)(b) after “his 60th birthday” insert “in the case of a pre-2007 entrant or his 65th birthday in any other case”;
  - (c) after sub-paragraph (2) insert–
    - “(2A) But sub-paragraph (2) does not apply in a case to which sub-paragraph (2B) applies.
    - (2B) This sub-paragraph applies in a case where–
      - (a) the qualifying teacher dies before attaining the normal pension age or becomes entitled to payment of retirement benefits by virtue of regulation E6(5),
      - (b) family benefit contributions were payable by monthly payments under paragraph 12D (Method 1), and
      - (c) the Scottish Ministers are not satisfied that the declaration under paragraph 12D(3) was made in good faith.”
  - (d) in sub-paragraph (3) for “the age of 60” substitute “the normal pension age, or in a case to which sub-paragraph (2B) applies”.
- (17) In paragraph 15 after “surviving civil partner” insert “, surviving nominated partner”.
- 80.** Schedule 7 (incomplete payment of additional contributions)–
- (a) in paragraph 2(1) before “regulation C5(11)” insert “old”; and
  - (b) in paragraph 10(1)(b) for “E6(1)(c)” substitute “E6(5)”.
- 81.** In Schedule 9 (modified application in certain cases)–
- (a) in paragraphs 3(2)(b), 4(3)(b) and 16(1) for “E6(1)(c)” substitute “E6(5)”;
  - (b) in paragraph 15(1) before “regulation C5” insert “old”;
  - (c) in paragraph 19 before “regulation C5(1)” insert “old”;
  - (d) in paragraph 26(2) before “regulation C6” insert “old”; and
  - (e) in paragraph 27 for “the age of 60” substitute “the normal pension age”.
- 82.** Omit Schedules 10 and 11.
- 83.** In paragraph 9 of Schedule 12 (transfer values) for “C5 and C8” substitute “old C5 and old C8”.

### **Transitional provisions and savings**

- 84.** Schedule 2 (which contains transitional and savings provisions) shall have effect.

### **Amendment of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996**

**85.** The Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996(10) are amended in accordance with regulations 85 to 103.

- 86.** In regulation 2 (interpretation)–
- (a) in paragraph (1)(c) after “corresponding provision in” insert “the 1992 Regulations or”;
  - (b) in paragraph (3)–

- (i) in the definition of “child” for “E21(5) and (6)” substitute “E26(6) and (7)”;
  - (ii) in the definition of “effective service” in sub-paragraph (b) for “regulation B6” substitute “regulation B7”;
  - (iii) in the definition of “new employment” for “regulation E15(1)(a) or (b)” substitute “regulation E18(1)(a) or (b)”;
  - (iv) in the definition of “nominated beneficiary” for “regulation E22” substitute “regulation E27”;
  - (v) in the definition of “the 1984 Regulations” omit “and” where it second occurs;
  - (vi) after the definition of “the 1984 Regulations” insert—
    - ““the 1992 Regulations” means the Teachers' Superannuation (Scotland) Regulations 1992(11); and”;
  - (vii) in the definition of “the Superannuation Regulations” for “1992” substitute “2005(12)”.
- 87.** In regulation 3 (teachers to whom Part II applies)—
- (a) in paragraph (1)(a)(ii) for “regulation E5(1)(f)” substitute “regulation E6(6)”; and
  - (b) in paragraph (3)(b) for “regulation B6” substitute “regulation B7”.
- 88.** In regulation 5 (lump sum compensation and annual compensation)—
- (a) in paragraph (2) for “regulation E7(1)” and “regulation E7(3)” substitute “regulation E8(2)” and “regulation E8(5)” respectively; and
  - (b) in paragraph (3) for “regulation E6(1)” and “regulation E6(4)” substitute “regulation E7(2)” and “regulation E7(7)” respectively.
- 89.** Omit regulation 6 (allocation of part of annual compensation).
- 90.** In regulation 7 (short-term compensation)—
- (a) in paragraph (1)(a) for “regulation E23” substitute “regulation E28”;
  - (b) in paragraph (1)(b) for “regulation B6” substitute “regulation B7”;
  - (c) in paragraph (3) after “civil partner” insert “, surviving nominated partner”.
- 91.** In regulation 8 (adults' long-term compensation)—
- (a) in paragraph (1)(a) for “regulation E25” substitute “regulation E30”;
  - (b) in paragraph (1)(b) for “regulation B6” substitute “regulation B7”;
  - (c) in paragraph (3) omit “any allocation under regulation 6 or”.
- 92.** In regulation 9 (children's long-term compensation)—
- (a) in paragraph (1)(a) for “regulation E25” substitute “regulation E30”;
  - (b) in paragraph (1)(b) for “regulation B6” substitute “regulation B7”;
  - (c) in paragraph (4) before “regulation 6” insert “old”.
- 93.**—(1) Regulation 10 (payment of compensation under regulations 7, 8 and 9) is amended as follows.
- (2) In the Table below paragraph (1)—
- (a) for “*regulation E23(2)*” substitute “*regulation E28*”; and

(11) S.I. 1992/280, amended by S.I. 1992/1025 and 1597, 1993/490 and 2513, 1994/1715 and 2699 and 1995/1670; revoked by S.S.I. 2005/393.

(12) S.S.I. 2005/393, amended by S.S.I. 2005/543, 2006/308 and 2007/189.

- (b) after “civil partner”, in the three places where it occurs, insert “, surviving nominated partner”.
- (3) After paragraph (3A) insert—
- “(3B) But paragraph (3) does not apply to any long-term adult compensation payable following the death of a person who was in pensionable employment after 31st March 2007 or who would have been in such employment after that date but for an election under regulation B7 of the Superannuation Regulations.”.
- 94.** In regulation 14(3) (adjustment of compensation where a designated teacher has ceased to be in new employment) for “regulation F1” substitute “regulation G1”.
- 95.** In regulation 16(3)(b) (additional compensation in certain cases of redundancy) for “regulation B6” substitute “regulation B7”.
- 96.** In regulation 16A(2)(b) (teachers to whom Part IIIA applies) for “regulation B6” substitute “regulation B7”.
- 97.**—(1) Regulation 16C (mandatory compensation) is amended as follows.
- (2) In paragraph (1) for “regulation E5(1)(f)” substitute “regulation E6(7)”, for “regulations E6(4) and E7(3)” substitute “regulations E7(6) and E8(5)”.
- (3) In paragraph (2)—
- (a) for “regulation E7” substitute “regulation E8”;
- (b) for “regulation E7(3)” in the three places where it occurs substitute “regulation E8(5)”;
- (c) for “regulation E16” substitute “regulation E19”; and
- (d) for “regulation E16(10)” substitute “regulation E19(10)”.
- (4) In paragraph (3)—
- (a) for “regulation E6” substitute “regulation E7”;
- (b) for “regulation E6(4)” in the three places where it occurs substitute “regulation E7(7)”;
- (c) for “regulation E16” substitute “regulation E19”; and
- (d) for “regulation E16(10)” substitute “regulation E19(10)”.
- 98.** In regulation 16D (abatement of annual compensation during further employment)—
- (a) in paragraph (1) for “regulation E15” substitute “regulation E18”;
- (b) in paragraph (2)(b) for “regulation E15(2)(b)” substitute “regulation E18(2)(b)”.
- 99.** In regulation 16E (supplementary deficiency grants) for “paragraph (4A) of regulation E20” substitute “regulation E25(6)” and for “paragraph (4A)” substitute “paragraph (6)”.
- 100.** In regulation 16F (entitlement to short-term family benefits)—
- (a) in paragraphs (1) and (2) for “regulation E23” substitute “E28”; and
- (b) in paragraph (1) for “regulation E24(4)” substitute “regulation E29(4)”.
- 101.** After regulation 19A (arrangements for payment of compensation under Part II or IIIB) insert the following—

**“Declaration where lump sum payments are made**

- 19B.**—(1) An employing authority may, before paying any lump sum under regulation 5 or 16C require the teacher to whom the payment is to be made to provide a declaration as specified in paragraph (2) by a date determined by the employing authority.

(2) The declaration is a declaration in a form specified by the Scottish Ministers, signed by that teacher, to the effect that paragraph 3A of Schedule 29 to the Finance Act 2004(13) does not apply.

(3) Where no such declaration is received by the employing authority by the date referred to in paragraph (1) the employing authority may, in place of the lump sum, pay additional annual compensation representing the value of the lump sum.

(4) The amount of additional compensation referred to in paragraph (3) shall be determined by the Scottish Ministers pursuant to regulation J6A of the Teachers' Superannuation (Scotland) Amendment Regulations 2007(14)

**102.** After regulation 20(3) (revocations and transitional provisions) insert–

“(4) Regulation 6 shall despite its revocation by regulation 88 of the Teachers' Superannuation (Scotland) Amendment Regulations 2007(15) continue to have effect where a declaration was delivered to the compensating authority pursuant to regulation 6(2) before 1st April 2007.”.

**103.** In paragraph 3 of Schedule 2 (other entitlement) for “regulation B6” substitute “regulation B7”.

**104.** In paragraph 2(b)(ii) of Schedule 4 (adjustment on account of new employment) for “regulation E12” substitute “regulation E14” and before “regulation 6” insert “old”.

### **Amendment of Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995**

**105.** The Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995(16) (“the AVC Regulations”) are amended in accordance with regulations 105 to 110 of these Regulations.

**106.** In regulation 2(3) (interpretation)–

- (a) for the definition of “dependant” for “or surviving civil partner” substitute “, surviving civil partner or surviving nominated partner”;
- (b) in the definition of “dependant” in sub-paragraph (c) after “a nomination under regulation” insert “26A or”;
- (c) after the definition of “lump sum death benefit” insert–  
““normal pension age” is to be construed in accordance with the Superannuation Regulations;”;
- (d) omit the definition of “retire”;
- (e) in the definition of “salary” in sub paragraph (b) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”; and
- (f) after the definition of “shareable rights” insert–  
““surviving nominated partner” means a person nominated in accordance with regulation E26A of the Superannuation Regulations;”.

**107.** For regulation 5(4) (allocation of lump sum death benefit to provide dependants' pensions) substitute–

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(13) 2004 c. 12; paragraph 3A of Schedule 29 was inserted by the Finance Act 2006 (c. 25), section 159.

(14) S.S.I. 2007/189.

(15) S.S.I. 2007/189.

(16) S.I. 1995/2814 as amended by S.S.I. 2000/444, 2001/292, 2005/543 and 2006/308.

“(4) A person who has continued to pay regular contributions up to his normal pension age but does not then cease to be in pensionable employment may elect to pay regular contributions up to his first birthday after he reached the normal pension age to provide for a lump sum death benefit; and so long as he has not ceased to be in pensionable employment further elections may be made annually in respect of years commencing on his first birthday after he reached the normal pension age and subsequent birthdays.”

**108.** In regulation 8(2)(c) (contributor) for “regulation C8 or C9” substitute “old regulation C8 or regulation C9”.

**109.**—(1) Regulation 12 (retirement and dependants' pensions) is amended as follows.

(2) For paragraph (1) substitute—

“(1) In this regulation “the relevant date”, in relation to a contributor or participator, means—

- (a) the date on which he attains the age of 55; or
- (b) the date on which he or she becomes entitled to payment of retirement benefits under regulation E6 of the Superannuation Regulations,

whichever is the earlier.

(1A) The benefits that may be provided at any time after the relevant date in accordance with this regulation under a pension policy purchased as described in paragraph (7) are 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.”

(3) In paragraph (2) for “the date of retirement” substitute “the relevant date”.

(4) In paragraph (5) for “Not earlier than one month before retirement, a contributor by giving written notice to the Scottish Ministers, may” substitute “A contributor may, at any time but not earlier than one month before the relevant date, by giving written notice to the Scottish Ministers”.

(5) For paragraph (6) substitute—

“(6) In the case of a retirement pension, the notice may also specify that, if the participator dies within the period of 5 years beginning when the retirement pension commences, the pension shall continue to be paid during the remainder of that period to such person as the authorised provider or the Scottish Ministers, where they are liable to make payments of the pension pursuant to regulation 16(2), determine.”

(6) In paragraph (9) for “retirement” in both places where the word occurs substitute “the relevant date”.

**110.**—(1) Regulation 13A (pension sharing on divorce) is amended as follows.

(2) In paragraph (4) for “the age of 60” substitute “the normal pension age”.

(3) In paragraph (7)(b) for “retirement” substitute “the relevant date”.

**111.**—(1) Regulation 16 (payment by Scottish Ministers) is amended as follows.

(2) In paragraph (2A) at the beginning insert “Subject to paragraphs (2B) and (2C)”.

(3) After paragraph (2A) insert the following—

“(2B) The Scottish Ministers may, before paying any lump sum as mentioned in regulation 12(1A) require the person to whom the payment is to be made to provide a declaration as specified in paragraph (2C) by a date determined by the Scottish Ministers.

(2C) The declaration is a declaration in a form specified by the Scottish Ministers, signed by that person, to the effect that paragraph 3A of Schedule 29 to the 2004 Act does not apply.

(2D) Where no such declaration is received by the Scottish Ministers by the date referred to in paragraph (2B) the Scottish Ministers may treat the election under regulation 12 for a lump sum benefit as of no effect, and may apply the amount of the lump sum to the purchase of a pension policy from the insurance company referred to in regulation 9 to provide such benefits as appear to them to be suitable.”.

St Andrew’s House,  
Edinburgh  
28th February 2007

*TOM McCABE*  
A member of the Scottish Executive

We consent

5th March 2007

*DAVE WATTS*  
*ALAN CAMPBELL*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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SCHEDULE 1

Regulation 74

“SCHEDULE 2A

Regulation C4B

Elections in respect of additional benefits

**Interpretation**

1. In this Schedule—

“additional benefits” means—

- (a) where the election is an election such as is mentioned in paragraph 5(a) or 12(a), an increased retirement pension; and
- (b) where the election is an election such as is mentioned in paragraph 5(b) or 12(b), an increased retirement pension and increased benefits for the teacher’s dependants;

“financial year” means—

- (a) the period starting on 1st April 2007 and ending on 31st March 2008; and
- (b) each subsequent period of 12 months ending on 31st March;

“monthly contribution election” means an election which, pursuant to paragraph 3(a), states that the additional contributions are to be paid in monthly payments;

“the payment period” has the meaning in paragraph 3(a);

“the start date” in relation to any election means the date on which the first contribution or, as the case may be, the lump sum contribution is received by the Scottish Ministers pursuant to the election.

**Election by a teacher in pensionable employment**

2. Paragraphs 3 to 10 apply in relation to an election by a teacher in pensionable employment pursuant to regulation C4B(1).

3. An election shall state whether the additional contributions—

- (a) are to be paid in monthly payments and, if so, the length of the period over which they are to be paid (“the payment period”); or
- (b) are to be paid in a single lump sum.

4. The length of the payment period must be such that—

- (a) the period ends before the teacher attains the normal pension age; and
- (b) the period does not end on a date which is more than 20 years from the date of the election.

5. An election shall be an election—

- (a) to be credited with an increased retirement pension of an amount specified in the election (but subject to paragraphs 7 and 18 to 22); or
- (b) to be credited with an increased retirement pension as mentioned in sub-paragraph (a) and with increased benefits for the teacher’s dependents.

6. An election shall contain such further information as may be specified by the Scottish Ministers.

7. The amount of an increased retirement pension specified in the election must be a multiple of such amount as may be specified from time to time by the Scottish Ministers.

8. An election is to contain a declaration by the teacher making it that he or she is in normal health.

9. An election only has effect if the Scottish Ministers notify the teacher making it in writing that it has been accepted.

10. Where an election has been made, nothing in this Schedule shall prevent further elections being made (but subject to paragraphs 18 to 22).

#### **Election by employer**

11. Paragraphs 12 to 16 apply in relation to an election made by an employer under regulation C4B(2).

12. An election shall be an election that additional contributions are to be paid in a single lump sum and shall be an election—

- (a) that the teacher in respect of whom the election is made should be credited with an increased retirement pension of an amount specified in the election (but subject to paragraphs 15 and 18 to 22); or
- (b) that the teacher in respect of whom the election is made should be credited with an increased retirement pension as mentioned in subparagraph (a) and with increased benefits for his or her dependents.

13. An election shall be accompanied by a declaration by the teacher in respect of whom it is made that he or she is in normal health.

14. An election shall contain such other information as may be specified from time to time by the Scottish Ministers.

15. The amount of increased retirement pension specified in the election must be a multiple of such amount as may be specified from time to time by the Scottish Ministers.

16. An election only has effect if—

- (a) it is made with the consent of the teacher in respect of whom it is made; and
- (b) the Scottish Ministers notify the employer in writing that it has been accepted.

#### **Effect of election**

17. Where an election has been accepted by the Scottish Ministers and has not ceased to have effect the teacher in respect of whom the election was made shall, subject to paragraphs 26, 28, 29 to 31, 32(2), 33, 35 and 36(2), be credited with the additional benefits specified in the election.

#### **Maximum amount of increased pension**

18. Where the election is the first election made by or in respect of a teacher the maximum amount of increased retirement pension that may be specified in the election is—

- (a) where the election is made in the financial year starting on 1st April 2007 and ending on 31st March 2008, £5000;
- (b) where the election is made in any subsequent financial year,  $A \times RI/RE$  rounded to the nearest £100 where—

A is the maximum amount of increased retirement pension for the financial year before the financial year in which the election is made (whether determined under this paragraph or under paragraph 19);

RI is the retail prices index for the month of April in the financial year before the financial year in which the election is made; and

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RE is the retail prices index for the month of April in the second financial year before the financial year in which the election is made or the index for April 2007 where the financial year before the financial year in which the election is made is the period starting on 1st April 2007 and ending on 31st March 2008.

19. The Treasury shall from time to time review the operation of paragraph 18 and as a result of such review may substitute a different maximum amount of increased pension for the amount determined under paragraph 18.

20. Where an election has previously been made in relation to a teacher (whether by the teacher under regulation C4B(1), or by the teacher's employer under regulation C4B(2)) the maximum amount of increased retirement pension is the amount specified in paragraph 18, or, as the case may be, paragraph 19 less the aggregate of the amounts of increased retirement pensions, multiplied by the factor specified in paragraph 21, specified in previous elections.

21. For the purposes of paragraph 20 the factor is  $RI/RE$  where—

RI is the retail prices index for the month of April in the financial year before the financial years in which the new election is made, and

RE is the retail prices index for the month of April in the financial year before the financial year in which the start date in relation to the previous election in question fell (or the index for April 2007, where the start date in relation to that election fell in the financial year starting on 1st April 2007 and ending on the 31st March 2008).

22. Where a previous election has been revoked the references in paragraph 20 to the amount of an increased retirement pension specified in a previous election shall be taken as the amount of an increased pension with which a teacher has been credited pursuant to regulation 26.

#### **Determination of contributions for given level of increased pension**

23. The Scottish Ministers shall from time to time determine the amount of monthly payments of contributions or lump sum payment of contributions required for any given amount of increased retirement pension and different amounts may be specified—

(a) in relation to different classes or descriptions of persons; and

(b) depending on whether the election is one specified in paragraph 5(a) or 12(a) or in paragraph 5(b) or 12(b),

and, where additional contributions are paid in monthly payments, different amounts may be determined depending on the length of the contribution period.

24. Where the Scottish Ministers have, pursuant to paragraph 23, determined any amount of monthly payments of contributions or lump sum payment of contributions required for any given level of increased retirement pension the Scottish Ministers may at any time redetermine any of the amounts previously determined, and where any amounts are redetermined during a period when the teacher is paying monthly contributions the teacher shall, from 1st April following the date of the redetermination, pay the monthly payments in accordance with the redetermination but without prejudice to paragraph 25 (revocation of election) or to any right of the teacher to make a further election.

#### **Revocation of election**

25. A teacher who has made a monthly contribution election may revoke the election before the end of the payment period.

26. Where an election is revoked the teacher shall be credited with additional benefits of an amount, determined by the Scottish Ministers, having regard to the contributions paid before the revocation.

#### **Election ceasing to have effect**

27. An election which states that the additional contributions are to be paid in a single lump sum ceases to have effect if—

- (a) the payment of contributions is not received by the Scottish Ministers within one month after the date on which the Scottish Ministers notified the teacher making the election that the election had been accepted; or
- (b) the payment of contributions is received by the Scottish Ministers after the teacher in respect of whom the election is made attains the normal pension age.

#### **Teacher ceasing to be in pensionable employment**

28.—(1) Where a teacher who has made a monthly contribution election ceases to be in pensionable employment before the end of the payment period and does not again enter pensionable employment within one month the teacher may (except where paragraph 29 applies)—

- (a) pay to the Scottish Ministers a lump sum of such amount, determined by them, so that he or she may be credited with the amount of additional benefits specified in the election; or
- (b) elect to be credited with an amount of additional benefits, determined by the Scottish Ministers, having regard to the contributions paid before he or she ceased to be in pensionable employment.

(2) Where the lump sum referred to in sub-paragraph (1)(a) is not received by the Scottish Ministers within one month after the date on which the teacher ceased to be in pensionable employment, the teacher is treated as having elected to be credited with additional benefits under sub-paragraph (1)(b).

#### **Teacher becoming entitled to retirement benefits**

29. Where a teacher who has made a monthly contribution election becomes entitled to retirement benefits by virtue of regulation E6(6) or (7) before the end of the payment period the teacher shall be credited with an amount of additional benefits, determined by the Scottish Ministers, having regard to the contributions paid before he or she became entitled to retirement benefits.

#### **Teacher making an election under regulation E6A**

30. Where a teacher who has made a monthly contribution election makes an election under paragraph (11) of regulation E6A (phased retirement) before the end of the payment period the teacher is credited with an amount of additional benefits, determined by the Government Actuary, having regard to the contributions paid before the date on which the first payment of additional benefits was made.

#### **Teacher becoming incapacitated**

31. Where a teacher becomes entitled to payment of retirement benefits by reason of his or her having become incapacitated within one year after the date on which the election was made—

- (a) where contributions have been made by the teacher pursuant to an election made by him or her those contributions shall be repaid to the teacher; and

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(b) where contributions have been made by the teacher's employer pursuant by an election made by the employer those contributions shall be repaid to the employer,  
but in either event the teacher will not be credited with any additional benefits.

**32.—**(1) Where a teacher who has made a monthly contribution election becomes entitled to payment of retirement benefits by reason of his or her having become incapacitated more than one year after the date on which the election was made but before the end of the payment period the teacher shall nevertheless be credited, pursuant to paragraph 17, with the amount of additional benefits specified in the election unless paragraph (2) applies.

(2) Where a teacher falls within paragraph (1) but the declaration required by paragraph 8 or 13 was not made in good faith the teacher shall be credited with an amount of additional benefits determined by the Scottish Ministers, having regard to the contributions paid before the date on which he or she became entitled to the payment of retirement benefits.

#### **Teacher ceasing to be incapacitated**

**33.—**(1) This paragraph applies where a teacher has become entitled to payment of retirement benefits by virtue of regulation E6(5) (incapacity) and subsequently ceases to be incapacitated (so that by virtue of regulation E17A(8) the increased retirement pension with which the teacher was credited pursuant to paragraph 32(1) ceases to be payable).

(2) Where this paragraph applies the teacher shall be credited with an amount of additional benefits determined by the Scottish Ministers having regard to—

- (a) the contributions paid before he or she became entitled to payment of retirement benefits by virtue of regulation E6(5); and
- (b) the contributions which would have been paid during the period when he or she was entitled to payment of those retirement benefits, if he or she had continued to pay monthly contributions during that period.

#### **Death of teacher**

**34.** Paragraphs 35 and 36 apply where the election is an election, pursuant to paragraph 5(b) or (where applicable) 12(b) for increased benefits to be paid to the teacher's dependants (as well as for an increased retirement pension).

**35.** Where the teacher dies within one year after the date on which the election was made—

- (a) where the contributions were made by the teacher pursuant to an election made by him or her those contributions shall be repaid to the teacher's personal representatives; and
- (b) where the contributions were made by the teacher's employer pursuant to an election made by the employer, those contributions shall be repaid to the employer,

but in either event there shall be no credit relating to increased benefits for the teacher's dependants.

**36.—**(1) Where the teacher has made a monthly contribution election and dies more than one year after the date on which the election was accepted, but before the end of the payment period, there shall nevertheless be a credit, pursuant to paragraph 17, relating to increased benefits for the teacher's dependants as specified in the election, unless paragraph (2) applies.

(2) Where the teacher falls within paragraph (1) but the declaration required by paragraph 8 or 13 was not made in good faith there shall be a credit relating to increased benefits for the teacher's dependants of an amount determined by the Scottish Ministers having regard to the contributions paid before the date of the teacher's death.

## Actuarial advice

37. The Scottish Ministers shall take advice from the Government Actuary before determining any amount pursuant to paragraphs 23, 24, 26, 28(1), 29, 30, 32(2), 33(2) or 36(2).”.

## SCHEDULE 2

Regulation 83

### Transitional Provisions and Savings

## PART 1

### Transitional Provisions and Savings relating to the Teachers' Superannuation (Scotland) Regulations 2005

1. In this Schedule “the Superannuation Regulations” means the Teachers' Superannuation (Scotland) Regulations 2005.

2. Where, before 1st April 2007, a teacher aged 70 or over was in employment which would have been pensionable but for regulation B6(1) of the Superannuation Regulations, the amendment made to that provision by regulation 5(2) of these Regulations does not have the effect of making pensionable any employment which occurred before 1st April 2007 but after the teacher was age 70.

3. Paragraph (11) of regulation C5 (additional contributions to purchase added years) of the Superannuation Regulations shall (despite regulation 12 of these Regulations) continue to have effect in relation to any election made under that regulation before 1st April 2007.

4.—(1) Regulation C6 (additional contributions to purchase past added years in the case of a deceased teacher) of the Superannuation Regulations shall (despite regulation 12 of these Regulations) continue to have effect in relation to any teacher who died before 1st April 2007.

(2) Where that regulation continues to have effect references in that regulation to regulation C5 shall have effect as references to old regulation C5.

5.—(1) Regulation C8 (additional contributions to purchase current added years) of the Superannuation Regulations shall (despite regulation 14 of these Regulations) continue to have effect in relation to any teacher who left pensionable employment before 1st April 2007.

(2) Where a teacher left pensionable employment before 1st April 2007 but has not made an election before that date that regulation shall have effect as if for paragraph (10) there were substituted—

“(10) An election under this regulation must be made by giving written notice to the Scottish Ministers which must specify the period and must be given before 31st March 2007.”.

(3) Where regulation C8 of the Superannuation Regulations continues to have effect by virtue of sub-paragraph (1)—

(a) paragraph (7) of that regulation shall have effect as if for sub-paragraph (b) there were substituted—

“(b) the percentage is the aggregate of the rate of contributions specified under regulation C3(2) and the required percentage determined in accordance with regulation H3.”; and

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- (b) paragraphs 1 and 2 of Schedule 3 to the Superannuation Regulations shall continue to apply for the purpose of determining the maximum length of the period in respect of which any election may be made.

**6.—(1)** Regulation E14 (allocation of part of retirement pension) of, and Schedule 11 to, the Superannuation Regulations shall (despite regulations 34 and 81 of these Regulations) continue to have effect where a declaration was delivered to the Scottish Ministers pursuant to regulation E14(4) of the Superannuation Regulations before 1st April 2007.

(2) Where the provisions mentioned in sub-paragraph (1) continue to have effect by virtue of that sub-paragraph, regulations E18(2) of the Superannuation Regulations shall have effect without the amendments made by regulation 38(3) and (4)(c) of these Regulations.

**7.—(1)** Regulation E34 (pensionable salary) of the Superannuation Regulations shall continue to have effect without the amendments made by regulation 54 of these Regulations for the purpose of determining the pensionable salary of a teacher where—

- (a) the teacher’s entitlement to payment of retirement benefits took effect before April 2007; or
- (b) (where the teacher does not fall within sub-paragraph (1)(a)) the teacher ceased to be in pensionable employment before 1st April 2007 and is not at any time in pensionable employment on or after that date before attaining the age of 60.

(2) For the purposes of sub-paragraph (1), a teacher is to be treated as being in pensionable employment during any period for which he or she is paying additional contributions under old regulation C8 or regulation C9 of the Superannuation Regulations.

(3) Where the entitlement of a teacher (other than a teacher falling within sub-paragraph (1)(b)) to payment of retirement benefits took effect on or after 1st April 2007 but before 1st April 2009 the pensionable salary of that teacher shall be the greater of—

- (a) the pensionable salary determined in accordance with regulation E34, or, where applicable, regulation E34A of the Superannuation Regulations; and
- (b) the pensionable salary determined in accordance with regulation E34 of the Superannuation Regulations without the amendments made by regulation 54 of these Regulations.

**8.** Where, before 1st April 2007, a teacher was in pensionable employment and would but for regulation E35(2)(b) of the Superannuation Regulations have reckonable service in excess of 40 years before attaining the age of 60, the amendment to regulation E35(2) of the Superannuation Regulations made by regulation 56 of these Regulations does not have the effect of increasing reckonable service undertaken before 1st April 2007.

## PART 2

### Transitional Provisions and Savings relating to the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996

**9.** In this Part “the 1996 Regulations” means the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996.

**10.—(1)** Regulation 6 (allocation of part of annual compensation) of the 1996 Regulations shall (despite regulation 88 of these Regulations) continue to have effect where a declaration was delivered to the compensating authority (within the meaning of regulation 19A(1) of the 1996 Regulations) pursuant to paragraph (2) of that regulation before 1st April 2007.

(2) Where regulation 6 of the 1996 Regulations continues to have effect pursuant to sub paragraph (1)–

- (a) the references in regulation 6(1)(a) and (2) of the 1996 Regulations to regulation E12 and E5(1)(f) respectively of the Superannuation Regulations shall have effect as references to regulations E14 and E6(6) of the Superannuation Regulations respectively; and
- (b) regulation 8(3) of the 1996 Regulations shall have effect without the amendment made by regulation 90.

## PART 3

### Transitional and Savings Provision relating to the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995

**11.** Any notice given before 1st April 2007 under regulation 12(6) of the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 shall be treated as having been given under that regulation as substituted by regulation 108(5) of these Regulations.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make further amendments to the Teachers' Superannuation (Scotland) Regulations 2005 (“the 2005 Regulations”), the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 (“the 1996 Regulations”) and the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 (“the AVC Regulations”).

### ***Amendment of the 2005 Regulations***

Regulation 4 amends regulation B2 of the 2005 Regulations to provide for those part-time teachers who are not existing members of the Scottish Teachers' Superannuation Scheme (“STSS”), but who elect to join on or after 1st April 2007 and consequently have either mixed service or are a “2007 or later entrant” and elect to backdate contributions.

Regulation 5 amends regulation B6. Paragraph (2) raises the upper membership age of the scheme from age 70 to 75 and paragraph (3) inserts the provisions of current regulation B9 to provide that a teacher is not in pensionable employment where the re-employment commenced between 1st April 1997 and 30th September 2001 unless he or she makes an election under regulation B8.

Regulation 6 amends regulation B7 to make clear that a teacher in concurrent employment can only opt out in relation to all of the employments.

Regulation 7 amends regulation B8 to cover teachers who were in post-retirement employment before 1st April 2007, but who had not made an election under that regulation that the employment should be pensionable. Such employment will not become pensionable automatically by virtue of the omission of regulation B9 but such a teacher can elect to join on or after 1st April 2007 with a normal pension age of 65 (classed as a new entrant). The employer and employee can pay back contributions to cover earlier service.

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Regulation 8 omits regulation B9 which is redundant as re-employed teachers will automatically be included in the STSS membership by virtue of regulations B1 and B2. The provisions of B9(2) have been transferred to regulation B8.

Regulation 9 amends regulation C2 to make changes consequential to the removal of the provisions for buying current added years (CAY) and past added years (PAY). Paragraph (3) omits paragraph (11) of regulation C2 because the definition of the “retail prices index” is now in Schedule 1.

Regulation 10 substitutes regulation C3 to make new provision as to how member contributions will be determined. The effect of the amendment is that member contributions will increase from the current 6% to 6.4% on 1st April 2007 and that future member contribution rates will be set as equal to the member rate applied at the equivalent scheme valuation in the Teachers' Pension Scheme (England and Wales).

Regulation 11 inserts new regulations C4A and C4B. Regulation C4A makes provision for the payment of contributions to be paid where an election under regulation B8 is made and is to take effect from an earlier date. Regulation C4B, together with the new Schedule 2A allows a member or his or her employer to make an election to purchase an amount of additional pension. The amount of additional pension purchased will be increased in line with the Retail Prices Index (RPI) between the date of the election and the date the benefit is drawn in accordance with new regulation E7A. Once in payment, the additional pension will, in the same way as the main retirement pension, be uplifted in accordance with the Pensions Increase Act. The election may cover either personal benefits or personal and dependant benefits. The limits are specified in the new Schedule 2A.

Regulation 12 omits regulation C5 and regulation C6 to remove the provisions to purchase PAY by the member and the facility for the beneficiary to complete the payments on the early death of the member. Transitional arrangements are in place to cover elections already in place. Regulation C5 and C6 are replaced by the provision to purchase additional pension benefits under new regulation C4B.

Regulation 13 substitutes regulation C7 which, when taken with the existing Schedules 3 and 4 of the 2005 Regulations, allows persons purchasing PAY to continue purchasing PAY until the end of the arrangement. The effect of the amendments is that it will not be possible for a teacher, who has made a PAY election, to alter the payment period or reduce the rate of additional contributions.

Regulation 14 omits regulation C8 to removes the ability to purchase CAY. Transitional provisions in paragraph 5 of Schedule 2 allow for a person to continue to purchase CAY until the end of the arrangement].

Regulation 15 amends regulation C9 to provide for the change in the employee’s contribution rate.

Regulation 16 amends regulation C10. Together with Schedule 6 (which is amended by inserting new Part IIB) the amendment provides for payment of additional contributions to cover pre-1st April 2007 service which would not otherwise count for the purpose of paying a survivor’s pension to the surviving partner of a member nominated in accordance with new Regulation E22A.

Regulation 17 amends regulation C11. Paragraph (2) makes changes consequential to the deletion of PAY and paragraph (3) raises the age for the return of contributions to age 75 where a teacher does not qualify for benefits and a refund has not been claimed. This corresponds with changes to regulation B6 whereby teachers can contribute to the STSS up until their 75th birthday.

Regulation 18 amends regulation C12 in consequence of the removal of the PAY and CAY provisions and regulation 19 amends regulation C14 to reflect the removal of regulations B9 and C8. Regulation 20 amends regulation C15 in consequence of new regulations C4A and C4B. Regulation 21 makes changes to regulation D4 in consequence of the omission of regulation C8.

Regulation 22 inserts new regulation EA1 which makes provision for existing members, new entrant and mixed service member. Under paragraph (5) and (6) any break in service of more than 5 years will result in a change in status for existing members and that to retain their normal pension age,

60 days pensionable employment or 30 days reckonable service (whether continuous or not) over a 12 month period within that 5 year period will be required. Paragraph (10) stipulates the definition of normal pension age in relation to each type of member. Paragraphs (12) creates added protection to those who are making contributions using the Current Added Years facility and to cover service in a reserve force, with the effect that such members will be treated as if they are in pensionable employment for the purposes of determining their status within the scheme.

Regulation 23 makes consequential amendment to regulation E2 in respect of the normal pension age of 65. Regulation 24 amends regulation E4 to enable an increase in the amount of tax-free lump sum at retirement from the 3/80ths currently allowed. Regulation 25 amends regulation E5 in consequence of the removal of regulation B9.

Regulation 26 substitutes regulation E6 to provide that deferred members are eligible for benefits subject to meeting the total incapacity standards set out in paragraphs (5), and specifies that the minimum retirement age in relation to premature retirement (i.e. the minimum age at which a member who is not a “post 30th June entrant” can be entitled to benefits under Regulation E6) is raised from age 50 to 55 where the member has not reached the age of 50 before 6th April 2010.

Regulation 27 introduces a new regulation E6A to enable a teacher to elect to receive some of his or her accrued benefits without the requirement of having to retire, known as phased retirement benefits. Under paragraph (2), to be eligible, a member must have reached the age of 55 and either is to continue in his or her employment or has secured further employment elsewhere. In both cases, the teacher’s employer has to certify that the member has taken a minimum reduction in salary of 25% compared to before he or she applied for phased retirement benefits. A member can choose to make up to two such elections of his or her pension benefits before retirement. The amount of phased retirement benefits is calculated as set out in regulation E7 and (where applicable) E8 but taking into account actuarial reduction. The pensionable salary is calculated as the teacher’s pensionable salary immediately before the change in employment and the effective reckonable service is the percentage of the election up to the date of that change. Similar adjustment is made for any additional benefits to be paid as part of the phased retirement benefits.

Regulation 28 replaces regulation E7 to insert the differences in application between the 1/80th and 1/60th arrangements in respect of pension calculation. Paragraphs (9) and (10) introduce actuarial enhancements for those who are covered by the normal pension age arrangements (whether as a new entrant or with mixed service) and who work beyond the normal pension age of 65.

Regulation 29 inserts a new regulation E7A which makes provision for the calculation and payment of additional pension at retirement where the member had previously made an election to purchase additional pension under regulation C4B.

Regulation 30 substitutes regulation E8 to insert differences in application between the 1/80th and 1/60th arrangements in respect of lump sum. Paragraph (4) provides that a member’s lump sum cannot exceed the “permitted maximum” defined in Schedule 1 by reference to the Finance Act 2004; paragraph (6) provides that a teacher aged 75 or over cannot receive a lump sum.

Regulation 31 introduces new regulations E8A and E8B. Regulation E8A sets out the commutation factors to be applied to the tax-free lump sum conversions from pension and the requirement for it to be within the maximum 25% of the fund value. Regulation E8B provides that where a member is prevented from receiving a lump sum because he or she is 75 years of age or over, he or she will receive an increased pension.

Regulation 33 amends regulation E10 and inserts new regulation E10A. Regulation E10 is amended so that existing service enhancements are only applied in respect of applications received before 1st April 2007. Regulation E10A is inserted to cater for those whose application is received on or after 1st April 2007. Paragraph (2) details the conditions for enhancement to apply and E10A(3) to E10A(5) explain how enhancement will be calculated. E10A(6) confirms that enhancement will be calculated to the Normal Pension Age (NPA) of 65 in cases of mixed NPA 60 and NPA65 service and E10A(7) confirms that the enhancement (Total Incapacity Benefit), although separate to the

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retirement pension (Partial Incapacity Benefit), is paid at the same time. Under the new provisions, a member who is not in pensionable employment is only entitled to benefits if, as well as being incapacitated, his or her ability to carry out work is impaired by more than 90% and is likely permanently to be so. Where however a member is in pensionable employment or taking unpaid leave immediately following pensionable employment and is entitled to benefits he or she will also be entitled to payment of an additional “total incapacity pension” and, where applicable, lump sum if his or her ability to carry out work is impaired by more than 90% and is likely permanently to be so.

Regulation 35 omits regulation E14, with the effect that part of a member’s pension may no longer be allocated to a dependant. Regulation 36 amends regulation E16 in consequence of the renumbering of regulation E6. Regulation 37 amends regulation E17 so that it only relates to applications received before 1st April 2007.

Regulation 38 creates a new regulation E17A for those teachers whose application is received on or after 1st April 2007. The provision sets out how those teachers with Total Incapacity Benefit can take up employment outside teaching if they have a medical certificate confirming that total incapacity still exists. Otherwise, it replicates the existing regulation E17 in determining the dates from which incapacity has ceased and future retirement benefits become payable. Where the member has received the additional total incapacity pension but the member’s ability to carry out work ceases to be impaired by more than 90% the total incapacity pension ceases to be payable. If a member ceases to be incapacitated his or her retirement pension ceases to be payable. If a member takes up certain types of employment his or her ability to carry out work is treated as ceasing to be 90% impaired or (as the case may be) he or she is treated as ceasing to be incapacitated.

Regulation 39 amends regulation E18 to provide for, where appropriate, the new pensionable salary arrangements in the determination of a member’s ‘salary of reference’. From 1st April 2007 onwards, the ‘salary of reference’ used to determine a teacher’s ‘earnings margin’ will depend on the date of cessation of employment or re-employment:

- (a) cases where the member became entitled to pension before 1st April 2007 (regulation E18(3A)): the ‘salary of reference’ will be determined as per regulation E18 as it currently stands;
- (b) cases where the member became entitled to pension on or after 1st April 2009 (regulation E18(3B)): the ‘salary of reference’ will be based on the highest salary during the final 365 days (if used to calculate pension) OR the highest salary during the best three-year average period (if used to calculate pension); and
- (c) cases where the member became entitled to pension on or after 1st April 2007 and before 1st January 2009 (regulation E18(3C)): the better of (a) or (b).

Regulation 40 makes changes to regulation E19 in consequence of the omission of regulations B9, E14 and the renumbering of E6. Regulation 41 amends regulation E20 as a consequence of the removal of B9. Regulation 42 amends regulation E23 to reflect the renumbering of paragraphs in regulation E6.

Regulation 43 amends regulation E24 to raise the death grant to three times the pensionable salary of the teacher for those who have service on or after 1st April 2007.

Regulation 44 amends regulation E25 to require any deficiency grant to be paid, in the absence of a nominee, to a surviving nominated partner. Regulation 45 amends regulation E26 to provide for short and long-term pensions to be paid to a surviving nominated partner and to provide that a person nominated under regulation E27 does not receive a pension if he or she is co-habiting at the date of the member’s death.

Regulation 46 inserts new regulation E26A to enable scheme members who are living together as civil partners or as husband and wife to nominate their partner to receive a beneficiary’s pension.

Paragraphs (1) and (2) prescribe the conditions that must be met for a partner to be nominated. The scheme member (Person A) and the partner (Person B) are required to make a joint declaration that

the following conditions have been met for a continuous period of two years when the nomination is made. Paragraph (3) deals with the situation where it comes to light that the conditions were not satisfied (i.e. the declaration was falsely made by either party). In such circumstances the nomination would have no effect and the Scottish Ministers would have power to reclaim any pension incorrectly paid. Paragraph (4) deals with the circumstances under which a nomination ceases to have effect.

Regulation 47 amends regulation E27 to provide that, if a partner is nominated under regulation E26A, any previous nomination made under regulation E27 of the 2005 Regulations ceases to have effect and no such nomination may be made while the nomination under regulation E26A is current.

Regulations 48, 49, 50 and 51 amend regulations E28, E29, E30 and E31 respectively to provide for short and long-term pensions to be paid to the surviving nominated partner. The service that counts for the purpose of calculating a surviving nominated partner's pension is specified in new paragraph (4B) of regulation E30.

Regulation 52 amends regulation E32 to provide for the calculation of long-term pensions payable to children where a pension is payable to a surviving nominated partner.

Regulation 53 inserts new regulation E32A to provide that if the scheme member has purchased additional pension for survivor partner, (widow, widower, civil partner or surviving nominated partner) purposes, the rate of the survivor pension would be half the rate of the additional pension purchased.

Regulation 54 amends regulation E33 so that survivor pensions are payable for the lifetime of the recipient. Widow, widower and civil partner pensions payable from a date prior to 1st April 2007 will remain liable to cessation on remarriage, civil partnership or cohabitation.

Regulation 55 amends regulation E34 to make new provisions for determining a member's pensionable salary on which benefits are calculated. The effect of the amendments, when taken with section 8(2)(a) of the Pensions (Increase) Act 1971, is that a member's pensionable salary is either the salary in the last 365 days of service or the average of the salary, index linked up to the date when the pensionable salary service ended, for the best 1095 consecutive days of service in the previous ten years. Consequential amendments are made to regulation E18. Under transitional provisions, the existing provisions continue to apply where a member's entitlement to benefits took effect before 1st April 2007. Where a member became entitled to benefits on or after 1st April 2007 but before 1st April 2009, the pensionable salary will either be that calculated under the old provisions or that calculated under the new provisions whichever is the higher.

Regulation 56 inserts regulation E34A which sets out the alternative pensionable salary calculation based on the best 1095 consecutive days of service in the last 10 years, index linked up to the date when the pensionable salary service ended. Paragraphs (4) to (6) determines how this pensionable salary works in conjunction with the Pensions Increase Act 1971 to provide the right level of benefits. Paragraph 7 provides that service need not be continuous but that it may be necessary to look back further than 10 years in order to achieve 1095 days of service. Paragraphs (8) and (9) repeat the leap year clarifications given in new regulations E34(14A) and (14B).

Regulation 57 amends regulation E35 with the effect that there is no longer a restriction on reckonable service at age 60, but overall service limit will be retained.

Regulation 58 amends regulation E36 to provide that any application for benefits must be made in writing. It also makes clear that the applicant and the employer must provide the relevant medical evidence which supports the application.

Regulation 59 amends regulation E37 to provide that no interest is payable on any late payment of phased retirement benefits under regulation E6A and to provide for the date from which interest is payable when ill-health pensions are restored retrospectively.

Regulation 60 amends regulation F1 to clarify that a pension paid to a surviving nominated partner is not a shareable right.

Regulation 61 amends regulation F9 to take account of the increase in normal pension age.

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Regulation 62 amends regulation F10 to make clear that the lump sum amounting to three times the annual pension only relates to those credit members with a normal pension age of 60. Regulation 63 inserts new regulation F10A which sets out the process for defining the normal pension age for a pension credit member and also for when the pension debit member has mixed service. Regulation 64 amends regulation F13 to take account of the increase in normal pension age.

Regulation 65 inserts new regulation F13A to allow increased lump sum flexibility for pension credit members in line with those for the pension debit members, by way of commutation.

Regulation 66 amends regulation G1 to provide for the normal pension age of 65 in respect of transfer values as well as normal pension age 60.

Regulation 67 substitutes regulation H3 to make provision for how the employers' contribution rate will be determined. The employer contribution rate is the balance between the overall Scottish valuation scheme cost (the net contribution rate) and the member rate that is set according to revised regulation C3. This amendment also makes provision for the increase in the employers' contribution rate from 12.5% to 13.5% from 1st April 2007.

Regulation 68 inserts new regulations H5A and H5B. Regulation H5A makes provision for the payment of employers' contributions where a teacher has become re-employed and contributions are to be backdated and regulation H5B makes provision for payment of employers' contributions where the employer elects to purchase additional benefits on behalf of a teacher.

Regulation 69 amends regulation H6(3) in consequence of the removal of PAY.

Regulation 70 amends regulation J1 in respect of "stepping down" elections, which, with the introduction of the new pensionable salary arrangements, will no longer be necessary. The effect of the amendments is that a reduction in salary will have to take place before 1st April 2007 and an election must be made by 1st July 2007 for a member to make use of the current provision.

Regulation 71 amends regulation J2 to extend the winding down scheme to normal pension age of age 65 members and to allow a teacher to have a break of more than 5 years, but allowing only 5 years of any break to count towards the requirement of having 25 years teaching service. Consequently the required 25 years teaching service does not have to be immediately prior to winding down.

Regulation 73 inserts new regulation J6A to introduce a requirement for a declaration to be signed prior to payment of benefits whereby the individual undertakes not to re-cycle any lump sum from the Teachers' Pension Scheme into another pension-savings vehicle. The amendment is consequential on amendments in the Finance Act 2006 to the Finance Act 2004 which provide that from 6th April 2006 where individuals who use their tax-free lump sum, as a result of accessing retirement benefits, to invest in other pension-saving vehicles, except where a low value exemption apply, the lump sum will be an "unauthorised" payment and in consequence subject to tax charges. If no declaration is received, any lump sum which would have been paid as a result of regulation E8 and regulation F10 may be converted to an additional pension. Where the payment would have been a lump sum paid as a result of regulation E6A, or E8A or F13A, then the commutation election will have no effect.

Regulation 74 amends Schedule 1 which deals with interpretation. The amendment includes a definition of "permitted maximum" in relation to the tax-free lump sum by reference to the Finance Act 2004. The amending provision also changes the definition of the 'appropriate factor' so that, instead of being set out in tables in Schedule 10, the factors are determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary).

Regulation 75 inserts a new Schedule 2A in Schedule 1 to the Regulations. Paragraphs 2 to 5 of Schedule 2A allow for a member to make an election to buy additional pension either by a lump sum payment or by monthly deductions from salary, and to define the period over which the monthly contributions will be made. This period is limited to either 20 years or the member's normal pension age, whichever is sooner.

Paragraph 7 provides for an election to be made to purchase additional pension in units of a value determined by the Scottish Ministers. Paragraph 8 provides that the member must make a health

declaration when purchasing additional pension to protect the scheme where the member is more likely to access ill health benefits or to have a reduced life expectancy. Paragraphs 11 to 16 allow for the employer of a member to elect to purchase additional pension on his or her behalf by means of a lump sum payment.

Paragraphs 18 to 22 set out the maximum additional pension that can be purchased. This limit is initially £5,000 but will increase annually in line with retail prices and be subject to periodic review by HM Treasury. Paragraph 23, taken together with paragraph 37, provides for the Scottish Ministers to vary the cost of purchasing additional pension and for any changes in the cost to be reflected in the payments made by members.

Paragraphs 25 and 26 allow a member who is paying by monthly contributions to revoke the election that has been made and to be credited with the additional pension having regard to contributions already paid. Paragraph 28 provides that, where a teacher ceases to be in pensionable employment before the end of the payment period, he or she may elect to make a lump sum payment to cover the remainder of the election or to receive additional pension equivalent to the contributions already made.

Paragraph 31 provides for the return of contributions where a teacher becomes eligible for benefits through incapacity within one year of an election to buy added pension benefits. Where the retirement is more than 12 months after the election, the member will be credited with the benefits he or she had elected to purchase.

Paragraphs 34 to 36 provide that, in the event of a teacher's death within one year of making an election, any contributions made by the member will be returned to his or her estate and any contributions from an employer will be returned to the employer. The teacher's dependants will not receive any additional benefits under that election. Where the death occurs after one year, the dependants will be credited with the full amount of the additional pension specified in the election.

Regulation 79 amends Schedule 6. The amendment removes the tables of factors for the payment of additional contributions to purchase pre-6 April 1988 service for widower and civil partner pension purposes from Parts II and IIA of the Schedule and substitutes reference to multipliers to be determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary). A new Part IIB is inserted to enable scheme members who have made a surviving nominated partner nomination and who are in pensionable employment to pay additional contributions to convert service before 1st April 2007. Scheme members wishing to pay additional contributions for surviving nominated partner purposes are required to make a health declaration.

Regulation 81 amends Schedule 9 to provide for normal pension ages of 60 and 65. Regulation 82 omits Schedules 10 and 11 in consequence of the introduction of the definition of "appropriate factor" in regulation 73 and the removal of regulation E14.

Regulation 84 gives effect to the savings and transitional provisions for the 2005 Regulations in Part I of Schedule 2.

### ***Amendment of the 1996 Regulations***

Regulations 85 to 103 makes minor textual and consequential amendment to the 1996 Regulations following consolidation of the 2005 Regulations. In addition, the regulations make the following changes of substance:

Regulation 88 omits regulation 6 to remove the allocation provision in line with the changes to the Teachers' Superannuation (Scotland) Regulations 2005.

Regulation 92 amends regulation 10 to make provision for short-term compensation to be payable to surviving nominated partners under paragraph (2). Paragraph (3) inserts new paragraph (3B) to provide that long-term compensation is only subject to cessation upon remarriage, formation of a civil partnership or cohabitation where the compensation pension arose from a death occurring prior to 1st April 2007.

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Regulation 100 inserts a new regulation 19B to allow a former employer (as “the compensating authority”) to require an individual to sign a declaration stating that the lump sum element to his or her mandatory premature retirement compensation will not be re-cycled into another pension-saving vehicle.

### ***Amendment of the AVC Regulations***

Regulations 105 to 110 amend the AVC Regulations.

Regulation 105 amends regulation 2(3) (Interpretation) to insert a definition of normal pension age giving it the same meaning consistent with the 2005 Regulations. Paragraph 1(b) amends regulation 2 so that “dependant” includes a person in whose favour a nomination under regulation E26A of the 2005 Regulations has effect.

Regulation 106 amends regulation 5(4) which stipulates that anyone working beyond age 60 has to elect annually to pay further contributions to the AVC scheme.

Regulation 108 amends regulation 12 to define the term ‘relevant date’ which enables the benefits from the AVC scheme to be realised separately from the main scheme and any time after reaching the age of 55. The exceptions to this age requirement are when the main scheme benefits have been paid earlier through regulation E6 of the 2005 Regulations (for example in cases of ill-health or premature retirement, when AVC benefits can be paid earlier). Paragraph (5) replaces regulation 12(6) to amend the provisions relating to the payment of the balance of a pension after a teacher’s death, where the teacher has notified the pension provider that he or she wishes the pension to continue if the teacher dies within 5 years. In place of the current provision whereby the balance is paid as a lump sum (which would be an unauthorised payment under the Finance Act 2004) the method of payment of the balance is at the discretion of the pension provider. Regulation 109 amends regulation 13A to make similar changes in relation to arrangements created through a pension-sharing order.

Regulation 110 amends regulation 16 by introducing a declaration to the application form to access the accumulated AVC fund. To protect the scheme from sanction charges which might otherwise be imposed by HMRC, in respect of an unauthorised payment the declaration will ask the individual to confirm that he or she does not intend to recycle any lump sum into another pension-savings vehicle. It also provides that, where an individual refuses to sign the declaration that the lump sum will not be recycled, any election under the existing regulation 12 for the provision of a lump sum, may have no effect and the whole accumulated fund will then be used to purchase an annuity (pension) and no lump sum element would be made available.