EXECUTIVE NOTE

THE TEACHERS' SUPERANNUATION (SCOTLAND) AMENDMENT REGULATIONS 2011

SSI 2011/42

The above instrument was made in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972. Functions under that Act as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative resolution procedure. The instrument extends only to Scotland.

This instrument amends the Teachers' Superannuation (Scotland) Regulations 2005 (SSI 2005/393). A consolidation of the 2005 Regulations is in progress and these consolidated Regulations will be made in 2011.

The main changes to the 2005 regulations are as follows:

- Guaranteed minimum pensions: provision is made for the equalisation of state pension age from 6th April 2010 and the fact that GMP age remains 60 for women and 65 for men

- Phased retirement: salary reduction requirement changes from 25% to 20%

- Pension credit members: introduction of actuarially reduced benefits for pension credit members

- Lifetime Allowance (LTA) charge: provision is made for the deduction of the LTA charge from a member's benefits where the value of those benefits exceeds the LTA. The amount of the deduction is based on advice from the scheme actuary

Policy Objectives

Regulations 3, 4, 10(a) and 14: as the Finance Act 2004 is referred to frequently in the regulations, the definition has been added to Schedule 1. It is therefore necessary to change the references in the body of the regulations from "the Finance Act 2004" to "the 2004 Act" wherever they occur.

Regulation 5: the Scottish Teachers' Superannuation Scheme (STSS) is contracted out of the State Second Pension (S2P). S2P is the state pension scheme which was introduced with effect from 6 April 2002 to replace the State Earnings-Related Pension Scheme (SERPS). As a consequence of contracting out members pay a lower rate of National Insurance contributions and the basic state pension is not enhanced by the state additional pension rights which members would have received if they had not been contracted-out. A Guaranteed Minimum Pension (GMP) is relevant to these state additional pension rights and as a condition of contracting-out the STSS is required to provide a pension at least equivalent to the GMP. Whilst increases to State Pension Age are being phased in from 6th April 2010, the obligations of occupational pension schemes in respect of GMPs will remain linked to age 60 for women and 65 for men. Regulation 5 of this instrument makes provision in the re-worked

Regulation E1 for the equalisation of state pension age from 6th April 2010 and the fact that GMP age remains 60 for women and 65 for men. This amendment takes effect from 6 April 2010.

Regulation 6: the provisions of Regulation E2 have been incorporated in the re-worked Regulation E1 and has therefore been omitted. Regulation E3 has been omitted because there is no longer a requirement to prescribe rates of revaluation of GMP on payment of a transfer value to an insurance policy which provides an annuity.

Regulation 7: re-words sub-paragraph (b) of Regulation E6(6) to clarify that the minimum pension age is 55 for all teachers.

Regulation 8: the option to take a phased retirement pension was introduced with effect from 1 April 2007 as part of the pensions reform package by Regulation E6A. STSS members may opt to take up to a maximum of 75% of their pension from age 55 and continue in teaching employment as long as they reduce their annual earnings by 25%. Regulation 8 of this instrument reduces this percentage from 25% to 20% as this fits better with the teacher's working week eg it represents a change from working 5 days to 4 days. This amendment takes effect from 1 April 2010.

Regulation 9: corrects a minor drafting error in the formula used to up-rate additional pension benefits in Regulation E7A.

Regulations 10 and 12: where a teacher or pension credit member is terminally ill (expected life expectancy is less than a year) they may elect to have their pension entitlement commuted to a lump sum. These regulations amend regulations E23 and F13 to clarify that a teacher or a pension credit member who is terminally ill will receive £12 for every £1 of pension up to the maximum permitted by Her Majesty's Revenue and Customs and the remainder will be commuted at the rate of £5 for every remaining £1 of pension.

Regulation 11: the Occupational, Personal and Stakeholder Pension (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/615) made provisions which broadly align the general rules for the payment of pension credit benefit with other deferred pension rights held in occupational pension schemes. As a consequence amendments have been made by the insertion of regulation F10B to allow early payment of a pension credit with an actuarial reduction from normal minimum pension age. This will mean that in addition to any fixed lump sum pension credit members will be able to exchange part of their pension credit for a lump sum up to the limits provided for in the Finance Act 2004. This amendment takes effect from 1 April 2010.

Regulations 13 and 15: The Lifetime Allowance and Lifetime Allowance Charge were introduced by the Finance Act 2004 from 6 April 2006. The Lifetime Allowance is the total allowable value of tax privileged pensions that a member may have from all sources, before incurring an additional tax charge. If the value of a member's benefits exceed the Lifetime Allowance, benefits may be subject to an additional tax charge which is called the Lifetime Allowance charge. Regulations 13 and 15 of this instrument introduce new regulations G1A and J6B which provide for the Scottish Ministers to pay the Lifetime Allowance Charge on the member's behalf as required by HMRC and to deduct it from the member's retirement benefits or transfer value as appropriate. This amendment takes effect from 6 April 2006. Regulation 15 also introduced a new regulation J6C which is a general protection against the

Scheme making an unauthorised payment, as defined in section 160(5) of the Finance Act 2004, and incurring a tax surcharge. However, there might be cases where an unauthorised payment is unavoidable, therefore, the regulation gives the Scottish Ministers power to deal with such exceptional cases.

Regulation 17: Adds the definition of “The Finance Act 2004” to the list of definitions contained in Schedule 1.

Consultation

To comply with the requirements of section 9(5) of the Superannuation Act 1972 a consultation on the amendments made by this instrument took place from 24 May 2010 to 16 July 2010. Those consulted were all teachers’ employers (including all 32 Scottish local authorities, Scottish Colleges and Independent Schools), teachers’ trades unions and relevant Scottish and UK Government Departments. Responses were either concerned with any financial implications for employers, of which there are none, or simply sought clarification of the change.

Financial effects

A Business and Regulatory Impact Assessment (BRIA) has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

Contact

If you have any queries regarding this instrument, please contact Christine Marr at the Scottish Public Pensions Agency (Tel: 01896 893225 or email: christine.marr@scotland.gsi.gov.uk).

Scottish Public Pensions Agency
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