SCOTTISH STATUTORY INSTRUMENTS

2014 No. 217

The Teachers' Pension Scheme (Scotland) Regulations 2014

PART 8

Payment of benefits

CHAPTER 1

Application for payment of benefits

Benefits payable by the scheme manager

158.—(1) Benefits under these Regulations are payable by the scheme manager.

(2) Benefits are not payable to or in respect of a member unless the provisions of this Chapter are complied with.

Application for payment of benefits

159.—(1) A person (P) must apply in writing to the scheme manager for payment of benefits.

(2) P must satisfy a written request from the scheme manager to provide any information specified in the request.

(3) The information must be information—

(a) in P's possession; or

(b) which P can reasonably be expected to obtain.

CHAPTER 2

Payment of pensions

Payment of pension

160.—(1) This regulation applies to the payment of a pension.

(2) A pension is normally to be paid monthly, but—

(a) may, on the application of the person entitled to it, be paid quarterly; or

(b) may be paid in such instalments and at such intervals as the scheme manager may think appropriate.

(3) Where payment of any such sum is due in respect of a period which is less than the interval at which it is payable—

(a) the amount payable in respect of each complete month of the period shall be 1/12th of the annual rate of the sum; and

(b) the amount payable in respect of a period of less than 1 complete month shall be—

$$\frac{A}{12} \times \frac{B}{C}$$

(4) In paragraph (3)(b)—

(a) A is the annual rate of the pension;

(b) B is the number of days in respect of which the benefit is payable; and

(c) C is the total number of days in the month in which the days in B fall.

CHAPTER 3

Payment of lump sums

Member declaration

161.—(1) The scheme manager may not pay a member a lump sum under this Chapter unless the member declares in writing that, on payment of the lump sum, paragraph 3A of Schedule 29 to FA 2004(**1**) would not apply.

(2) The declaration must be—

(a) signed by the member;

(b) in a form specified by the scheme manager; and

(c) provided by a date determined by the scheme manager.

Commutation of part of pension

162.—(1) The following members may apply to the scheme manager to receive a lump sum in place of part of a pension—

(a) a member who is entitled to payment of a retirement pension;

(b) a pension credit member who is entitled to payment of a pension credit retirement pension.

(2) Paragraph (1)(b) only applies if—

(a) the member's pension credit is derived from rights attributable to the pensionable service of a pension debit member; and

(b) a retirement pension does not become payable to the pension debit member before the transfer day in respect of that pensionable service.

(3) An application under this regulation must—

(a) be in writing;

(b) be made when the member applies under regulation 159 for payment of the pension; and

(c) specify the amount of the lump sum which the member wishes to receive.

Amount of lump sum payable under regulation 162

163. The amount of a lump sum payable under regulation 162 must—

(a) be a multiple of £12; and

(b) not exceed P's permitted maximum.

(**1**) Paragraph 3A of Schedule 29 was inserted by section 159 of the Finance Act 2006 (c.25).

Commutation amount for lump sum payable under regulation 162

164.—(1) For the purpose of calculating the annual rate of pension payable to a member (P) who receives a lump sum under regulation 162, the commutation amount is 1/12th of the amount of the lump sum.

(2) If a retirement pension commuted under regulation 165 ceases to be payable under regulation 94 or 111, the commutation amount for any retirement pension that subsequently becomes payable to P is an amount determined by the scheme manager after consulting the scheme actuary.

Commutation of whole pension (serious ill-health)

165.—(1) This regulation applies to a member (P) who, on the entitlement day for a pension, has a life expectancy of less than a year.

(2) P may apply to the scheme manager to receive a lump sum instead of the pension.

(3) The application must—

(a) be in writing;

(b) be made when P applies under regulation 159 for payment of the pension; and

(c) be accompanied by all the medical evidence necessary for the scheme manager to determine that P is entitled to payment of the lump sum.

(4) If P is eligible to apply under regulation 162 to receive a lump sum under that regulation—

(a) the largest permissible lump sum is to be paid under that regulation; and

(b) the commutation amount under that regulation is to be deducted when calculating the annual rate under regulation 166.

(5) In this regulation, "pension" means—

(a) an age retirement pension and any phased retirement pension payable with it;

(b) an ill-health pension and a total incapacity pension or phased retirement pension payable with it; or

(c) a pension credit retirement pension.

Amount of lump sum payable under regulation 165 instead of retirement pension

166.—(1) This regulation applies to a member (P) who applies under regulation 165 to receive a lump sum instead of a retirement pension.

(2) The amount of the lump sum payable to P is the total of—

(a) for an age retirement pension, ill health pension or total incapacity pension, a sum equal to 5 x the annual rate of the retirement pension; and

(b) for a phased retirement pension that is already in payment, a sum equal to—

(A-B) x the annual rate of the phased retirement pension

where—

A is 5, and

B is the period (in years and fractions of a year) from the date on which the phased retirement pension was first paid until the date of the application(**2**).

(**2**) Note: if this period is 5 years or more, no lump sum is payable in respect of the phased retirement pension.

Amount of lump sum payable under regulation 165 instead of a pension credit retirement pension

167.—(1) This regulation applies to a member (P) who applies under regulation 165 to receive a lump sum instead of a pension credit retirement pension.

(2) The amount of the lump sum payable to P is an amount equal to 5 times the annual rate of the pension credit retirement pension.

Commutation: small pensions

168.—(1) If paragraph (2) applies, the scheme manager may, on the application of a member (P), commute a retirement pension by paying a lump sum to P.

(2) This paragraph applies if—

(a) the lump sum is a trivial commutation lump sum as defined in paragraphs 7 and 7A of Schedule 29 to FA 2004 or falls within regulation 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009(**3**);

(b) the application under paragraph (1) is made when P applies under regulation 159 for payment of the retirement pension;

(c) in the 3 years ending with the date of the application, a transfer value payment has not been made in respect of P;

(d) a transfer value payment or cash transfer sum has not been accepted under Part 10 in respect of P's rights accrued under a personal pension scheme; and

(e) in the 5 years ending with the date of the application, a transfer value payment or cash transfer sum has not been accepted under Part 10 in respect of rights accrued under another occupational pension scheme.

(3) If a lump sum is paid under paragraph (1), benefits are not payable under Part 6 on P's death.

(4) The scheme manager may, on the application of a pension credit member (P), commute a pension credit retirement pension by paying a lump sum to P if—

(a) the lump sum is a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to FA 2004 or falls within regulation 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009;

(b) the application is made when P applies under regulation 159 for payment of the pension; and

(c) in the 3 years ending with the date of the application, a transfer value payment has not been made in respect of P.

(5) The scheme manager may, on the application of a beneficiary to whom a pension is payable under Part 6, commute that pension by paying a lump sum to the beneficiary if—

(a) the application is made when the beneficiary applies under regulation 159 for payment of the pension; and

(b) the lump sum is a trivial commutation lump sum death benefit as defined in paragraph 20 of Schedule 29 to FA 2004.

(6) A lump sum payable under this regulation is to be determined by the scheme manager after taking advice from the scheme actuary.

(**3**) S.I. 2009/1171.

CHAPTER 4

Continuing entitlement to benefit

Evidence of continuing entitlement to benefit

169.—(1) Where a benefit is being paid to a person (P), the scheme manager may at any time require that evidence be provided, by such date as the scheme manager may specify, to establish—

(a) the identity of P; and

(b) P's continuing entitlement to the benefit.

(2) If the evidence is not provided by the date specified, the scheme manager may withhold the whole or any part of the benefit.

(3) If a benefit ceases to be payable because P ceases to meet the incapacity condition or ceases to meet the total incapacity condition, the power in paragraph (1)(b) may be exercised so as to require P to provide evidence that there has been no such cessation.

Cessation of benefits where no entitlement

170.—(1) This regulation applies if after paying a benefit the scheme manager determines that there was no entitlement or there is no longer an entitlement to the benefit.

(2) The scheme manager may—

(a) cease to pay the benefit;

(b) withhold the whole or any part of the benefit;

(c) recover any payment made if there was no entitlement to the benefit.

CHAPTER 5

Miscellaneous

Recovery of overpayment of benefits

171.—(1) This regulation applies in respect of a financial year for which a decrease in prices is specified in the Treasury order.

(2) The scheme manager may recover any overpayment of benefits that occurs as a result of the application of the leaver index adjustment for that year.

Interest on late payment of benefits

172.—(1) This regulation applies to a benefit except—

(a) a phased retirement pension or a lump sum payable under regulation 162 in place of part of that pension; or

(b) a total incapacity pension payable between the date on which the person to whom it is paid first engages in any other form of work as mentioned in regulation 115(2)(c) and the date on which the scheme manager is satisfied that the person continues to meet the total incapacity condition despite engaging in such work.

(2) Except as provided in paragraphs (8) and (9), where a benefit to which this regulation applies is not paid within one month after the due date, the scheme manager must pay interest on the amount unpaid at the Bank of England base rate compounded with 3-monthly rests from the due date to the date of payment.

(3) Where the benefit is a death grant, the due date is the day after the date on which the scheme manager became satisfied that payment may be made.

(4) Where the benefit is a lump sum under regulation 162, 165 or 168 or a grant other than a death grant, the due date is the day on which the benefit is payable.

(5) Where the benefit is a pension or annuity, the due date is the last day of the month in which entitlement to the benefit took effect.

(6) In determining the due date in accordance with paragraphs (4) and (5), no account is to be taken of the requirement to make an application for the benefit under regulation 159.

(7) In this regulation "Bank of England base rate" means—

(a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the money markets; or

(b) where an order under section 19 of the Bank of England Act 1998(**4**) is in force, any equivalent rate determined by the Treasury under that section.

(8) Where a payment to the scheme manager is received after the benefit to which it relates becomes payable, the scheme manager may determine that this regulation does not apply to the benefit until the payment is received.

(9) If paragraph (10) applies, the scheme manager may determine that this regulation does not apply to any benefit, either in respect of the whole period or any part of the period.

(10) This paragraph applies if—

(a) a benefit is payable between the date specified under regulation 169(1) and the date on which the evidence required under that regulation is received by the scheme manager;

(b) that evidence was not provided by the date specified but was provided later; and

(c) it does not appear to the scheme manager that the delay in providing the evidence was due to circumstances outside the control of the person to whom the benefit is payable.

Payment of benefits in certain cases

173.—(1) Where a person (P) to whom a benefit is payable has not reached the age of 16 or is incapable by reason of infirmity of mind or body of managing P's affairs, the scheme manager may—

(a) pay the benefit to any person having the care of P; or

(b) apply it as the scheme manager thinks fit for the benefit of P or P's dependants.

(2) Where a benefit is payable to a widow and there is more than one widow, the benefit must be paid to the widows in equal shares.

(3) Where on the death of a person (D) the total of any sums due to D and any sums payable to D's executors under these Regulations does not exceed the amount specified in any order made under section 6 of the Administration of Estates (Small Payments) Act 1965(**5**) which applies to D's death, the scheme manager may, without requiring the production of confirmation or other proof of title, pay the amount due—

(a) to D's executors; or

(b) to the person, or to or among any one or more of any persons, appearing to the scheme manager to be beneficially entitled to D's estate.

(**4**) 1998 c.11.
(**5**) 1965 c.32; the amount currently specified in S.I. 1984/539 is £5,000.

Benefits not assignable

174.—(1) Any assignation of or charge on, or agreement to assign or charge, any benefit under these Regulations is void.

(2) On the sequestration of the estate of a person entitled to any such benefit or on the bankruptcy of such a person, no part of the benefit passes to any trustee or other person acting on behalf of the creditors, except as provided in paragraph (3).

(3) Nothing in paragraph (2) affects the powers of the Court under section 32(2) and (4) of the Bankruptcy (Scotland) Act 1985(**6**) or under section 310 of the Insolvency Act 1986(**7**).

Forfeiture of benefits

175.—(1) This regulation applies to a benefit payable to a person who is convicted of—

(a) an offence of treason, or

(b) one offence or more under the Official Secrets Acts 1911 to 1989(**8**) for which the person has been sentenced on the same occasion to a term of imprisonment of, or to 2 or more consecutive terms amounting in the aggregate to, at least 10 years,

where the offence was committed before the benefit became payable.

(2) This regulation also applies to retirement benefits or a pension credit retirement pension payable to a person convicted of an offence, committed before the benefit became payable, in connection with service as a public servant certified by the scheme manager to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.

(3) This regulation also applies to a benefit payable on the death of a person (D) to any person convicted of the murder of D, the culpable homicide of D or any other offence of which the unlawful killing of D is an element.

(4) The scheme manager may defer or suspend payment of a benefit to which this regulation applies for so long, or reduce its amount or rate by so much and for so long, as the scheme manager may determine.

Reduction of benefits: annual allowances and lifetime allowance charge

176.—(1) This regulation applies to the situations set out in paragraphs (2) and (3) and in this regulation "the charge" refers to either of the charges set out in those paragraphs.

(2) The lifetime allowance charge under section 214 of FA 2004 arises because a benefit becomes payable to a person and the person and the scheme manager are jointly and severally liable to the charge.

(3) The annual allowance charge under section 227 of FA 2004 arises in respect of a person who serves a notice under section 238A of that Act.

(4) The scheme manager must pay the charge.

(5) The amount of the benefit must be reduced to reflect the amount of the charge in such manner as the scheme manager is to determine, after taking advice from the scheme actuary.

(**6**) 1985 c.66.
(**7**) 1986 c.45.
(**8**) 1911 c.28, 1920 c.75, 1939 c.121, 1989 c.6.

General prohibition on unauthorised payments

177. Nothing in these Regulations requires or authorises the making of any payment which, if made, would be an unauthorised payment for the purpose of Part 4 of FA 2004 (see section 160(5) of that Act) unless the scheme manager determines otherwise (in the case of a particular payment).