

2014 No. 69

PENSIONS

**The Teachers' Superannuation (Scotland) (Miscellaneous
Amendments) Regulations 2014**

Made - - - - *3rd March 2014*

Laid before the Scottish Parliament *5th March 2014*

Coming into force - - *1st May 2014*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a) and all other powers enabling them to do so.

In accordance with section 9(5) of that Act, the Scottish Ministers have consulted with representatives of education authorities, teachers and such other persons likely to be affected by these Regulations as appear to them to be appropriate.

In accordance with section 9(1) of that Act, the Treasury has approved the making of these Regulations(b).

Citation, commencement and effect

1. These Regulations may be cited as the Teachers' Superannuation (Scotland) (Miscellaneous Amendments) Regulations 2014 and come into force on 1st May 2014, but regulations 3 and 5(a) have effect from 6th April 2010 and regulations 4 and 5(b) to (d) have effect from 1st October 2012.

Amendment of the Teachers' Superannuation (Scotland) Regulations 2005

2. The Teachers' Superannuation (Scotland) Regulations 2005(c) are amended in accordance with regulations 3 to 22 of these Regulations.

(a) 1972 c.11. Section 9 was amended by sections 4(1), 8(3) and (4), and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) ("the 1990 Act"), by section 190 of, and paragraph 7 of Schedule 8 to 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). Section 12 was amended by section 10 of the 1990 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I. 1999/1750).

(b) This function was transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670) and remains exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(c) S.S.I. 2005/393, as amended by S.S.I. 2005/543, S.S.I. 2006/308, S.S.I. 2006/605, S.S.I. 2007/189, S.S.I. 2008/227, S.S.I. 2011/42, S.S.I. 2001/52, S.S.I. 2012/70, S.S.I. 2013/71 and S.S.I. 2014/44.

Additional paternity leave

3. In each of the following provisions, after “paternity” insert “, additional paternity”—
- (a) paragraph (1)(b) of regulation C1 (salary on which contributions are payable);
 - (b) paragraph (1)(a) of regulation C2 (salary on which contributions are payable – election);
 - (c) paragraph (4)(a) of regulation D1 (reckonable service generally);
 - (d) paragraph (5)(c)(i)(bb) of regulation E6 (entitlement to payment of retirement benefits);
 - (e) paragraph (1)(b) of regulation E10A (total incapacity benefit);
 - (f) paragraph (1)(e) of regulation E24 (death grants);
 - (g) paragraph (1)(a) of regulation E29 (amount and duration of short-term family benefits);
 - (h) paragraph (7)(a) of regulation E34 (pensionable salary); and
 - (i) paragraph (1)(f) of regulation J4 (records and information).

Amendment of regulation B2

4. In regulation B2 (part-time service)—
- (a) after “new employment specified in Schedule 2” insert “or the teacher’s employer makes arrangements under section 3(2) (automatic enrolment) or 5(2) (automatic re-enrolment) of the 2008 Act”; and
 - (b) omit paragraphs (4) to (6).

Amendment of regulation B6

5. In regulation B6 (employment not pensionable)—
- (a) in paragraph (1)(c), after “pay” insert “or additional statutory paternity pay”;
 - (b) in paragraph (2), after “not pensionable employment” insert “unless the teacher’s employer makes arrangements under section 3(2) (automatic enrolment) or 5(2) (automatic re-enrolment) of the 2008 Act in respect of that employment”;
 - (c) in paragraph (3), after “not in pensionable employment” insert “unless the teacher’s employer makes arrangements under section 3(2) (automatic enrolment) or 5(2) (automatic re-enrolment) of the 2008 Act in respect of that employment”;
 - (d) in paragraph (6), after “regulation B8” insert “or the teacher’s employer makes arrangements under section 3(2) (automatic enrolment) or 5(2) (automatic re-enrolment) of the 2008 Act in respect of that employment”.

Substitution of regulation B7

6. For regulation B7, substitute—

“Election for employment not to be pensionable

B7.—(1) A teacher may make an election under this regulation in respect of a particular pensionable employment by giving written notice to the employer.

(2) An election has effect from the first day of the month after the month in which the notice is given.

(3) But—

- (a) if the notice is given within 3 months after the start of employment in a capacity mentioned in Schedule 2, the election has effect from the first day of that employment; and
- (b) if the notice is given within 3 months after the date on which arrangements made by the employer under section 3(2) (automatic enrolment) or section 5(2)

(automatic re-enrolment) of the 2008 Act have effect in respect of that employment, the election has effect from that date.

- (4) An election ceases to have effect from the earlier of—
- (a) the date on which an election under regulation B8 (resumption of pensionable status) has effect; and
 - (b) the date on which arrangements made by the employer under section 3(2) (automatic enrolment) or section 5(2) (automatic re-enrolment) of the 2008 Act have effect in respect of the employment.”.

Substitution of regulation B8 and new regulation B8A

7. For regulation B8, substitute—

“Resumption of pensionable status

B8.—(1) A teacher mentioned in paragraph (2) may make an election under this regulation in respect of a particular employment by giving written notice to the Scottish Ministers, save that a teacher mentioned in paragraph (2)(b) or (c) may only make an election before the automatic enrolment date in relation to that teacher in respect of that employment.

(2) The teachers are—

- (a) a teacher in, or about to enter, employment in a capacity mentioned in Schedule 2 who has previously made an election under regulation B7 (election for employment not to be pensionable);
- (b) a teacher in part-time employment which is not pensionable by virtue of regulation B2(3);
- (c) a teacher in part-time or full-time employment which is not pensionable by virtue of regulation B6(5).

(3) An election has effect from the first day of the month after the month in which the notice is given.

(4) But where the election is made by a teacher mentioned in paragraph (2)(a) who gives notice before or within 3 months after the start of employment in a capacity mentioned in Schedule 2, the election has effect from the first day of that employment.

Backdating elections for employment to be pensionable

B8A.—(1) Where—

- (a) an election under regulation B8 (resumption of pensionable status) is made by a teacher in respect of non-pensionable part-time employment or in non-pensionable post-retirement employment;
- (b) (except where the election is made by a teacher in non-pensionable post-retirement employment) at the same time as notice of the election is given the teacher making the election and the teacher’s employer request that the Scottish Ministers backdate the election (by making a determination in accordance with paragraph (2)(b)) and the Scottish Ministers agree to do so;
- (c) the teacher making the election and the teacher’s employer inform the Scottish Ministers that they agree that contributions in accordance with sub-paragraph (d) be paid; and
- (d) the sum mentioned in paragraph (6) together with interest at the standard rate is paid to the Scottish Ministers,

the teacher’s relevant employment during the back period is to be treated as pensionable employment.

- (2) Where the election is made by a teacher in non-pensionable part-time employment—
- (a) “relevant employment” means non-pensionable part-time employment; and
 - (b) the “back period” means the period beginning on a date determined by the Scottish Ministers and ending on the day on which the election has effect.
- (3) The date determined for the purpose of paragraph (2)(b) must be such that the back period does not begin before or during—
- (a) any period of the teacher’s opted-out employment; or
 - (b) any period during which the teacher was employed in relevant employment by an employer who does not join in the request mentioned in paragraph (1)(b) or inform the Scottish Ministers as mentioned in paragraph (1)(c).
- (4) Where the election is made by a teacher in non-pensionable post-retirement employment—
- (a) “relevant employment” means non-pensionable post-retirement employment; and
 - (b) the “back period” means the period beginning on a date agreed between the teacher and the teacher’s employer and ending on the day on which the election has effect.
- (5) The date agreed for the purposes of paragraph (4)(b)—
- (a) must not be before 1st October 2001; and
 - (b) must be such that the back period does not begin before or during—
 - (i) any period of the teacher’s opted-out employments; or
 - (ii) any period during which the teacher was employed in relevant employment by an employer who does not inform the Scottish Ministers as mentioned in paragraph (1)(c).
- (6) The sum is a sum equal to the contributions (due from both the teacher making the election and the teacher’s employer or employers) which would have been payable to the Scottish Ministers if the teacher’s relevant employment during the back period had been pensionable employment.
- (7) Where the election is made by a teacher with mixed service, the teacher’s relevant employment during the back period is to be treated for the purpose of these Regulations as occurring after the post-break employment start date.
- (8) Where the election is made by a 2007 or later entrant, the teacher’s relevant employment during the back period is to be treated for the purposes of these Regulations as occurring after 31st March 2007.
- (9) In this regulation—
- “non-pensionable part-time employment” means employment which is not pensionable by virtue of regulation B2(3);
 - “non-pensionable post-retirement employment” means employment which is not pensionable by virtue of regulation B6(5);
 - “opted-out employment” means—
 - (a) employment in a capacity mentioned in Schedule 2 which was not pensionable by virtue of an election under regulation B7 (election for employment not to be pensionable);
 - (b) employment in a capacity mentioned in regulation B4 which ceased to be pensionable by virtue of an election under regulation B7 (election for employment not to be pensionable),
- and where employment falls within paragraph (a) or (b) and is also non-pensionable part-time employment or non-pensionable post-retirement employment, that employment is opted-out employment.”.

Omission of regulations C4 and C4A

8. Omit regulations C4 (contributions where an election under regulation B2(4) has been made) and C4A (contributions where an election under regulation B8(1A) is to take effect from an earlier date).

Substitution of regulation C15

9. For regulation C15, substitute—

“Deduction by employers of contributions, etc. from salary, payment in default and interest

C15.—(1) The employer of a teacher in pensionable employment must deduct from that teacher’s salary each month the contributions and instalments mentioned in paragraph (3).

(2) If any contributions or instalments referred to in paragraph (1) are not deducted in the appropriate month in accordance with that paragraph, the employer may deduct such contributions or instalments from the teacher’s salary in any subsequent month (but this paragraph does not affect regulation H6 (payment by employers to Scottish Ministers)).

(3) The contributions and instalments are—

- (a) the contributions payable under regulation C3(2);
- (b) any contributions payable under regulation C3(3);
- (c) any additional contributions payable as a result of an election under regulation C4B;
- (d) any additional contributions payable by virtue of regulation C7 or C10; and
- (e) any instalments payable under regulation C14(3).

(4) Where a teacher has ceased to be employed by an employer and, at the time when he or she ceased to be employed by that employer—

- (a) any deduction required by paragraphs (1) to (3) to be made by the employer has not been made; and
- (b) despite regulation H6(1)(a) (payment by employers to Scottish Ministers), a corresponding amount has not been paid to the Scottish Ministers pursuant to that regulation,

any amount remaining due, together with interest at the appropriate rate (compounded with monthly rests) from the due date to the date of payment, is to be paid by the teacher to the Scottish Ministers on receipt of a written demand, but the Scottish Ministers may in any case waive the payment of the whole or any part of such interest.

(5) In paragraph (4)—

- (a) the “appropriate rate” is—
 - (i) 4 per cent per annum in respect of any period before 1st May 2014;
 - (ii) the standard rate in respect of any other period; and
- (b) the “due date” is the 8th day after the end of the month in which the deduction required by paragraph (1) should have been made.”.

Amendment of regulation E8

10. For paragraph (6) of regulation E8 (amount of retirement lump sum), substitute—

“(6) Where a teacher on becoming entitled to a lump sum under this regulation on or before 5th April 2011 has attained the age of 75, the teacher—

- (a) will cease to be entitled to a lump sum; and

- (b) will instead be entitled to have his or her pension increased by such amount as the Scottish Ministers may, after taking advice from the scheme actuary, determine.”.

Amendment of regulation E18

11. In paragraph (2)(b) of Regulation E18 (abatement of retirement pension), after “does” insert “not”.

Substitution of regulation E21

12. For regulation E21, substitute—

“Short-service serious ill-health grant

E21.—(1) This regulation applies to a teacher if—

- (a) he or she was in pensionable employment for at least 12 months;
- (b) he or she is not qualified for retirement benefits or qualified for retirement benefits following further employment;
- (c) he or she ceases to be in pensionable employment because he or she satisfies the incapacity condition;
- (d) his or her application under regulation E36 (payment of benefits) is made within 12 months after the date on which his or her pensionable employment ceases; and
- (e) he or she has a life expectancy of less than a year.

(2) A short-service serious ill-health grant is payable to a teacher to whom this regulation applies.

(3) But no grant may be paid to a teacher who is 75 or over.

(4) The amount of the grant is the teacher’s pensionable salary/12 x the teacher’s reckonable service (in years and fractions of a year).

(5) For the purposes of this regulation, a teacher satisfies the incapacity condition if the teacher is incapacitated and is likely to be incapacitated permanently.”.

New regulation E21A

13. After regulation E21, insert—

“Short-service annuity: unauthorised payments

E21A.—(1) This regulation applies where the repayment of a teacher’s contributions under regulation C11 is not made because of regulation J6C (general prohibition on unauthorised payments) but where the teacher would otherwise be entitled to repayment of contributions.

(2) A short-service annuity is payable to the teacher from the date specified by the teacher in his or her application which must be no earlier than 6 weeks after the date on which his or her application is made.

(3) Except as otherwise provided in these Regulations, the annuity is payable for life.

(4) The annual rate of the annuity is the actuarial equivalent of the contributions which would have been repaid.”.

Amendment of regulation E24

14. For paragraph (5) of regulation E24 (death grants), substitute—

“(5) The amount of the grant under paragraph (3) is $\frac{3}{80}$ ths x the teacher’s pensionable salary x the teacher’s reckonable service (in years and fractions of a year) less the amount of any retirement lump sum or short service serious ill health grant.”.

Amendment of regulation G2

15. After paragraph (4) of regulation G2 (acceptance of transfer values) insert—

“(4A) But subparagraphs (a) and (b) of paragraph (4) do not apply if—

- (a) while the teacher was subject to the previous scheme, he or she was employed in comparable British service;
- (b) the teacher entered pensionable employment—
 - (i) immediately after the end of the employment; or
 - (ii) on or before the teacher’s 60th birthday in the case of a pre-2007 entrant or the teacher’s 65th birthday in any other case; and
- (c) the teacher has not applied for payment of any benefit.”.

Omission of regulation H2

16. Omit regulation H2 (actuarial review).

Insertion of regulation H2A

17. After regulation H2 (omitted under regulation 16 above), insert—

“Meaning of “standard rate” of interest

H2A. Where under any provision of these Regulations interest is required to be paid at the standard rate, the rate of interest is the Superannuation Contributions Adjusted for Past Experience discount rate set by the Treasury.”.

Amendment of regulation H3

18. Regulation H3 (employers’ contributions) is amended as follows—

- (a) omit sub-paragraphs (a) and (b) of paragraph (1);
- (b) in paragraph (2), omit ”during every relevant period”;
- (c) for paragraph (3), substitute—

“(3) The required percentage is 14.9%.”; and
- (d) omit paragraphs (4), (6) and (7).

Omission of regulations H5 and H5A

19. Omit regulations H5 (employers’ contributions – part-time elections) and H5A (employers’ contributions in respect of further employment).

Amendment of regulation H6

20. In paragraph (10) of regulation H6 (payments by employers to Scottish Ministers), omit “and” after sub-paragraph (a) and insert at the end of sub-paragraph (b)—

“and before 1st May 2014; and

- (c) the standard rate in relation to all amounts and contributions payable in relation to pensionable employment on or after 1st May 2014”.

Substitution of regulation J6B

21. For regulation J6B, substitute—

“Reduction of benefits: annual allowance and lifetime allowance charge

J6B.—(1) This regulation applies where—

- (a) the lifetime allowance charge under section 214 of the 2004 Act^(a) arises because a benefit becomes payable to a teacher and the teacher and the Scottish Ministers are jointly and severally liable to the charge; or
- (b) the annual allowance charge under section 227 of the 2004 Act arises in respect of a teacher who serves a notice under section 238A of that Act^(b).

(2) The Scottish Ministers must pay the charge referred to in sub-paragraph (a) or (b) of paragraph (1) (as the case may be).

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

Amendment of Schedule 1

22. In Schedule 1 (glossary of expressions)—

- (a) insert the following definitions at the appropriate place in each case—

“The 2008 Act”	The Pensions Act 2008
“additional paternity leave”	The meaning in regulation 2(1) of the Additional Paternity Leave Regulations 2010 ^(c)
“additional statutory paternity pay”	The meaning in regulation 2(1) of the Additional Statutory Paternity Pay (General) Regulations 2010 ^(d)
“automatic enrolment date”	The meaning in section 3(7) of the 2008 Act
“short-service annuity”	An annuity payable under Regulation E21A
“short-service serious ill-health grant”	A grant payable under Regulation E21A
“standard rate” (in the context of interest)	See regulation H2A (meaning of “standard rate” of interest);

- (b) omit the definitions of “Back Period” and “Indexing”.

Amendment of the Teachers’ Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995

23. The Teachers’ Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995^(e) are amended in accordance with regulations 24 to 26.

(a) The “2004 Act” is the Finance Act 2004 (c.12).

(b) Section 238A was inserted by the Finance Act 2011 (c.11), Schedule 17, paragraph 17.

(c) S.I. 2010/1055.

(d) S.I. 2010/1056.

(e) S.S.I. 1995/2814, as amended by S.S.I. 2000/444, S.S.I. 2001/292, S.S.I. 2005/543, S.S.I. 2006/308, S.S.I. 2007/189 and S.S.I. 2008/227.

Amendment of regulation 5

24. For paragraph (3)(c) of regulation 5 (allocation of lump sum death benefit to provide dependants' pensions), substitute—

- “(c) in respect of every pension to be provided, whether the annual rate of the pension—
- (i) is to be fixed;
 - (ii) is to vary in accordance with the Index;
 - (iii) is to increase yearly by a specified percentage;
 - (iv) where the authorised provider offers pensions which vary in accordance with an index of prices other than the Index, is to vary in accordance with the index specified in the notice; or
 - (v) is to be an Investment Linked Pension.”.

Amendment of regulation 11

25. In regulation 11 (outward transfers)—

- (a) in paragraph (1), omit “(b), (c) or (d)”; and
- (b) for paragraph (2), substitute—

“(2) A transfer value shall not be paid pursuant to paragraph (1) in respect of a person who has given written notice to the Scottish Ministers under regulation 12(5).”.

Amendment of regulation 12

26. In regulation 12 (retirement and dependants' pensions), for paragraph (5)(d) substitute—

- “(d) in respect of every pension to be provided, whether the annual rate of the pension—
- (i) is to be fixed;
 - (ii) is to vary in accordance with the Index;
 - (iii) is to increase yearly by a specified percentage;
 - (iv) where the authorised provider offers pensions which vary in accordance with an index of prices other than the Index, is to vary in accordance with the index specified in the notice; or
 - (v) is to be an Investment Linked Pension.”.

JOHN SWINNEY

A member of the Scottish Government

St Andrew's House,
Edinburgh
25th February 2014

We consent

*SAM GYIMAH
DAVID EVENNETT*

Two of the Lords Commissioners of Her Majesty's Treasury

3rd March 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Teachers' Superannuation (Scotland) Regulations 2005 ("the principal Regulations") and the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 ("the AVC Regulations").

Regulations 2 to 22 deal with changes to the principal Regulations.

Regulations 3 and 5(a) make provision in relation to additional paternity leave and additional statutory paternity pay, treating such matters in the same way as paternity leave and statutory paternity pay.

Regulations 4 to 7 make changes to the arrangements for members to opt into and out of the Scottish Teachers' Superannuation Scheme ("the Scheme"). This is to assist employers with employees in, or eligible to join, the Scheme in complying with certain of the requirements set out in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772). Those Regulations prescribe arrangements, in terms of Chapter 1 of Part 1 of the Pensions Act 2008 ("the 2008 Act"), for employers to enrol jobholders who are not active members of a pension scheme into a compliant scheme with effect from the automatic enrolment date, to process opt-out notices where these are received, and to re-enrol those who opt out at three-yearly intervals.

There is an extended phasing-in of the employers' duties under the 2008 Act. Some of the amendments to the principal Regulations apply only when the automatic enrolment date has been reached. The employer is under a duty to enrol jobholders who are not members of any scheme into an eligible scheme without requiring any election by the jobholder.

These Regulations also introduce the power for a member to opt into and out of the Scheme in respect of individual employment contracts.

Regulation 8 removes regulations C4 and C4A from the principal Regulations. Relevant replacement provision is now made by paragraphs (2) to (5) of new regulation B8A (inserted in the principal Regulations by regulation 7).

Regulations 9, 17 and 20 introduce a standard rate of interest that will apply in all cases where interest is payable on monies due to the Scottish Teachers' Superannuation Scheme. The interest rates in respect of the arrears of employer and member contributions are being harmonised. Previous provisions contained different rates of interest for different circumstances with no clear justification for the various rates. On grounds of simplification, a single standard rate is being introduced equal to the SCAPE discount rate.

Regulation 10 removes the requirement for a teacher to take a lump sum prior to attaining age 75. A lump sum can be paid to a member over the age of 75, provided the member applied for the benefits and any elective lump sum before the age of 75 and provided the lump sum is paid within 12 months of the application in line with overriding legislation governing "authorised payments".

Regulation 11 corrects a typographical error.

Regulation 12 substitutes regulation E21 of the principal Regulations, as it is not possible to pay a short-service incapacity grant to a person solely on grounds of incapacity. Unless the teacher has limited life expectancy, the grant would be an unauthorised payment (hence the change to the title of the regulation).

Regulation 13 inserts a new regulation to deal with circumstances where a person's only entitlement would be to a repayment, but a repayment would be an unauthorised payment (i.e. because the repayment is linked to further employment).

Regulation 14 amends regulation E24 of the principal Regulations to clarify that an out of service death grant at the rate of $\frac{3}{80}$ ths x pensionable salary x reckonable service is payable for all deferred members, including those with a normal pension age of 65.

Regulation 15 amends regulation G2 of the principal Regulations to clarify that a teacher who was employed in comparable British service can transfer those benefits at any time.

Regulation 16 removes the requirement to have an actuarial review and regulation 18 makes consequential amendments to regulation H3 of the principal Regulations.

Regulation 19 removes regulations H5 and H5A from the principal Regulations. Relevant replacement provision is now made by regulation B8A(6) (inserted into the principal Regulations by regulation 7).

Regulation 21 provides for the annual allowance charge.

Regulation 22 inserts into Schedule 1 to the principal Regulations 2005 definitions relevant to the amendments made by these Regulations.

Regulations 23 to 26 deal with changes to the AVC Regulations.

The amendments in regulations 24 and 26 provide an option, additional to those presently available, to a person making an election regarding annuities to be purchased. The additional option is for the annuity to increase in accordance with a prices index other than the retail prices index (for example, the consumer prices index).

The effect of the amendment in regulation 25(1) is that individuals who have already become entitled to retirement benefits may request the payment to another registered pension scheme of a transfer value of funds arising from the investment of additional voluntary contributions (in addition to others who may already do so). The amendment in regulation 25(2) provides that such a transfer value is not payable where the individual has made an election for the purchase of an annuity and, if relevant, payment of a lump sum.

An impact assessment has not been produced for this instrument as it has no impact on businesses or third sector organisations. The instrument has a minimal impact on the public sector.

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