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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 98**

**PENSIONS**

**The Teachers' Superannuation (Scotland)  
Amendment Regulations 2015**

<i>Made</i>	- - - -	<i>2nd March 2015</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>3rd March 2015</i>
<i>Coming into force</i>	- -	<i>1st April 2015</i>

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(1) 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 and teachers and with such other persons likely to be affected by these Regulations as appeared to them to be appropriate.

In accordance with section 9(1) of that Act, the Treasury has approved the making of these Regulations(2).

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Teachers' Superannuation (Scotland) Amendment Regulations 2015 and come into force on 1st April 2015.

(2) Regulation 3 has effect from 16th December 2014.

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

2. The Teachers' Superannuation (Scotland) Regulations 2005(3) are amended as follows.

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- (1) 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).
- (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 remains 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, 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. 2011/52, S.S.I. 2012/70, S.S.I. 2013/71, S.S.I. 2014/44 and S.S.I. 2014/69.

### New regulations A3 to A5

3. After regulation A2, insert—

**“Marriage of a same sex couple**

**A3.**—(1) Subject to regulation A5, in these Regulations—

- (a) a reference to civil partnership is to be read as including a reference to marriage of a same sex couple;
- (b) a reference to civil partners is to be read as including a reference to a married same sex couple; and
- (c) a reference to a person who is in a civil partnership is to be read as including a reference to a person who is married to a person of the same sex.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, or a reference to a person whose civil partnership has ended) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

**Living together as a same sex couple**

**A4.**—(1) In these Regulations—

- (a) a reference to persons who are not in a civil partnership but are living together as civil partners is to be read as including a reference to a same sex couple who are not married but are living together as a married couple; and
- (b) a reference to a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

**Continuation of marriage where scheme member acquires new legal gender**

**A5.**—(1) Where—

- (a) a deceased scheme member was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004<sup>(4)</sup>; and
- (b) at the time of the member’s death, she was married to a woman and that marriage subsisted before the time when the certificate was issued,

the scheme member’s widow is to be treated for the purpose of these Regulations as if the certificate had not been issued.

(2) Where—

- (a) a deceased scheme member was a man by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004; and

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(4) 2004 c.7.

(b) at the time of the member’s death, he was married to a man and that marriage subsisted before the time when the certificate was issued, the scheme member’s widower is to be treated for the purpose of these Regulations as if the certificate had not been issued.”.

### **Amendment of regulation C3**

4. In regulation C3(5) (ordinary contributions)—

(a) in paragraph (1)—

(i) for “paragraph (3)”, substitute “paragraphs (2A) to (4)”; and

(ii) omit “in respect of the period between 1st April 2014 and 31st March 2015”;

(b) for the table in paragraph (2), substitute—

<i>“Column 1</i>	<i>Column 2</i>
<i>Annual salary for the pensionable employment for 2015-16</i>	<i>Ordinary contribution rate</i>
Up to and including £25,999	7.2%
£26,000 to £34,999	8.7%
£35,000 to £41,499	9.7%
£41,500 to £54,999	10.4%
£55,000 to £74,999	11.5%
£75,000 and above	11.9%”

(c) after paragraph (2), insert—

“(2A) The annual salary bands in Column 1 of the table in paragraph (2) are increased for each financial year following 2015-16, if there is a relevant increase in the consumer prices index for that financial year, by the appropriate percentage for the financial year, rounded up to the nearest £1.

(2B) There is a relevant increase in the consumer prices index for a financial year if the consumer prices index for the month of September before that financial year is higher than that for the previous September.

(2C) The appropriate percentage for the financial year is the same percentage as the percentage increase in the consumer prices index for that year.

(2D) In this regulation, “consumer prices index” means the all items consumer prices index published by the Statistics Board, a body corporate established by section 1 of the Statistics and Registration Service Act 2007(6).”.

### **Amendment of regulation C11**

5. In paragraph (1)(b) of regulation C11 (return of contributions), for “regulation G1” substitute “regulations G6, G12, G17 and G23”.

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(5) Regulation C3 was substituted by [S.S.I. 2007/189](#) and amended by [S.S.I. 2013/71](#) and [S.S.I. 2014/44](#).

(6) [2007 c.18](#).

### **Amendment of regulation D1**

6. In paragraph (1)(b) of regulation D1 (reckonable service generally), for “or G2” substitute “, G8(2), G13(2), G20(2) or G24(3)”.

### **Amendment of regulation D2**

7. In paragraph (c) of regulation D2 (exclusion from reckonable service), for “G1” substitute “G6, G12, G17 or G23”.

### **Amendment of regulation D5**

8. In paragraph (3)(d) of regulation D5 (calculation of reckonable service where cap is removed)

- (a) for “regulation G2(5)” substitute “regulation G8, G13, G20 or G24”; and
- (b) for “previous scheme (within the meaning of regulation G2(2))”, substitute “registered pension scheme in which the teacher’s accrued rights are preserved”.

### **Amendment of regulation E10A**

9. In paragraph (2)(b) of regulation E10A (total incapacity benefit where application received on or after 1st April 2007), for “12 months” (in both places) substitute “24 months”.

### **New regulations to replace regulation E18**

10. For regulation E18, substitute—

#### **“Interpretation: abatement of pension**

**E18.** In this regulation and regulations E18A to E18D—

“abatable pension” means the sum of a teacher’s retirement pension—

- (a) disregarding the effect of any reduction under regulation E18D; and
- (b) excluding—
  - (i) phased retirement pension;
  - (ii) additional pension;
  - (iii) a pension (or part of a pension) which is payable to the teacher by reason of retirement with actuarial adjustment applying to the teacher’s reckonable service; and
  - (iv) retirement benefits defined in and payable under the Teachers’ Pension Scheme (Scotland) (No. 2) Regulations 2014(7);

“adjusted salary of reference” for a teacher is—

- (a) if the teacher’s previous employment was full-time, the higher of—
  - (i) the highest salary taken into account in determining the teacher’s pensionable salary under regulation E34 or E34A(8), multiplied by the adjustment factor; or

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(7) [S.S.I. 2014/292](#).

(8) Regulation E34A was inserted by [S.S.I. 2007/189](#).

- (ii) (if applicable) the highest salary taken into account in determining the teacher's pensionable salary under regulation E34 or E34A relating to the teacher's further employment, multiplied by the adjustment factor;
- (b) if the teacher's previous employment was part-time, the higher of the full-time equivalent of—
  - (i) the highest salary taken into account in determining the teacher's pensionable salary under regulation E34 or E34A, multiplied by the adjustment factor; or
  - (ii) (if applicable) the highest salary taken into account in determining the teacher's pensionable salary under regulation E34 or E34A relating to the teacher's further employment, multiplied by the adjustment factor;
- (c) if the teacher becomes entitled to a further retirement pension during a tax year, and the salary of reference for the teacher's employment immediately prior to the further retirement ("the new higher salary of reference") is higher than that for the previous employment ("the existing salary of reference"), the sum of—
  - (i) the existing salary of reference divided by 365 multiplied by the number of days from the beginning of the tax year to the day before the further retirement; and
  - (ii) the new higher salary of reference divided by 365 multiplied by the number of days from the date of entitlement to further retirement benefits to the end of the tax year;

"adjustment factor" for a salary is the amount (if any) by which, immediately before the first day of the employment, that salary would have increased if it had been the annual rate of an official pension as defined in section 5(1) of the 1971 Act, beginning and first qualifying for increases under that Act, on the same date as—

- (a) the last day of employment at that salary, in a case where the pensionable salary was determined under regulation E34;
- (b) the retirement pension, in a case where the pensionable salary was determined under regulation E34A;

"initial adjusted salary of reference" is a teacher's adjusted salary of reference divided by 365 and multiplied by the number of days in the initial period;

"initial period" is that part of a tax year running from a teacher's entitlement day in respect of retirement benefits and ending at the end of the tax year;

"pension receipts" means the sum of a teacher's retirement pension—

- (a) including—
  - (i) phased retirement pension;
  - (ii) a pension (or part of a pension) which is payable to the teacher by reason of—
    - (aa) retirement on or after reaching normal pension age;
    - (bb) premature retirement; or
    - (cc) early retirement with actuarial adjustment applying to the teacher's reckonable service and to mandatory and discretionary compensation for premature retirement under the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996(9);

- (iii) an ill-health pension which began to be paid before 1st April 1997, including where the annual rate of the pension has been reduced to zero because the teacher entered full-time employment or ceased to be incapacitated (as referred to in regulation E14(1) of the Teachers' Superannuation (Scotland) Regulations 1992(10));
  - (iv) retirement benefits defined in and payable under the Teachers' Pension Scheme (Scotland) (No. 2) Regulations 2014; and
- (b) excluding additional pension; and
- “salary” means—
- (a) contributable salary;
  - (b) pensionable earnings as defined in Chapter 4 of Part 3 of the Teachers' Pension Scheme (Scotland) (No. 2) Regulations 2014.

#### **Scope of abatement of retirement pension following further employment**

**E18A.** Regulation E18B applies to a teacher to whom retirement benefits have become payable and who is employed—

- (a) in pensionable employment, comparable United Kingdom service or employment which would have been pensionable but for—
  - (i) the teacher having made an election under regulation B7 (election for employment not to be pensionable); or
  - (ii) the teacher having reached the age of 75; or
- (b) in part-time or full-time employment which is not pensionable employment which falls within regulation B6.

#### **Abatement of a retirement pension following further employment**

**E18B.**—(1) Where this regulation applies to a teacher and the teacher is in an initial period—

- (a) if the teacher's salary in the employment during the initial period equals or exceeds the teacher's initial adjusted salary of reference, no abatable pension is to be paid in that tax year;
- (b) in any other case, the abatable pension to which the teacher is entitled in the initial period is to be paid only in respect of X number of days, where—

$$X = A / B$$

and where—

A is the amount by which the teacher's salary in the employment during the initial period falls short of the teacher's initial adjusted salary of reference; and

B is the total of the teacher's pension receipts for the initial period divided by the number of days in the initial period.

- (2) Where this regulation applies to the teacher and the teacher is not in an initial period—
  - (a) if the teacher's salary in the tax year equals or exceeds the teacher's adjusted salary of reference, no abatable pension is to be paid in that tax year;

- (b) in any other case, the abatable pension to which the teacher is entitled in that tax year is to be paid only in respect of X number of days, where—

$$X = A / B$$

and where—

A is the amount by which the teacher's salary in the employment during the tax year falls short of the teacher's adjusted salary of reference; and

B is the total of the teacher's pension receipts for the tax year divided by 365.

### **Method of abatement**

**E18C.**—(1) Where the abatable pension of a teacher falls to be reduced—

- (a) under regulation E18B(1), paragraph (2) applies; or
- (b) under regulation E18B(2), paragraph (3) applies.

(2) Where this paragraph applies, the Scottish Ministers are to pay the teacher's abatable pension in accordance with regulation E36 (monthly and quarterly payments), without taking account of regulation E18B(1)(b), on the assumption that the teacher will remain in employment at the same salary for the remainder of the initial period.

(3) Where this paragraph applies, the Scottish Ministers are to pay the teacher's abatable pension in accordance with regulation E36 (monthly and quarterly payments) without taking account of the reduction, until the abatable pension has been paid in respect of the number of days calculated in regulation E18B(2)(b), on the assumption that the teacher will remain in employment at the same salary for the remainder of the tax year.

(4) When the teacher's abatable pension has been paid in respect of the number of days calculated in regulation E18B(1)(b) or (2)(b), paragraph (5) applies unless the teacher ceases to be in the employment, or is in employment at a lower salary, in which case paragraph (6) applies.

(5) If this paragraph applies, the Scottish Ministers are to pay no further payable abatable pension to the teacher in respect of—

- (a) the remainder of the initial period, if regulation E18B(1)(b) applies; or
- (b) the remainder of the tax year, if regulation E18B(2)(b) applies.

(6) If this paragraph applies the Scottish Ministers are to pay the teacher's abatable pension during the remainder of the initial period or tax year, of such amount and at such times as is necessary in order to achieve the outcome described in—

- (a) regulation E18B(1)(b) in respect of an initial period; or
- (b) regulation E18B(2)(b) in respect of a tax year.

### **Recovery of overpaid pension**

**E18D.**—(1) If the abatable pension paid in any tax year has exceeded the amount which should have been paid by virtue of regulation E18B and E18C, the difference between the amount which has been paid and the amount which should have been paid is an overpayment to which paragraph (2) applies.

(2) Where this paragraph applies, the overpayment is recoverable and (without prejudice to any other means of recovery) may be recovered in whole or in part by a reduction in the abatable pension paid in any subsequent tax year.”

### **Amendment of regulation E30**

11. In regulation E30 (entitlement to long-term family benefits)—
- (a) in paragraph (3)(e), for “regulation G2” substitute “regulation G9, G14, G21 or G24”; and
  - (b) in paragraph (4)(d), for “regulation G2” substitute “regulation G8(2), G13(2), G20(2) or G24(3)”.

### **Amendment of regulation F14**

12. In regulation F14 (transfer values), for “within the meaning of regulations G1 and G2” substitute “under Part G”.

### **Substituted Part G**

13. For Part G, substitute—

**“PART G**  
Transfer Values  
CHAPTER 1  
General provisions

#### **Application of Part**

**G1.**—(1) This Part does not affect a teacher’s entitlement to a cash equivalent conferred by or under Chapter 4 of Part 4 of the 1993 Act.

(2) A transfer value in respect of any pension credit rights or pension credit benefits is not to be paid or accepted under this Part.

(3) A transfer value in respect of a teacher is not to be accepted under this Part if the previous scheme was a money purchase arrangement as defined in section 152 of the 2004 Act—

- (a) to which the teacher’s employer was not a contributor; and
- (b) which provided benefits additional to those provided by a scheme to which the teacher was a contributor.

(4) Under this Part a transfer value may not be paid in respect of the teacher’s phased retirement benefits in payment, only in respect of the teacher’s other benefits.

(5) A transfer value may be paid or accepted under this Part, in respect of the teacher, to the extent that paragraph (6) or (7) applies to the transfer value.

(6) A transfer value referable to the teacher’s NPA 65 reckonable service may be paid or accepted if—

- (a) the teacher has mixed service; and
- (b) the teacher’s NPA 60 reckonable service has come into payment.

(7) A transfer value referable to the teacher’s further employment may be paid if—

- (a) retirement benefits, a short-service serious ill-health grant or a short-service annuity have not come into payment in respect of that further employment; and
- (b) retirement benefits, a short-service serious ill-health grant or a short-service annuity have come into payment in respect of the previous employment.

(8) In paragraph (6)—

“NPA 65 reckonable service” means reckonable service in relation to which a person has a normal pension age of 65;

“NPA 60 reckonable service” means reckonable service in relation to which a person has a normal pension age of 60.

### **Interpretation of Part**

**G2.** In this Part—

“club transfer value”, in relation to reckonable service in this scheme or another club scheme, means an amount calculated—

- (a) in accordance with the club transfer arrangements; and
- (b) by reference to tables provided by the Government Actuary for this purpose that are in use on the date used for the calculation;

“CUKS transfer value”, in relation to reckonable service in this scheme or a comparable United Kingdom scheme, means an amount calculated in accordance with the arrangements for comparable United Kingdom scheme transfers;

“transfer value”, in relation to reckonable service which is not related to a club transfer value or a CUKS transfer value, under—

- (a) this scheme, means a value determined by the Scottish Ministers having taken advice from the Government Actuary; or
- (b) another scheme, means a value determined by the scheme actuary and accepted by the Scottish Ministers.

### **Reduction in transfer value: lifetime allowance charge**

**G3.**—(1) This regulation applies where—

- (a) the lifetime allowance charge under section 214 of the 2004 Act arises on the payment of a cash equivalent or a transfer value in respect of a teacher to a qualifying recognised overseas pension scheme; and
- (b) the teacher and the Scottish Ministers are jointly and severally liable to the charge.

(2) The Scottish Ministers must pay the charge.

(3) The cash equivalent or transfer value which, apart from this regulation, would be payable must be reduced to reflect the amount of the charge in such manner as the Scottish Ministers determine, after taking advice from the scheme actuary.

(4) In this regulation, “qualifying recognised overseas pension scheme” has the same meaning as in Part 4 of the 2004 Act.

## CHAPTER 2

### Transfers on a club basis

#### SECTION 1

##### *Application of Chapter*

### **Application of this Chapter**

**G4.** This Chapter applies in relation to the payment and acceptance of club transfer values.

## SECTION 2

### *Transfers out*

**G5.**—(1) This Section applies to—

- (a) a teacher who ceases to be in pensionable employment and enters a club scheme;
- (b) a teacher who—
  - (i) ceases to be in pensionable employment;
  - (ii) enters a public service scheme established for teachers and maintained in the Channel Islands or the Isle of Man on or before 31st March 2015; and
  - (iii) makes an application for a transfer value payment on or before 31st March 2017.

(2) Part 1 of Schedule 12 determines the amount of a club transfer value payment.

#### **Payment under this Section**

**G6.**—(1) A club transfer value may only be paid under this Section in respect of a teacher if the teacher satisfies the conditions in either paragraph (2) or (3).

(2) The conditions are that the teacher—

- (a) has left all pensionable employment under this scheme;
- (b) makes a written application to the Scottish Ministers within 12 months from the date on which the teacher becomes subject to another club scheme;
- (c) meets the requirements for a club transfer from the receiving scheme; and
- (d) has not reached the age of 75.

(3) The conditions are that the teacher—

- (a) has entered pensionable employment in a public service scheme for teachers established and maintained in the Channel Islands or the Isle of Man on or before 31st March 2015, after leaving this scheme, and makes a written application for a transfer value payment to the Scottish Ministers either—
  - (i) on or before the day on which the teacher reaches the normal pension age; or
  - (ii) after the day on which the teacher reaches the normal pension age, having entered pensionable employment—
    - (aa) on or before the day on which the teacher reaches the normal pension age; and
    - (bb) immediately after the end of the teacher’s employment in this scheme service; and
- (b) makes the application on or before 31st March 2017.

#### **Restrictions on the payment of a club transfer value**

**G7.** Save as provided in regulation G1(5) a club transfer value is not to be paid under this Section if, before a teacher’s application for a club transfer value payment is received, the teacher—

- (a) becomes subject to another club scheme and is in receipt of retirement benefits;
- (b) is in receipt of a short-service serious ill-health grant; or
- (c) is in receipt of a short-service annuity.

### SECTION 3

#### Transfers in

#### Application of this Section

**G8.**—(1) This Section applies to—

- (a) a teacher who ceases to be in another club scheme and enters pensionable employment in this scheme; and
- (b) a teacher who—
  - (i) ceases to be in a public service scheme for teachers established and maintained in the Channel Islands or the Isle of Man on or before 31st March 2015;
  - (ii) enters pensionable employment in this scheme on or before 31st March 2015; and
  - (iii) makes an application for a transfer value payment on or before 31st March 2017.

(2) A teacher in respect of whom a club transfer value is accepted is entitled to count reckonable service in accordance with Part 2 of Schedule 12.

#### Receipt under this Section

**G9.**—(1) A club transfer value may be accepted under this Section in respect of a teacher if the teacher satisfies the conditions in either paragraph (2) or (3).

(2) The conditions are that the teacher—

- (a) enters pensionable employment;
- (b) makes a written application to the Scottish Ministers within 12 months from the date on which the teacher enters pensionable employment;
- (c) makes the application before the teacher attains the age of 75; and
- (d) before the teacher ceased to be subject to the previous scheme, retirement benefits have not come into payment to the teacher either—
  - (i) under regulation E6 (retirement benefits); or
  - (ii) under a provision of a statutory scheme corresponding to regulation E6.

(3) The conditions are that the teacher—

- (a) enters pensionable employment on or before 31st March 2015, after leaving a public service scheme for teachers established and maintained in the Channel Islands or the Isle of Man; and either—
  - (i) makes a written application to the Scottish Ministers on or before the day on which the teacher reaches the normal pension age; or
  - (ii) makes the application after the day on which the teacher reaches the normal pension age, having entered pensionable employment—
    - (aa) on or before the day on which the teacher reaches the normal pension age; and
    - (bb) immediately after the end of the teacher's employment in the previous scheme service; and
- (b) makes the application on or before 31st March 2017.

## CHAPTER 3

### Transfers on a comparable United Kingdom service basis

#### SECTION 1

##### *Application of Chapter*

#### **Application of this Chapter**

**G10.** This Chapter applies in relation to the payment and acceptance of CUKS transfer values.

#### SECTION 2

##### *Transfers out*

#### **Application of this Section**

**G11.**—(1) This Section applies if—

- (a) a teacher ceases to be in pensionable employment and has become subject to a comparable United Kingdom scheme on or before 31st March 2015; and
- (b) the teacher makes an application for a transfer value payment on or before 31st March 2017.

(2) Part 1 of Schedule 12 determines the amount of a CUKS transfer value payment.

#### **Payment under this Section**

**G12.**—(1) A CUKS transfer value may only be paid under this Section in respect of a teacher if either paragraph (2) or (3) applies.

(2) This paragraph applies if the teacher makes an application for a CUKS transfer value payment on or before the day the teacher reaches the normal pension age.

(3) This paragraph applies if—

- (a) the teacher makes an application for a CUKS transfer value after the day on which the teacher reaches the normal pension age;
- (b) the teacher joined the comparable United Kingdom scheme—
  - (i) immediately after ceasing to be in pensionable employment; and
  - (ii) before reaching the normal pension age; and
- (c) before the teacher's application for a CUKS transfer value payment is received, the teacher is not in receipt of—
  - (i) retirement benefits from the other comparable United Kingdom scheme;
  - (ii) a short-service serious ill-health grant; or
  - (iii) a short-service annuity.

### SECTION 3

#### *Transfers in*

#### **Application of this Section**

**G13.**—(1) This Section applies if a teacher—

- (a) ceases to be in a comparable United Kingdom scheme;
- (b) enters pensionable employment in this scheme on or before 31st March 2015; and
- (c) makes an application for a transfer value payment on or before 31st March 2017.

(2) A teacher in respect of whom a CUKS transfer value is accepted is entitled to count reckonable service in accordance with Part 2 of Schedule 12.

#### **Receipt under this Section**

**G14.**—(1) A CUKS transfer value payment may be accepted under this Section in respect of a teacher to whom this Section applies, if either paragraph (2) or (3) applies.

(2) This paragraph applies if—

- (a) the teacher makes an application for a CUKS transfer value on or before the day on which the teacher reaches the normal pension age; and
- (b) when the teacher's application is received, the teacher is not in receipt of—
  - (i) retirement benefits under this scheme;
  - (ii) a short-service serious ill-health grant; or
  - (iii) a short-service annuity.

(3) This paragraph applies if the teacher—

- (a) makes an application for a CUKS transfer value after the day on which the teacher reaches the normal pension age; and
- (b) the teacher entered pensionable employment—
  - (i) immediately after ceasing comparable UK service; and
  - (ii) on or before the date on which the teacher reaches the normal pension age.

### CHAPTER 4

#### Transfers on a cash equivalent basis

### SECTION 1

#### *Application of Chapter*

#### **Application of this Chapter**

**G15.** This Chapter applies in relation to the payment and acceptance of transfer values.

## SECTION 2

### *Transfers out*

#### **Application of this Section**

**G16.**—(1) This Section applies if a teacher ceases to be in pensionable employment and has become subject to another registered pension scheme.

(2) This Section only applies to a teacher who ceases to be in pensionable employment and becomes subject to a personal pension scheme if the teacher was in pensionable employment after 31st December 1985.

#### **Payment under this Section**

**G17.** A transfer value may only be paid under this Section in respect of a teacher if the teacher—

- (a) has left all pensionable employment under this scheme;
- (b) makes a written application for a transfer value payment to the Scottish Ministers within 12 months from the date on which the teacher becomes subject to another registered pension scheme; and
- (c) has not reached the normal pension age when the teacher's application is received.

#### **Restrictions on the payment of a transfer value**

**G18.** A transfer value is not to be paid under this Section if, before a teacher's application for a transfer value payment is received, the teacher is in receipt of—

- (a) retirement benefits under this scheme;
- (b) a short-service serious ill-health grant; or
- (c) a short-service annuity.

#### **Limitation on payment of transfer values**

**G19.**—(1) Where the receiving scheme is not a contracted-out occupational pension scheme, a transfer value may only be paid under this Section if the teacher—

- (a) is not qualified for retirement benefits;
- (b) has ceased to be in pensionable employment before 6th April 1978; or
- (c) is a married woman or widow who, by virtue of an election made or treated as made under regulations under section 19(4) of the Social Security Contributions and Benefits Act 1992<sup>(11)</sup>, either is liable to pay primary Class 1 contributions or Class 2 contributions at a reduced rate or is under no liability to pay Class 2 contributions.

(2) Where a teacher has accrued section 9(2B) rights, a transfer value may only be paid in respect of those rights if any applicable provisions of Part 3 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996<sup>(12)</sup> are complied with.

(3) Where the teacher has acquired a right to a cash equivalent, a transfer value may only be paid under this Section if—

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<sup>(11)</sup> 1992 c.4.

<sup>(12)</sup> S.I. 1996/1462.

- (a) the service to which the cash equivalent relates includes service before 1st September 1988; and
  - (b) the right has been exercised by requiring the whole of the cash equivalent to be paid to the scheme managers of an occupational pension scheme which is not a club scheme.
- (4) Where the teacher has acquired a right to a part cash equivalent, a transfer value may only be paid under this Section if the teacher would not remain qualified for retirement benefits on taking that right.
- (5) In this regulation—
- “occupational pension scheme” has the same meaning as in section 150(5) the 2004 Act; and
  - “receiving scheme” means the scheme a teacher becomes subject to after leaving pensionable employment.

### *SECTION 3*

#### *Transfers in*

#### **Application of this Section**

**G20.**—(1) This Section applies if a teacher ceases to be in another registered pension scheme and enters pensionable employment.

(2) A teacher in respect of whom a transfer value on a cash equivalent basis is accepted is entitled to count reckonable service in accordance with Part 2 of Schedule 12.

#### **Receipt under this Section**

**G21.** A transfer value may be accepted under this Section in respect of a teacher who enters pensionable employment if—

- (a) the teacher makes a written application to the Scottish Ministers within 12 months from the date on which the teacher enters pensionable employment; and
- (b) the teacher’s application is made before the teacher attains the normal pension age.

#### **Restrictions on the acceptance of a transfer value**

**G22.** A transfer value payment in respect of a teacher may not be accepted under this Section if, before the teacher’s application for a transfer value payment is received, the teacher is in receipt of—

- (a) retirement benefits under this scheme;
- (b) a short-service serious ill-health grant; or
- (c) a short-service annuity.

## CHAPTER 5

### Bulk transfers

#### SECTION 1

##### *Transfers out*

#### **Payment of bulk transfer values**

**G23.**—(1) This regulation applies where, as a result of a relevant transfer to a new employer, a teacher or a group of teachers is no longer in pensionable employment and either has joined or is entitled to join the new employer’s pension scheme (“the receiving scheme”), referred to below as a bulk transfer.

(2) A transfer value may be calculated by the Scottish Ministers, after taking advice from the scheme actuary, in respect of a teacher who has made a written application to the Scottish Ministers for such a transfer within 3 months after the date on which the teacher was notified of the opportunity to take part in the bulk transfer arrangement.

(3) Such a transfer value may be paid to the receiving scheme on the teacher becoming subject to the scheme.

#### SECTION 2

##### *Transfers in*

#### **Acceptance of bulk transfer values**

**G24.**—(1) This regulation applies where, as the result of a relevant transfer to a new employer, a teacher or a group of teachers has become employed in pensionable employment and is given the opportunity to transfer past service pension rights, referred to below as a “bulk transfer”.

(2) A transfer value may be accepted by the Scottish Ministers in respect of a teacher who has made a written application within 3 months after the date on which the teacher was notified of the opportunity to take part in the bulk transfer, but this paragraph is subject to regulation G22.

(3) A teacher in respect of whom a transfer of such rights has been accepted as part of a bulk transfer is entitled to count reckonable service in accordance with Part 2 of Schedule 12.”.

#### **Amendment of regulation H3**

**14.** In paragraph (3) of regulation H3(**13**) (employers’ contributions), after “14.9%” insert “prior to 1st September 2015 and 17.2% from that date”.

#### **Amendment of regulation J6B**

**15.** In paragraph (1)(b) of regulation J6B(**14**) (reduction of benefits: lifetime allowance and lifetime allowance charge), for “section 238A” substitute “section 237B(**15**)”.

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(13) Regulation H3 was substituted by [S.S.I. 2007/189](#) and amended by [S.S.I. 2014/69](#).

(14) Regulation J6B was substituted by [S.S.I. 2014/69](#).

(15) Section 237B was inserted by the Finance Act [2011 \(c. 11\)](#), Schedule 17.

## Amendment of Schedule 1

### 16. In Schedule 1 (glossary of expressions)—

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

<p>“club scheme”</p>	<p>A registered pension scheme which—</p> <ul style="list-style-type: none"> <li>(a) is a contracted-out scheme or is a scheme established and maintained in the Channel Islands or the Isle of Man which is not a contracted-out scheme;</li> <li>(b) is a final salary scheme;</li> <li>(c) is a scheme which is open to new participants (“open scheme”) or, if not a scheme so open (“closed scheme”), is a scheme whose trustees or managers also provide an open scheme which is a scheme for new employees of the same employer and of the same grade or level of post as participants of the closed scheme; and</li> <li>(d) is a scheme whose trustees or managers have undertaken to comply with the reciprocal arrangements for the payment and receipt of transfer values agreed from time to time between the trustees or managers of such a scheme.</li> </ul>
<p>“contributions refund period”</p>	<p>A period in respect of which contributions have been or are to be repaid and—</p> <ul style="list-style-type: none"> <li>(a) have not been, or fallen to be treated as having been, refunded; or</li> <li>(b) have been returned but have since been repaid.</li> </ul>
<p>“comparable United Kingdom scheme”</p>	<p>For transfer purposes, a pension scheme for teachers in public employment in any part of the United Kingdom outside Scotland.</p>
<p>“comparable United Kingdom service”</p>	<p>For transfer purposes, service pensionable under a comparable United Kingdom scheme.</p>

#### (b) in the definition of “short-service serious ill-health grant”, for “Regulation E21A” substitute “regulation E21”.

## Substituted Schedule 12

### 17. For Schedule 12, substitute—

“SCHEDULE 12

Part G

Transfer Values

**PART 1**

Outward transfers

1. For the purposes of this Part—
  - (a) a transfer value is calculated on the cash equivalent basis if it is calculated in the manner prescribed under section 97 of the 1993 Act for the calculation of cash equivalents; and
  - (b) “occupational pension scheme” has the same meaning as in section 150(5) of the 2004 Act.
2. Paragraphs 3 to 6 are subject to paragraphs 7 to 11.
3. Where—
  - (a) a transfer value is payable to the scheme managers of a club scheme or a personal pension scheme; or
  - (b) a transfer value is payable to the scheme managers of a registered pension scheme which is not a club scheme and none of the service to which it relates is service before 21st October 1988,

and no right to a cash equivalent was acquired, the transfer value is to be calculated on the cash equivalent basis.

4. Where—
  - (a) a transfer value is payable to the scheme managers of a registered pension scheme which is an occupational pension scheme and not a club scheme; and
  - (b) the service to which it relates includes service before 21st October 1988; and
  - (c) no right to a cash equivalent was acquired,

the amount of the transfer value is the total of A and the greater of B and C, where—

A is a notional transfer value, calculated on the cash equivalent basis, in respect of the person’s service after 20th October 1988,

B is a notional transfer value, calculated on the cash equivalent basis, in respect of the person’s service before 21st October 1988, and

C is a notional transfer value, calculated as if Schedule 10 to the 1977 Regulations as in force on 5th April 1988 had continued in force in respect of his or her service before 21st October 1988.

5. Where—
  - (a) a transfer value is payable to the scheme managers of a registered pension scheme which is an occupational pension scheme and not a club scheme;
  - (b) the service to which it relates includes service before 21st October 1988; and
  - (c) a right to a cash equivalent was acquired,

the amount of the transfer value is D – E, where—

D is the transfer value that would have been payable if paragraph 4 had applied, and

E is the amount of the cash equivalent.

**6.** Where—

- (a) a transfer value is payable to the scheme managers of a personal pension scheme; and
- (b) a right to a part cash equivalent was acquired,

the transfer value is to be calculated on the cash equivalent basis but as if the person's pensionable employment had ended on 5th April 1988.

**7.** Unless the receiving scheme is a club scheme, where—

- (a) the person in respect of whom a transfer value is payable had become entitled to count reckonable service under regulation G8(2) or G24(3); and
- (b) the amount determined in accordance with paragraph 3, 4, 5 or 6 (as appropriate), together with that of any cash equivalent paid on the transfer, is less than the appropriate amount,

a transfer value of the appropriate amount is to be paid.

(2) The appropriate amount is  $A + B - C$ , where—

A is the transfer value accepted under regulation G15 or the relevant part of the transfer value accepted under regulation G23,

B is the total of the contributions paid by the person under Part C, except any that fell to be treated for the purposes of Part H as employer's contributions, and

C is any cash equivalent paid on the transfer.

**8.** Where a person has elected to receive phased retirement benefits, the transfer value is calculated by reference to benefits other than those phased retirement benefits.

**9.**—(1) This paragraph applies where—

- (a) a transfer value falls to be calculated in accordance with paragraph 3 or 4; and
- (b) for the purposes of paragraph 4, C is greater than B.

(2) If the transfer value is without reasonable cause or excuse not paid within 6 months of the guarantee date, and it is not to be made to a club scheme, the amount calculated in accordance with paragraph 3 or 4 is increased by the greater of—

- (a) interest, if any, calculated on a daily basis over the period from the guarantee date to the date on which the transfer value is paid, at the rate set out in regulation 10(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996(16); or
- (b) the amount by which the transfer value falls short of what it would have been if the guarantee date had been the date on which the transfer value was paid.

**10.** Where a transfer value is paid to the scheme managers of an occupational pension scheme which is not a contracted-out scheme, or of a personal pension scheme, there may be deducted from it the amount of any contributions equivalent premium paid by the Scottish Ministers.

**11.** The Scottish Ministers may, on the advice of the Scheme actuary, adjust a transfer value calculated in accordance with this Part.

## PART 2

### Inward transfers

**12.** If regulations G13 and G14 apply, the teacher is entitled to count as reckonable service the period of service under a comparable United Kingdom scheme certified by the scheme managers as having stood to the teacher's credit under the scheme when the teacher ceased to be subject to it.

**13.—**(1) If regulations G8 and G9 apply, the teacher is entitled to count as reckonable service the period specified in this paragraph.

(2) A period specified in this paragraph is determined by the Scottish Ministers having taken advice from the Scheme actuary and by reference to the age and salary of the teacher notified by the scheme managers of the club scheme.

(3) Any sum representing interest that is included in the transfer value is not to be taken into account.

**14.—**(1) If regulations G20, G21 and G22 apply, the teacher is entitled to count as reckonable service the period specified in this paragraph.

(2) A period specified in this paragraph is determined by the Scottish Ministers having taken advice from the Scheme actuary and by reference to—

- (a) the teacher's age and salary at the date the teacher entered pensionable employment, if a transfer value is received within 12 months of entering pensionable employment;
- (b) the teacher's age and salary at the date a transfer value is received, if the transfer value is received more than 12 months after the teacher enters pensionable employment.

(3) Any sum representing interest that is included in the transfer value is to be taken into account.

**15.—**(1) This paragraph applies where—

- (a) the teacher is subject to a personal pension scheme after ceasing to be in pensionable employment and that pensionable employment was after 31st December 1985;
- (b) the teacher has made an election under regulation B8;
- (c) the previous election under regulation B7 was made before 30th June 1994;
- (d) the teacher has been in excluded employment between the date of the election under regulation B7 and the date of the election under regulation B8;
- (e) a cash equivalent or a transfer value under regulation F1 of the 1992 Regulations (or both) was paid in respect of the teacher in consequence of the teacher ceasing to be in pensionable employment by virtue of the election under regulation B6 of those Regulations;
- (f) the teacher is an individual as is mentioned in section 172(1) of the 1995 Act; and
- (g) the Scottish Ministers accept a transfer value under regulation G15 of the amount specified in sub-paragraph (3).

(2) In this paragraph—

“the period of original pensionable employment” means the period during which the teacher was in pensionable employment before the teacher made the election under regulation B6 of the 1992 Regulations; and

“the transfer out payment” means the payment referred to in sub-paragraph (1)(e).

(3) The amount referred to in sub-paragraph (1)(g) is  $A + B$ , where—

A is the transfer value which, calculated on the basis specified in paragraph 14(2), would enable the person to count the period of excluded employment as reckonable service as if it had been pensionable employment; and

B is the greater of—

- (a) the transfer out payment together with—
    - (i) in a case where the transfer value was paid to the Scottish Ministers pursuant to regulation G15 within four weeks of the request under regulation G21, an amount, determined actuarially, which represents the income which would have been received had such sum been invested during the period starting at the end of the month in which the transfer out payment was made and ending at the end of the month in which the request under regulation G21 was made; and
    - (ii) in any other case, the amount referred to in paragraph (i) above together with a further amount, determined actuarially, which represents the income which would have been received compounded with monthly rests, had such sum been invested during the period starting at the end of the month in which the request under regulation G21 was made and ending at the end of the month in which the transfer value was paid to the Scottish Ministers; and
  - (b) the amount which would be paid as a cash equivalent or transfer value (or both) by the Scottish Ministers in respect of the teacher if at the date on which the teacher made the election under regulation B8—
    - (i) the teacher was in pensionable employment and made an election under regulation B7; and
    - (ii) the teacher had been in pensionable employment for a period equal to the period of original pensionable employment.
- (4) Where this paragraph applies the teacher is entitled to count as reckonable service—
- (a) the reckonable service arising from the period of original pensionable employment; and
  - (b) such service arising from the period of excluded employment as if it had been pensionable employment.

## PART 3

### Inward transfers: bulk transfers

**16.** In this Part “bulk transfer” has the same meaning as in regulation G24.

**17.** The teacher is entitled to count as reckonable service a period of service determined in accordance with the terms of the bulk transfer as agreed between the Scottish Ministers and the scheme managers of the previous scheme, the Scottish Ministers having taken advice from the Scheme actuary as to those terms.”.

St Andrew’s House,  
Edinburgh  
25th February 2015

*JOHN SWINNEY*  
A member of the Scottish Government

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

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We consent

2nd March 2015

*DAVID EVENNETT*  
*JOHN PENROSE*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

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

These Regulations, which come into force on 1st April 2015, amend the Teachers' Superannuation (Scotland) Regulations 2005 ("the 2005 Regulations").

Regulation 3 makes provision (retrospective to 16th December 2014) in consequence of commencement of the legislation allowing same sex marriage in Scotland.

Regulation 4 sets out member contribution rates and provides for relevant salary bands to be uprated in line with changes in the consumer prices index.

Regulations 5 to 8, 11 to 13 and 17 are concerned with transfers. The whole of Part G and Schedule 12 in the 2005 Regulations are replaced so as to provide for changes in club rules and the ending of comparable United Kingdom service transfers.

Regulation 9 amends the timescale for applications for payment of retirement benefits where a teacher is incapacitated.

Regulation 10 clarifies the operation of abatement.

Regulation 14 makes provision as to employers' contributions.

Regulations 15 and 16 correct minor errors and insert new definitions in Schedule 1 to the 2005 Regulations.