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STATUTORY INSTRUMENTS

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**1997 No. 675 (S.45)**

**EDUCATION, SCOTLAND**

**The Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Amendment Regulations 1997**

<i>Made</i>	- - - -	<i>5th March 1997</i>
<i>Laid before Parliament</i>		<i>11th March 1997</i>
<i>Coming into force</i>	- -	<i>1st April 1997</i>

The Secretary of State, in exercise of the powers conferred by section 24 of the Superannuation Act 1972(1), and of all other powers enabling him in that behalf, and with the consent of the Treasury(2), hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Amendment Regulations 1997 and shall come into force on 1st April 1997.

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

2. The Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996(3) shall be amended in accordance with regulations 3 to 12 below.

**Interpretation**

3. Regulation 2(3) shall be amended—

(a) by omitting the definition of “the 1978 Act” and inserting in its place the following definition:—

““the 1996 Act” means the Employment Rights Act 1996(4);” and

(b) in the definition of “redundancy payment” by substituting for the words “Part VI of the 1978 Act” the words “Part XI of the 1996 Act”.

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(1) 1972 c. 11.

(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).

(3) S.I. 1996/2317.

(4) 1996 c. 18.

### **Teachers to whom Part II applies**

4. Regulation 3(1) shall be amended by substituting for sub-paragraph (a) the following paragraphs:—

- “(a) on or after the date specified in paragraph (2) has ceased to hold employment of a kind specified in paragraph (3) with an employing authority, where that authority has certified in writing to the Secretary of State that—
- (i) the teacher’s employment has been terminated by reason of his redundancy or in the interests of the efficient exercise of the employer’s functions, and
  - (ii) in the case of a person who has not attained the age of 60, the authority has agreed that he should be entitled to payment of retiring allowances under regulation E5(1)(f)(5) of the Superannuation Regulations;
- (aa) has not received and is not to receive compensation under Part IIIA (discretionary compensation for termination);”.

### **Lump sum compensation and annual compensation**

5. Regulation 5 shall be amended—

- (a) in paragraph (2) by inserting after the words “Superannuation Regulations,” the words “disregarding any actuarial reduction required by regulation E7(3)(6) of those Regulations and”; and
- (b) in paragraph (3) by inserting after the words “Superannuation Regulations,” the words “disregarding any actuarial reduction required by regulation E6(4)(7) of these Regulations and”.

### **Additional compensation in certain cases of redundancy**

6. Regulation 16 shall be amended—

- (a) in paragraphs (1) and (2)(a) by substituting for the words “Part VI of the 1978 Act” the words “Part XI of the 1996 Act”; and
- (b) in paragraph (2)(b) by substituting for the words “paragraph 8(1)(c) of Schedule 14 to the 1978 Act” the words “section 227(1)(c) of the 1996 Act”.

### **Discretionary compensation for termination and mandatory compensation for premature retirement**

7. After Part III (additional compensation for redundancy) there shall be inserted the following Parts:—

## **“PART IIIA**

### **DISCRETIONARY COMPENSATION FOR TERMINATION**

#### **Teachers to whom Part IIIA applies**

**16A.**—(1) Part IIIA shall apply to a teacher who on or after 1st April 1997 has ceased to hold employment of a kind specified in paragraph (2) with any employer by reason of his

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(5) Regulation E5(1)(f) was amended by [S.I. 1997/676](#).

(6) Regulation E7(3) was added by [S.I. 1997/676](#).

(7) Regulation E6(4) was added by [S.I. 1997/676](#).

redundancy or in the interests of the efficient exercise of the employer's functions and who is not entitled to payment of retiring allowances under regulation E5(1) of the Superannuation Regulations.

- (2) The kinds of employment referred to in paragraph (1) are—
- (a) pensionable employment;
  - (b) employment which would have been pensionable employment but for an election under regulation B6 of the Superannuation Regulations; and
  - (c) employment as a part-time teacher which would have been pensionable employment if an election under regulation B2 of those Regulations had had effect.

### **Discretion to pay compensation**

**16B.**—(1) The employer may pay to a teacher to whom this Part applies compensation which shall not exceed

**(A-B),**

where—

A is the lesser of—

- (a) a sum equivalent to 66 weeks' pay; and
- (b) the total of—
  - (i) a sum equivalent to 2 weeks' pay for each complete year of qualifying employment after the attainment of 18 years of age; and
  - (ii) a sum equivalent to 3 weeks' pay for each complete year of qualifying employment after attainment of 41 years of age; and

B is the amount of any payment received under regulation 16.

(2) In this regulation—

“qualifying employment” means a period of employment with an employer in relation to which the employer who may pay compensation under paragraph (1) is satisfied that the employee—

- (a) was in pensionable employment within the meaning of the Superannuation Regulations or was in employment which would have been pensionable employment but for a relevant disqualification; or
- (b) was in local government employment within the meaning of the 1987 Regulations or would have been treated as being in local government employment but for a relevant disqualification; or
- (c) was in pensionable employment within the meaning of the National Health Service Superannuation Scheme (Scotland) Regulations 1995<sup>(8)</sup> or was in employment which would have been pensionable employment but for a relevant disqualification,

but excludes—

- (i) periods of employment in an independent school within the meaning of section 135(1) of the Education (Scotland) Act 1980<sup>(9)</sup>; and

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<sup>(8)</sup> S.I. 1995/365.

<sup>(9)</sup> 1980 c. 44; section 135(1) was relevantly amended by the Self-Governing Schools etc (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8(22)(c).

(ii) any period in relation to which a pension or other benefits (other than a refund of contributions) under the relevant Regulations are being or have been paid;

“qualifying scheme” means an occupational pension scheme constituted under the relevant Regulations;

“relevant disqualification” means—

- (a) the failure of any medical examination required for membership of the qualifying scheme in question;
- (b) the requirement that a manual worker should have completed any period of continuous employment before he may become a pensionable employee within the meaning of the 1987 Regulations;
- (c) the making of any election to opt out of or the absence of an election to opt into membership of the qualifying scheme in question with respect to any period;
- (d) any restriction on part-time employment being pensionable employment under any qualifying scheme;
- (e) the fact that, where the employment is part-time, the person has not elected that it should be pensionable; or
- (f) the fact that a person is not eligible to be a pensionable employee within the meaning of the 1987 Regulations by reason of the fact that his employer has given him notice under regulation B4B(6) of those Regulations,

in consequence of one or more of which (either individually or cumulatively) that person has not become or has ceased to be or has not been treated as being eligible for the qualifying scheme in question;

“relevant Regulations” means, in respect of a period of employment which is qualifying employment by virtue of paragraph (a), (b) or (c) of the definition of that term, the Superannuation Regulations, the 1987 Regulations or the National Health Service Superannuation Scheme (Scotland) Regulations 1995 respectively;

“the 1987 Regulations” means the Local Government Superannuation (Scotland) Regulations 1987<sup>(10)</sup>.

## PART IIIB

### MANDATORY COMPENSATION FOR PREMATURE RETIREMENT

#### **Mandatory compensation**

**16C.**—(1) A person who is entitled to retirement allowances under regulation E5(1) (f) of the Superannuation Regulations and to whom regulations E6(4) and E7(3) of those Regulations apply (actuarial reductions on premature retirement) is entitled to lump sum compensation and to annual compensation under this regulation.

(2) The amount of the lump sum compensation under this regulation is the difference between the retirement lump sum calculated under regulation E7 of the Superannuation Regulations, applying regulation E7(3), or, as the case may be, the additional lump sum calculated under regulation E16 of those Regulations, applying regulation E7(3) in

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<sup>(10)</sup> S.I. 1987/1850, amended by S.I. 1988/625, 1989/422, 802 and 967, 1990/422 and 1284, 1991/78, 1992/1220, 1597 and 3025, 1993/1593, 2013 and 3044, 1994/531, 1995/214, 750, 2865 and 3294 and 1996/414 and 1241.

accordance with regulation E16(10)(11), and the amount which that lump sum would be if regulation E7(3) did not apply.

(3) Subject to paragraph (4), the rate of the annual compensation under this regulation is the difference between the annual rate of retirement pension calculated under regulation E6 of the Superannuation Regulations, applying regulation E6(4), or, as the case may be, the annual rate of additional retirement pension calculated under regulation E16 of those Regulations, applying regulation E6(4) in accordance with regulation E16(10), and the amount which that annual rate would be if regulation E6(4) did not apply.

(4) When a person in receipt of annual compensation under this regulation attains state pensionable age and the annual rate of his retirement pension under the Superannuation Regulations is increased by virtue of regulation E1 of those Regulations (guaranteed minimum pension), then from the date that he attained state pensionable age his annual compensation under this regulation shall be reduced by the difference between the annual rate of his retirement pension calculated with the operation of regulation E1 of the Superannuation Regulations and the annual rate as calculated without.

#### **Abatement of annual compensation during further employment**

**16D.**—(1) This regulation applies where the annual rate of a person’s retirement pension is reduced under regulation E15(12) of the Superannuation Regulations.

(2) Where this regulation applies the rate of the annual compensation under regulation 16C shall be reduced—

- (a) where the annual rate of the retirement pension is reduced to zero, to zero; and
- (b) in any other case, in the same proportion as the annual rate of the retirement pension is reduced under regulation E15(2)(b) of the Superannuation Regulations, applying paragraph (7) of that regulation.

#### **Supplementary deficiency grants**

**16E.** Where paragraph (4A) of regulation E20(13) of the Superannuation Regulations applies, a supplementary grant may be paid by the employer to the person entitled under that regulation equal to the difference between the deficiency referred to in that regulation and the amount of grant that may be paid under paragraph (4A) of that regulation.

#### **Entitlement to short-term family benefits**

**16F.**—(1) This regulation applies where the annual rate of a person’s short-term pension under regulation E23 of the Superannuation Regulations is reduced by virtue of regulation E24(4) of those Regulations.

(2) Where this regulation applies the person to whom the short-term pension is payable under regulation E23 is entitled to compensation, for each month during which the short-term compensation is payable, which is equal to the amount by which the short-term pension is reduced for that month.

#### **Notification of compensation**

**16G.** As soon as is reasonably practicable after—

- (a) a person becomes entitled under regulation 16C or 16F; or

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(11) Regulation E16(10) was added by [S.I. 1997/676](#).

(12) Regulation E15 was amended by [S.I. 1997/676](#).

(13) Regulation E20(4A) was inserted by [S.I. 1997/676](#).

(b) any adjustment has been made under regulation 16D,  
the employer shall give the person written notification of the compensation payable or of any adjustment and, in each case, of the calculation thereof.”.

### **Supply of information**

**8.** Regulation 17 shall be amended—

- (a) in paragraph (a) by inserting after the words “employing authority” the words “or, in the case of compensation payable under Part IIIA or IIIB, the employer”; and
- (b) by substituting for paragraph (b) the following:—
  - “(b) where he is a designated teacher or a person entitled under regulation 16C, not later than one month after his entering or ceasing to hold a new employment, give his employing authority or, in the case of compensation payable under Part IIIA or IIIB, his employer written notification of that fact.”.

### **Procedure for payment of compensation**

**9.** In regulation 18(2) the words “Subject to any statutory provision in that behalf,” shall be omitted.

### **Paying authority**

**10.** For regulation 19(1) there shall be substituted the following:—

“(1) Subject to paragraph (2) and regulation 19A, compensation payable to any person by virtue of these Regulations shall be paid by the employing authority or, in the case of compensation payable under Part IIIA or IIIB, by the employer.”.

### **Arrangements for payment of compensation under Part II or IIIB**

**11.** After regulation 19 there shall be inserted the following:—

#### **“Arrangements for payment of compensation under Part II or IIIB**

**19A.—(1)** An employing authority or employer (in this regulation “the compensating authority”) may—

- (a) itself pay any compensation payable under Part II or IIIB of these Regulations, for which it is liable by virtue of regulation 19(1); or
  - (b) arrange for the compensation to be paid by any suitable person and for its reimbursement by the authority.
- (2) Arrangements for reimbursement may provide—
- (a) for the periodical repayment by the compensating authority of amounts paid on its behalf;
  - (b) for a single payment by the compensating authority of a sum equal to the actuarial value of the total compensation payable; or
  - (c) for the payment of such a sum by not more than five annual instalments.”.

### **Reduction of annual compensation during new employment**

**12.** In paragraph 1 of Schedule 4 for the words “and his annual compensation (including any increase under Part I of the 1971 Act)” there shall be substituted “, his annual compensation and

any annual compensation payable under regulation 16C (including any increase under Part I of the 1971 Act)”).

St Andrew’s House,  
Edinburgh  
4th March 1997

*James Douglas-Hamilton*  
Minister of State, Scottish Office

We consent,

5th March 1997

*Gyles Brandreth*  
*Roger Knapman*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

*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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## EXPLANATORY NOTE

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

These Regulations amend the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 (“the 1996 Regulations”). In addition to minor amendments made by regulations 3, 6 and 9, the main changes are as follows.

Regulation 4 amends the existing provisions regarding discretionary compensation for premature retirement (Part II of the 1996 Regulations). The amendments make it clear that teachers are eligible for that type of discretionary compensation only if they do not receive the separate discretionary compensation for termination which is being introduced by regulation 7 (new Part IIIA of the 1996 Regulations). The amendments also make it clear that, in the case of teachers between the ages of 50 and 60, compensation for premature retirement under Part II of the 1996 Regulations is available only if the employing authority agrees that early payment of pension benefits is appropriate.

Regulation 5 provides that, in the calculation of the amounts of compensation awarded under regulation 5 of the 1996 Regulations, there shall be disregarded the actuarial reduction of the lump sum and pension under the teachers' pension scheme (which reduction is consequential upon provisions in the Teachers' Superannuation (Scotland) Amendment Regulations 1997 (“the 1997 Regulations”)).

Regulation 7 inserts 2 new Parts into the 1996 Regulations.

Part IIIA gives teachers' employers the power to make discretionary compensation payments for termination of employment to persons (described in regulation 16A) whose employment has ceased either because of redundancy or in the interests of the efficient exercise of the employer's functions but who are not then eligible for early payment of pension benefits. The compensation takes the form of a lump sum calculated by reference to length of qualifying employment and the amount of a week's pay (within specified limits).

Part IIIB adds new provisions for the payment of mandatory compensation, by all teachers' employers, to teachers aged 50 or over who are made redundant or granted premature retirement on the grounds of the efficient exercise of the employer's functions.

New regulation 16C stipulates that the amount of compensation to be paid is the difference between the lump sum and pension paid, actuarially reduced as a result of the 1997 Regulations, and the lump sum and pension which would have been paid under the teachers' pension scheme if the actuarial reduction had not applied.

New regulation 16D provides that where the retirement pension received from the teachers' pension scheme is to be abated on re-employment, the mandatory compensation received under new regulation 16C is to be abated in the appropriate proportion.

New regulation 16E provides for the payment of a supplementary deficiency grant, equal to the amount by which the deficiency grant from the teachers' pension scheme is reduced as a consequence of the actuarial reduction of benefits payable from the scheme.

New regulation 16F provides for the payment of short-term compensation upon death, equal to any reduction in short-term pension payable from the teachers' pension scheme which follows the payment of an actuarially reduced pension.

New regulation 16G provides for the employer to notify the teacher in writing of compensation payable under regulation 16C or 16F, or of any adjustment under regulation 16D.



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Regulations 8 and 10 amend regulations 17 and 19 of the 1996 Regulations, to take account of the fact that compensation under new Parts IIIA and IIIB is payable by any employer (not just employing authorities).

Regulation 11 is a new provision enabling employers, in the context of compensation under Parts II and IIIB of the 1996 Regulations, to arrange for that compensation to be paid by another person with appropriate reimbursement.

Regulation 12 amends paragraph 1 of Schedule 4 to the 1996 Regulations (reduction of annual compensation during new employment) in order to take account of any compensation which a teacher is receiving under new regulation 16C following actuarial reduction of his teachers' scheme pension.