EXECUTIVE NOTE

THE TEACHERS' SUPERANNUATION (SCOTLAND) AMENDMENT REGULATIONS 2008 SSI/2008/227

The above instrument is made in exercise of the powers conferred by sections 9, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972. These powers have been transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (SI 1999/1750). The instrument is subject to negative resolution procedure.

Policy Objectives

This instrument amends the Teachers' Superannuation (Scotland) Regulations 2005 (SSI 2005/393) ("the 2005 Regulations"), the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 (SI 1995/2814) ("the AVC Regulations") and the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 (SI 1996/2317) ("the 1996 Regulations").

The consolidation of the 2005 Regulations, the 1995 Regulations and the 1996 Regulations is underway with a view to consolidated regulations being made early next year.

The main changes to the 2005 Regulations are as follows:

Removal of earnings cap: the Earnings Cap – the level (£112,800 as at 31 March 2008) at which the amount of contributable salary is capped for pension purposes – is being removed from the Scottish Teachers' Superannuation Scheme (STSS) retrospectively with effect from 1 April 2008 (although it can be retained where the member and his or her employer agree that the earnings cap will not apply or for those members whose employer changes as a result of a transfer of undertakings (TUPE)). This is in line with the Finance Act 2004 and allows the full salary to be taken into account for benefit calculations.

The regulations introduce a calculation by way of new regulation D5, which will apportion the period of service that had been subject to the earnings cap to enable the uncapped salary to be used in the benefit calculations for all the service at the point of retirement. This has the effect of reducing proportionately the service accumulated during the period when the earnings cap applied and protects the main scheme against disproportionate amounts of benefits from being paid out to individuals against the level of contributions paid.

Election in respect of additional benefits: teachers who have a normal pension age of 60 and who continue to work beyond that age (or those members' employers) may purchase additional pension benefits based on the costs in place for those who fall under the normal pension age 65 arrangements. This is to increase options for individuals to both enhance pension provision and to work longer in line with UK Government policy whilst also providing a mechanism for improved workforce planning through employers being able to exploit this provision as part of a teacher retention policy.

Entitlement to retain normal pension age on transfer: a teacher who enters pensionable employment on or after 1 April 2007 as a result of a TUPE/involuntary transfer within the public services will retain normal pension age 60 when becoming a member of the STSS if that teacher was subject to a normal pension age of 60 in the previous scheme.

Amount of retirement lump sum: under HMRC tax simplification legislation, which took effect on 6 April 2006, certain payments would be classed as "unauthorised payments" and, depending on the circumstances, both the scheme and member would be subject to "sanction charges" ranging from 15% to 50% of the payment made. To protect the STSS against the imposition of such charges, the amount of tax-free lump sum paid (should calculations prove that the level of lump sum would exceed the permitted maximum) will be restricted. Any excess lump sum will be converted back into annual pension.

Applications for ill-health retirement: the regulations clarify that those teachers who submit an application for ill-health retirement benefits must do so within 12 months of leaving pensionable employment when being assessed against the criteria for partial incapacity benefits. This reflects existing practice.

The only change to the 1995 Regulations is as follows:

Provision is made for the authorised provider of the pension to extend the period of beneficiary payments within the over-arching limits of the Finance Act 2004. This allows members of the Teachers' AVC Scheme to elect to make provision for the payment of an ongoing pension to their beneficiaries if they were to die within 5 to 10 years of accessing their benefits.

The only change to the 1996 Regulations is as follows:

The amount of discretionary severance compensation that employers can award to teachers who are made redundant or retired in the interests of efficiency is increased from 66 weeks to 104 weeks.

Consultation

The amendments made by this instrument have been the subject of consultation with local authorities and other employers of teachers and lecturers, with representatives of teachers, and with other Government Departments. Following consultation SPPA received 4 responses – one from a teacher's union, one from a local authority, one from a college of further education and one from a Government Department. The teacher's union supported the changes, the employers had no comments as they thought the changes would have negligible effect and the Government Department has picked up a drafting error which has now been rectified.

Financial effects

An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

Contact

If you have any queries regarding this Scottish Statutory Instrument, please contact Christine Marr at the Scottish Public Pensions Agency.

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