SCOTTISH STATUTORY INSTRUMENTS

2002 No. 288

PENSIONS

The Teachers' Superannuation (Scotland) Amendment Regulations 2002

Made - - - -	*10th June 2002*
Laid before the Scottish Parliament - - - -	*10th June 2002*
Coming into force - -	*1st July 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(**1**) and of all other powers enabling them in that behalf, after consulting with representatives of education authorities and of teachers and with such representatives of other persons likely to be affected by the Regulations as appear to them to be appropriate, in accordance with section 9(5) of that Act, and with the consent of the Treasury(**2**), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Teachers' Superannuation (Scotland) Amendment Regulations 2002 and shall come into force on 1st July 2002.

Amendment of the Teachers' Superannuation (Scotland) Regulations 1992

2. The Teachers' Superannuation (Scotland) Regulations 1992(**3**) shall be amended in accordance with regulations 3 to 14 of these Regulations.

Reckonable service generally

3. In regulation D1–

(**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) and section 12 was amended by section 10 of that 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 is still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(**3**) S.I. 1992/280 ("the principal Regulations"), amended by S.I. 1992/1025 and 1597, 1993/490 and 2513, 1994/1715 and 2699, 1995/840 and 1670, 1997/676, 1998/718, 1999/446 and S.S.I. 2000/366, 2001/152 and 291.

(a) in paragraph (3)(**4**) for "Where during a financial year" there shall be substituted "Subject to paragraph (4A), where during a financial year"; and

(b) after paragraph (4) there shall be inserted–

"(4A) Where a teacher commences winding down employment by virtue of regulation H1A (winding down employment) the period of part-time service under the winding down employment shall count as if it had been full-time service.

(4B) Paragraph (4A) above shall not apply if the teacher ceases to be in winding down employment and–

(a) returns to teaching service; and

(b) is not entitled to payment of retiring allowances by virtue of regulation E5(1)(a) to (g).".

Entitlement to payment of retiring allowances

4. In regulation E5–

(a) after paragraph (1)(f) there shall be inserted–

"(g) (i) has attained the age of 55;

(ii) has ceased on or after 30th June 2002 and before attaining the age of 60 to be in pensionable employment or excluded employment; and

(iii) is not entitled to payment of retiring allowances by virtue of paragraph (1)(e) or (1)(f),

and the conditions specified in paragraph (4) are satisfied.".

(b) in paragraph (2) after sub-paragraph (c) there shall be inserted–

"(d) paragraph (1)(g) takes effect–

(i) where, at the time of the application for benefits under regulation E31, the teacher was in pensionable employment or excluded employment, as from the day after the end of the employment; and

(ii) in any other case on a date determined by the teacher making the application for benefits under regulation E31 being a date no earlier than 6 weeks after the date of such application.".

(c) after paragraph (3)(**5**) there shall be inserted–

"(4) The conditions referred to in paragraph (1)(g) are–

(a) where the teacher has a guaranteed minimum pension in respect of employment before 6th April 1997, or an equivalent pension benefit relating to employment undertaken during the period starting on 3rd April 1961 and ending on 5th April 1975 (or both) that the annual rate of the person's retirement benefits in the opinion of the Government Actuary is equal to or exceeds the equivalent pension benefit or the value of the guaranteed minimum pension (or if both the aggregate); and

(b) where, at the time of the application for payment of benefits under regulation E31, the teacher was in pensionable employment (otherwise than by virtue of regulation B8) or excluded employment that–

(i) his employer has consented to the application; or

(**4**) Regulation D1(3) of the principal Regulations was substituted by S.I. 1994/2699, regulation 8.
(**5**) Regulation E5(3) of the principal Regulations was inserted by S.I. 1995/1670, regulation 3.

(ii) 6 months have elapsed since the date on which the teacher requested his employer to give consent and such consent has not been given.".

Amount of retirement pension

5. In regulation E6 for paragraph (5)(**6**) there shall be substituted–

"(5) Subject to sub-paragraph (b), paragraph (4)(**7**) applies where–

(i) a teacher is entitled to payment of retiring allowances under regulation E5(1)(f) and ceased to be in pensionable employment or in excluded employment on or after 1st September 1997; or

(ii) a teacher has become entitled to payment of retiring allowances by virtue of regulation E5(1)(g); and

(b) paragraph (4) shall not apply where in the case of a teacher who falls within paragraph (5)(a) notice to terminate the teacher's employment was given or his resignation was tendered on or before 22nd October 1996.".

Amount of retirement lump sum

6. In regulation E7(**8**)–

(a) for paragraph (3) there shall be substituted–

"(3) Subject to paragraph (4), where–

(a) a teacher who has become entitled to the payment of retiring allowances by virtue of regulation E5(1)(f) has ceased to be in pensionable or excluded employment on or after 1st September 1997; or

(b) a teacher has become entitled to payment of retiring allowances by virtue of regulation E5(1)(g),

the amount of the teacher's retirement lump sum shall be the amount calculated in accordance with paragraphs (1) and (2) multiplied by the appropriate factor."; and

(b) in paragraph (4) after "shall not apply where" there shall be inserted "in the case of a teacher who falls within paragraph (3)(a)".

Enhancement of retiring allowances in case of incapacity

7. In regulation E9 for paragraph (4)(b) there shall be substituted–

"(b) the period beginning when his pensionable employment ended and ending immediately before his 65th birthday, or, if he is entitled to retirement benefits by virtue of regulation E5(1)(g) and subsequently becomes entitled to retirement benefits by virtue of regulation E5(1)(e) with reference to his reckonable service in further employment which is pensionable by virtue of regulation B8, his 60th birthday.".

Abatement of retirement pension

8. In regulation E15 after paragraph (7)(**9**) there shall be inserted–

"(8) This regulation shall not apply in respect of a pension (or part of a pension) to which a teacher is entitled by virtue of regulation E5(1)(g).".

(**6**) Regulation E6(5) of the principal Regulations was inserted by S.I. 1997/676, regulation 12.
(**7**) Regulation E6(4) of the principal Regulations was inserted by S.I. 1997/676, regulation 12.
(**8**) Regulation E7 of the principal Regulations was substituted by S.I. 1999/446, regulation 8.
(**9**) Regulation E15(7) of the principal Regulations was inserted by S.I. 1997/676, regulation 18.

Retiring allowances on cessation of further employment

9. In regulation E16 for paragraph (8) there shall be substituted–

"(8) If the teacher ceased to be in the further employment before attaining the age of 60 and neither regulation E5(1)(e) nor regulation E5(1)(f) applied, he shall not become entitled to payment of retirement benefits under paragraph (3)(b) or (4) until he attains that age, save that where the teacher ceases to be in further employment on or after 30th June 2002 and is entitled to payment of retirement benefits under sub-paragraph (3)(b), he shall upon attaining the age of 55 become entitled to retirement benefits multiplied by the appropriate factor.".

10. In regulation E16A(**10**) after paragraph (5) there shall be inserted–

"(5A) Where regulation E5(1)(g) applies, subject to paragraph (6), a teacher's entitlement to retirement benefits takes effect in accordance with regulation E5(2)(d).".

Pensionable salary

11. In regulation E29(**11**) after paragraph (16) there shall be inserted–

"(17) Where a teacher has spent the material part of his terminal service employed in part time service under regulation H1A (winding down employment), his pensionable salary shall be calculated by reference to his salary for the last consecutive 365 days prior to commencement of his winding down employment under regulation H1A taking into account prospective increases under the Pensions (Increase) Act 1971.".

Employers' contributions

12. In regulation G9(**12**)–

(a) in paragraph (1) for "next following the date of the 2001 report" there shall be substituted "starting on 1st April 2003";

(b) in paragraph (2) for "(A - 6) + (B - C)" there shall be substituted "(A - 6) + (B - C) + 0.25"; and

(c) after paragraph (3) there shall be inserted–

"(3A) Where a teacher commences employment by virtue of regulation H1A (winding down employment) and that teacher either simultaneously or subsequently commences employment at reduced salary by virtue of regulation H1(**13**) (modified application in case of employment at reduced salary) the employer of that teacher shall pay the contributions payable under paragraphs (1) and (2) above and regulation C2 (ordinary contributions) on the amount determined by paragraph (3B) below.

(3B) The amount referred to under paragraph (3A) shall be the difference between–

(a) the contributable salary which would be payable under regulation H1A (winding down employment) if employment at reduced salary by virtue of regulation H1 (modified application in case of employment at reduced salary) had not been commenced, and

(b) the contributable salary payable where employment has been commenced under both regulation H1A and H1.".

(**10**) Regulation E16A of the principal Regulations was inserted by S.S.I. 2001/291, regulation 13.
(**11**) Regulation E29 of the principal Regulations was substituted by S.I. 1998/718, regulation 11 and amended by S.I. 1999/446, regulation 14.
(**12**) Regulation G9 of the principal Regulations was amended by S.S.I. 2000/366, regulation 8.
(**13**) Regulation H1 was substituted by S.I. 1998/718, regulation 17, and amended by S.S.I. 2001/291, regulation 18.