
SCOTTISH STATUTORY INSTRUMENTS

2013 No.

PENSIONS

**The Teachers' Superannuation (Scotland) Amendment (No. 2)
Regulations 2013**

Made - - - -

Laid before the Scottish Parliament

Coming into force - -

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) Amendment Regulations 2013 and shall come into force on 1st 2013 but Regulation [] shall have effect from [].

Amendment of the Teachers' Superannuation (Scotland) Regulations 2005

2. The Teachers' Superannuation (Scotland) Regulations 2005(c) shall be amended in accordance with regulations 3 to 17 of these Regulations.

(a) 1972 c.11; ("the 1972 Act"). 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) and was modified by article 5 of, and Schedule 2(2), paragraph 27 to, the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158). 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, 2006/308, 2006/605, 2007/189, 2008/227, 2011/42 and 52 and 2012/70.

Amendment of regulation B2

3.—(1) In paragraph (3) of regulation B2 (Part-time service), after the words “or enters a new employment specified in Schedule 2” add the following “or the teacher’s employer makes arrangements under section 3(2) (automatic enrolment) or 5(2) (automatic re-enrolment) of the 2008 Act”.

(2) Delete paragraphs (4), (5), (5A), (5B) and (6).

Amendment of regulation B6

4.—(1) Regulation B6 is amended as follows—

- (a) in paragraphs (2) after the words “not pensionable employment” insert the following “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”;
- (b) in paragraph (3) after the words “not in pensionable employment” insert the following “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”; and
- (c) in paragraph (6), after the words “or she makes an election under regulation B8” insert the words “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”.

Amendment of regulation B7

5. For regulation B7 (Election for employment not to be pensionable) substitute the following—

“**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 pay period following that in which the notice is given.

(3) But—

- (a) if the notice is given during the first pay period after commencing pensionable 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 during the first pay period 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.”.

Amendment of regulation B8 and new B8A

6. For regulation B8 (Resumption of pensionable status) substitute the following—

“(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- 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 pay period following that 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 during the first pay period after commencing 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.”.

Additional paternity leave and additional statutory paternity pay

7. These Regulations are amended in accordance with the Schedule.

Amendment of regulation C15

8. For regulation C15 (Deduction, payment and recovery of contributions) and the title of the regulation substitute the following:—

“C15. Deduction by employers of contributions, etc from salary, payment in default and interest

(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 standard rate, 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) But paragraph (4) is subject to [transitional provision] where the date of the demand referred to in that paragraph falls before the date these regulations come into force.

(6) In paragraph (5) 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

9. 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 –

- (a) the teacher 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

10. For paragraph (2)(b) of Regulation 18 (Abatement of retirement pension) substitute:—

“(b) in any other case, and subject to paragraph (6), by the amount (if any) which is necessary to secure that (A+B) does not exceed (C+D).”.

Amendment of regulation E21

11. For regulation E21 (Grants on grounds of incapacity) and the title 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.”.

12. After regulation E21 (Grants on grounds of incapacity) insert the following regulation—

“E21A. Short-service annuity: unauthorised payments

(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 paid.”.

Amendment of regulation E24

13. For paragraph (5) of Regulation E24 (Death grants) substitute the following—

“(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

14. After paragraph (4) of regulation G2 (Acceptance of transfer values) insert the following paragraph—

“(4A) But subparagraphs (a) and (b) of paragraph (4) do not apply if, while the teacher was subject to the previous scheme, he or she was employed in comparable British service and he or she entered pensionable employment—

(a) immediately after the end of the employment;

(b) on or before the teachers 60th birthday in the case of a pre-2007 entrant or the teacher's 65th birthday in any other case.”.

Omission of regulation H2

15. Omit regulation H2 (Actuarial review).

Insertion of regulation H2A

16. After regulation H2 (Actuarial review) insert the following—

“Meaning of “standard rate” of interest

H2A.—(1) Where, under any provision of these regulations, interest is required to be paid at the standard rate, the interest is calculated in accordance with this Regulation.

(2) From the date 3 months from the date when these regulations come into force, the rate of interest is the Superannuation Contributions Adjusted for Past Experience discount rate set by the Treasury.

(3) Interest is compounded with monthly rests.”.

Amendment of regulation H3

17. Regulation H3 (Employers’ contributions) is amended as follows:

- (a) omit subparagraphs (a) and (b) of paragraph(1);
- (b) in paragraph (2) omit ”during every relevant period”;
- (c) for words in paragraph (3) substitute “The required percentage is 14.9%”; and
- (d)omit paragraphs (6)and (7).

Amendment of regulation H6

18. In paragraph (10) of regulation H6 (Payments by employers to Scottish Ministers) omit “and” after sub-paragraph (a) and insert after sub-paragraph (b)—

“and

- (c) the rate of interest equal to the Superannuation Contributions Adjusted for Past Experience discount rate set by the Treasury from the date these regulations come into force.”.

New regulation: Reduction of benefits: annual allowance charge

19. After regulation J6B insert:

“J6BA Reduction of benefits: annual allowance charge

(1) This regulation applies to a teacher who –

(a) is liable to an annual allowance charge in accordance with section 237A of the Finance Act 2004^(a) (“the 2004 Act”) Act; and

(b) meets the conditions specified in paragraph (1) of section 237B of that Act.

(2) Subject to section 237C of the 2004 Act, a member to whom paragraph (1) applies may give notice in writing to the Scottish Ministers specifying that the Scottish Ministers and the teacher are to be jointly and severally liable for the payment of the annual allowance charge due in respect of that teacher in accordance with section 237B of the 2004 Act.

(3) Unless the scheme administrator’s liability to an annual allowance charge referred to in paragraph (2) is discharged in accordance with section 237D of the 2004 Act –

(a) that annual allowance charge will be paid by the scheme administrator on behalf of the teacher; and

(b) that teacher’s present or future benefits in respect of which that charge arises are to be adjusted in accordance with section 237E of the 2004 Act and calculated by reference to advice provided by the scheme actuary for that purpose.”.

(a) 2004 c. 12. Sections 237A to 237F were inserted by Finance Act 2011(c. 11), section 66 and para. 15 of Schedule 17.

Glossary of expressions

20.—(1) At the appropriate place in Schedule 1, insert—

“The 2008 Act”	The Pensions Act 2008
“additional paternity leave”	The meaning in regulation 2(1) of the Additional Paternity Leave Regulations 2010(a)
“additional statutory paternity pay”	The meaning in regulation 2(1) of the Additional Statutory Paternity Pay (General) Regulations 2010(b)
“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”

(2) Delete the word “Indexing” for the Expression column on the left-hand side and delete the meaning opposite in the right-hand column.

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

21 The Teachers’ Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995(c) are amended in accordance with regulations 22 to 24.

Amendment of regulation 5

22 For sub-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

23. In paragraph (1) of regulation 11 (Outward transfers), omit “(b) and (c)” [not sure about (d) yet]

(3) 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).”

(a) S.I. 2010/1055.

(b) S.I. 2010/1056.

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

Amendment of regulation 12

24. In regulation 12 (Retirement and dependants' pensions), for sub-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.”.

A member of the Scottish Government

St Andrew's House,
Edinburgh

2013

Two of the Lords Commissioners of Her Majesty's Treasury

2013

SCHEDULE

Regulation 7

Amendments to the Teachers' Superannuation (Scotland) Regulations 2005

1.—(1) In the provision specified in sub-paragraph (2) for “or paternity” substitute “, paternity or additional paternity”.

(2) The provision is regulation C1(1)(b).

(3) In the provisions specified in sub-paragraph (4) after “paternity” insert “, additional paternity”.

(4) The provisions are—

- (a) regulation C2(1)(a);
- (b) regulation D1(4)(a);
- (c) regulation E6(5)(c)(i)(bb);
- (d) regulation E10A(1)(b);
- (e) regulation E24(1)(e);
- (f) regulation E29(1)(a);
- (g) regulation E34(7)(d);
- (h) regulation J4(1)(f).

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 1995 Regulations").

Regulations 3 to 6 make changes to the arrangements for members to opt into and out of the Scottish Teachers' Superannuation 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. Those Regulations prescribe arrangements, provided for by 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 Act. Some of the amendments to the Teachers' Superannuation (Scotland) Regulations 2005 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.

Regulations 4(1) and 7 make provision in relation to additional paternity leave and additional statutory paternity pay, giving the same recognition to such rights under the Teachers' Superannuation (Scotland) Regulations 2005 as is given to paternity leave and statutory paternity pay.

Regulations 8, 16 and 18 introduce a standard rate of interest that will apply in all cases where interest is payable on monies payable 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 9 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 the lump sum is paid within 12 months of the application in line with overriding legislation governing "authorised payments".

Regulation 10 corrects a typographical error.

Regulation 11 amends Regulation E21 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 12 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 (ie because the repayments is linked to further employment).

Regulation 13 amends Regulation E24 (Death grants) 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 14 amends Regulation G2 (Acceptance of transfer values) to clarify that a teacher who was employed in comparable British service can transfer those benefits at any time.

Regulation 15 removes the requirement to have an actuarial review and regulation 17 makes consequential amendments to regulation H3 resulting from the omission of regulation H2..

Regulation 20 inserts into Schedule 1 of the Teachers' Superannuation (Scotland) Regulations 2005 definitions relevant to these amendments.

The amendments in regulations 22 and 24 provide an option, additional to those presently available, to a person making elections 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 23(1) is that individuals who have already become entitled to retirement benefits may request the payment of a transfer value to another registered pension scheme of funds arising from the investment of additional voluntary contributions, in addition to others who may already do so. The amendment in regulation 23(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 civil society organisations. The instrument has a minimal impact on the public sector.