sppa
SCOTTISH PUBLIC PENSIONS AGENCY

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To:

The Secretary General, Convention of Scottish Local Authorities

The Directors of Education, Directors of Finance & Human Resource Managers, Scottish Local Authorities

Principals of Further and Higher Education Institutions

Independent Schools

Official Correspondents of Other Participating Organisations

Dear Sir or Madam

The Teachers' Superannuation (Scotland) Amendment Regulations 2006
Changes arising from HMRC Tax Simplification

I am writing to consult you on proposals to further amend the Teachers' Superannuation (Scotland) Regulations 2005 and the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995. These amendments are to make provision for certain aspects of HM Revenue and Customs (HMRC) tax simplifications as a result of the Finance and Pensions Acts 2004.

The simplification of legislation governing occupational pension schemes comes into effect on 6 April 2006. The legislation is in 2 main parts. The first imposes mandatory changes that schemes must comply with from April. The second part includes enabling provisions that cover a range of new freedoms and flexibilities that schemes can, if they wish, introduce into their provisions.

At this stage we do not propose to introduce any of the discretionary provisions into the Scottish Teachers' Superannuation Scheme (STSS) benefits package, except for the ability to take up to 25% of the AVC fund as a tax free lump sum. Consideration of these provisions will be included with the ongoing UK review of the teachers' pension schemes so that any potential cost implications associated with the new flexibilities can be considered in the wider context of the review.

A commentary on the proposed amendments is attached. A copy of this letter and the attached commentary has been placed on our website www.sppa.gov.uk.

The amendment regulations are currently being drafted. It is now unlikely that they will be made in time to come into force on 6 April 2006, therefore, if the coming into force date is later, they will have retrospective effect.

Comments are invited on the attached commentary. They should be made in writing to me at the above address by Friday, 24 February 2006.

Finally, we will also take this opportunity to correct some minor inaccuracies in the Teachers' Superannuation (Scotland) Regulation 2005, which occurred whilst consolidating the 1992 regulations.

Yours faithfully

Christine Marr
Policy Manager, STSS

Commentary on the Teachers' Superannuation (Scotland) Amendment Regulations 2006

Incorporating amendments to the Teachers' Superannuation (Scotland) Regulations 2005 and the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995

It is necessary to make a number of amendments to the Teachers' Superannuation (Scotland) Regulations 2005 and the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 to comply with the Pensions Act 2004, Finance Act 2004 and Finance Act 2005 from 6 April 2006. We also propose to take the opportunity to introduce new flexibilities into the Teachers' AVC arrangements from April 2006. We do not propose at this stage to introduce into the Scottish Teachers' Superannuation Scheme (STSS) other changes that are covered by the permissive provisions of the Finance and Pensions Acts. Rather these will be considered as part of the wider UK review of the Teachers' Pension Schemes following the recent agreement between the UK Government and the unions on the framework for taking forward pension reform in the public services.

Proposed changes to the Teachers' Superannuation (Scotland) Regulations 2005

Registered Pension Schemes

The regulations will be amended consequential on the requirement in the Pensions Act 2004 that pension schemes are required to be registered. References in the regulations to "Approved pension scheme" will be amended accordingly, as well as making reference to the Finance Act 2004 and Finance Act 2005 where appropriate, and to the Annual Allowance and Lifetime Allowance.

Salary on which contributions are payable

It is intended to retain, for the time being at least, the Earnings Cap for teachers entering pensionable employment after 31 May 1989 but it will be necessary to amend the regulations to reflect the fact that from 6 April 2006 the statutory power to apply the Earnings Cap will be embedded in the teachers' superannuation regulations, instead of – as is currently the case – the overriding effect of primary legislation. Any relaxation of this provision will be considered during the Teachers' Pensions Schemes Review.

Commutation of Trivial Pensions

The provision which permits scheme members to commute a trivial pension will be amended to come into line with the overriding rules in force with effect from 6 April 2006.

Under the new tax rules members aged between 60 and 75 will be able to commute pensions on grounds of triviality only where all of their pension benefits (under all scheme arrangements) amount to no more than 1% of their life time allowance provided all the "trivial" commutations take place within a 12 month period. Administrators will have to be satisfied that they act in light of what they are told by the scheme member. Commutation will extinguish the member's rights under the STSS.

Children's Pensions

The Pensions Act 2004 specifies that children's pensions must cease at age 23, except where they were dependent on the teacher at the date of the teacher's death because of physical or mental impairment. Regulations will introduce transitional provisions for pensions already in payment at

5 April 2006 to allow them to continue until the later of age 23 or the cessation of full-time education or vocational training. In all other cases, children's pensions must cease by age 23 except if they were dependent on the teacher because of physical or mental impairment.

Minimum Retirement Age 55 for New Entrants

The minimum retirement age for new entrants will be increased from age 50 to age 55 from 6 April 2006. From 2010 all STSS members will be subject to a minimum retirement age of 55. This change does not apply to ill health cases.

Individuals aged 75 and over

Under the new tax provisions any lump sum payment made to or in respect of a member age 75 or over on or after 6 April 2006 will be an unauthorised payment.

Efforts will be made to contact members before their 75th birthday to allow time for a retirement lump sum to be paid.

Failing that it would then be necessary for an inverse commutation calculation to take place to convert the lump sum to annual pension. The rate for the commutation will be assessed by the Government Actuary.

Revised Awards

It will not be possible to make a lump sum payment in respect of revised awards put into payment more than 3 months after the initial retirement (the Benefit Crystallisation Event (BCE).

There are 2 options for dealing with this, both of which entail a regulatory change:

1. *The balance of pension and retirement lump sum is paid as a separate award (and, therefore, a new BCE)*

This would mean that a further tax free retirement lump sum would be paid but there would no entitlement to arrears of pension. The second BCE pension could be actuarially increased to offset the loss of pension arrears.

The obvious benefit of this from a scheme member's perspective is that it maintains access to a full tax free retirement lump sum. However, the additional regulatory and administrative burdens that must be gone through in order to secure this outcome would have to be considered. SPPA would have to pay and calculate 2 separate pensions, the second possibly with an actuarial enhancement. Also, as this would be a further BCE, SPPA would be obliged to introduce a second 'application process'; at the very least they would have to obtain a further member declaration in relation to the Lifetime Allowance before putting the second pension into payment.

2. *Inverse Commutation*

In the same way that retirement lump sums will have to be commuted to annual pension for members who retire having attained age 75, the retirement lump sum arising from a revised award paid more than 3 months after retirement would be commuted to annual pension.

<u>Consultees are asked to offer views on what they consider to be the more appropriate approach</u>

Proposed amendments to the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1995

Registered Pension Schemes

The regulations will be amended consequential on the requirement in the Pensions Act 2004 that previous schemes are required to be registered. References in the regulations to "approved pension scheme" will be amended accordingly, as well as making reference to the Finance Act 2004 and Finance Act 2005 where appropriate, and to the Annual Allowance and Lifetime Allowance.

Outward Transfers

Due to clarification from HM Revenue and Customs the existing restriction that limits the transfer of AVC funds will be lifted so that they will be transferable independently of the main scheme benefits.

Retirement and Dependents' Pensions

The regulations will be amended consequential on the requirement in the Pensions Act 2004 that children's pensions must cease at age 23 in line with the proposals for the main scheme.

Cash lump sum

The Finance Act 2004 allows individuals to take up to 25% of all their pension benefits from each arrangement as a tax free lump sum subject to individual scheme rules. The AVC regulations will be amended to allow individuals to benefit from this provision rather than having to purchase an annuity with 100% of the AVC fund.

Commutation of trivial pensions

The regulations will be amended consequential on the requirement in the Pensions Act 2004 that members will be able to commute pensions on trivial grounds only where all of their pension benefits (under all scheme arrangements) amount to no more than 1% of their life time allowance.