

To:

Secretary General, Convention of Scottish Local Authorities,

The Director of Education, Director of Finance and Human Resource
Managers, Scottish Local Authorities,

Principals of Further and Higher Educational Institutes

Official Correspondents of Other Participating Organisations

7 Tweedside Park
Tweedbank
Galashiels TD1 3TE
<http://www.sppa.gov.uk>

Telephone: 01896 893224
Fax: 01896 893230
Dorothy.hamilton@scotland.gsi.gov.uk

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Dear Sir or Madam

THE TEACHERS' SUPERANNUATION (SCOTLAND) AMENDMENT (No 2) REGULATIONS 2006

I enclose, for any comments that you may have, a draft of the Teachers' Superannuation (Scotland) Amendment (No 2) Regulations 2006. As this draft SSI is very short and the proposed changes are straightforward, the consultation period will last for 4 weeks only. Responses by Tuesday, 7 November 2006, would therefore be appreciated. Please distribute this letter and attachments as widely as possible.

A commentary on the changes is attached at Annex A. The draft SSI is attached at Annex B.

Comments on the draft Teachers' Superannuation (Scotland) Amendment (No.2) Regulations 2006 should be made in writing or by email to me at SPPA, 7 Tweedside Park, Tweedbank, Galashiels TD1 3TE or by e-mail to dorothy.hamilton@scotland.gsi.gov.uk

In accordance with our normal practice, the Agency may make available, on request, responses to this consultation exercise, other than those in which consultees indicate that they wish their responses to be treated as confidential.

Yours faithfully

Dorothy Hamilton

Dorothy Hamilton
Policy Officer
STSS



COMMENTARY ON DRAFT REGULATIONS

The Teachers' Superannuation (Scotland) Amendment (No.2) Regulations 2006

The Teachers' Superannuation (Scotland) Regulations 2005

Salary on which contributions are payable – election. Regulation 3 will amend regulation C2 of the 2005 Regulations to restrict the arrangement to teachers who step down and take a reduction in contributable salary before 2nd December 2006. This arrangement along with the 'two-part pension' stepping down arrangement, will be superseded in April 2007 by the 10 year average salary provision included in the consultation on the package of changes due to pension reform launched on 3 October 2006. However, there is a risk that the arrangement, which is only open to certain teachers aged 50 or over may be in breach of Age Discrimination legislation, therefore the amendment is being made in advance of April 2007 as a precaution.

Commutation: exceptional circumstances of ill-health. Regulation 4 amends Regulation E23 of the 2005 Regulations to provide that all benefit entitlement, including GMP entitlement, will be extinguished when a teacher elects to commute on grounds of serious ill-health. This is a consequence of overriding HMRC rules that require schemes to extinguish all benefits when a person chooses to commute their annual pension to a single lump sum payment on grounds of their serious ill-health. The effective date of this amendment will be 14 June 2006 in line with the date DWP amended the contracting-out rules to permit GMP to be commuted.

The Teachers (Compensation for Redundancy and Premature Retirement)(Scotland) Regulations 1996

Regulation 6 amends Regulation 16A of the 1996 Regulations so as to remove the requirement that regulation 16A, which provides for discretionary compensation on the termination of employment, only applies to persons who are not entitled to retirement benefits under the Teachers' Superannuation (Scotland) Regulations 2005.

Regulation 7 amends Regulation 16B of the 1996 Regulations by substituting the age and service related enhanced severance arrangement which, subject to qualifying conditions, permits payments of up to a maximum of 66 weeks pay to teachers under age 60. From 2 December 2006 onwards prescribed employers will have discretion to award a lump sum of up to 66 weeks pay with no upper age limit ie the circumstances under which payments may be made and the level of such payments will be a matter of policy on the part of the employer.

Although the Department for Education and Skills (DfES) increased the discretionary severance payment to a maximum of 104 weeks pay (with effect from 1 October 2006), SPPA do not propose to mirror this amendment at the present time. No further changes are proposed until such time as the premature retirement and severance arrangements have been reviewed in early 2007.

The Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995

Regulation 8 amends Regulation 11 of the AVC Regulations to rectify an oversight in the earlier amendments. This change will allow an existing teacher to transfer AVC benefits to another provider independently of main scheme benefits.



 SCOTTISH STATUTORY INSTRUMENTS

2006 No.

PENSIONS

**The Teachers' Superannuation (Scotland) Amendment (No. 2)
Regulations 2006**

<i>Made</i> - - - -	2006
<i>Laid before the Scottish Parliament</i>	2006
<i>Coming into force</i> - -	2006

The Scottish Ministers, in exercise of the powers conferred by sections 9, 12 and 24 of 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 these 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 (No. 2) Regulations 2006 and shall come into force on 2 December 2006, but regulation 4 shall have effect from 14th June 2006 and regulation 8 shall have effect from 30 June 2006.

Amendment of the Teachers' Superannuation (Scotland) Regulations 2005

2. The Teachers' Superannuation (Scotland) Regulations 2005(3) are amended in accordance with regulations 3 and 4 of these Regulations.

3. In regulation C2 (Salary on which contributions are payable – election) –

- (a) in paragraph (1)(a) after “reduced” insert “before 2nd December 2006”; and
- (b) in paragraph (1)(b) after “(“employer A”)” insert “before 2nd December 2006”.

4. In regulation E23 (Commutation: exceptional circumstances of ill-health) –

- (a) in paragraph (1) omit “in respect of so much of that pension as exceeds the teacher’s guaranteed minimum”;

(1) 1972 c.11; section 9 was amended by sections 4(1), 8(3), (4) and (6), and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) (“the 1990 Act”), by section 190, Schedule 8, paragraph 7 of 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 section 12 was amended by section 10 of the 1990 Act. The functions of the Secretary of State exercised in the making of these Regulations were transferred to the Scottish Ministers as regards Scotland 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.S.I. 2005/393, to which there are amendments not relevant to these Regulations.



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(b) at the end of paragraph (1) insert “if such a lump sum would be a serious ill-health lump sum as defined in paragraph 4 of Schedule 29 to the Finance Act 2004(4).”; and

(c) for paragraph (2) substitute –

“(2) The lump sum is an amount equal to five times the annual rate of the retirement pension.”

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

5. The Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996(5) are amended in accordance with regulations 6 and 7.

6. In Regulation 16A(1) (Teachers to whom Part IIIA applies) omit “and who is not entitled to payment of retirement benefits under regulation E5(1) of the Superannuation Regulations”.

7. In Regulation 16B (Discretion to pay compensation) for paragraph (1) substitute –

“(1) The employer may pay to a teacher to whom this Part applies compensation which shall not exceed (A-B), where-

A is a sum equivalent of 66 weeks’ pay, and

B is the aggregate of-

(a) any redundancy payment to which the teacher is entitled under Part XI of the 1996 Act(6), and

(b) any compensation which is paid to him under Part III of these Regulations (additional compensation for redundancy).”.

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

8. For Regulation 11(1) and (2) of the Teachers’ Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995(7) substitute -

“(1) Except as provided in paragraph (2) the Scottish Ministers shall, on application by a person who has ceased to be a contributor by virtue of regulation 8(2)(b), (c) or (d), pay a transfer value representing the value of investments made under regulation 9(1) or 10(2) to any other registered pension scheme in which the person may be participating (provided that the other pension scheme is willing and able to accept such a transfer).

(2) A transfer value shall not however be paid pursuant to paragraph (1)-

(a) in respect of a person who has ceased to be a contributor by virtue of regulation 8(2)(b), if the person ceased to be a contributor before 30th June 2006 and has not become a contributor again since that date, or

(b) in respect of a person who has ceased to be a contributor by virtue of regulation 8(2)(c) or (d) and who ceased to be in pensionable employment before 30th June 2006, unless that person has applied for a transfer value under regulation G1 of the Superannuation Regulations.”.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

2006

(4) 2004 c. 12.

(5) S.I. 1996/2317; relevant amending instruments are S.I. 1997/675 and S.I. 1998/719.

(6) The “1996 Act” is the Employment Rights Act 1996 (c. 18), defined as such in regulation 2(3) of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996.

(7) S.I. 1995/2814; the relevant amending instrument is S.S.I. 2006/308.



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We consent

Two of the Lords Commissioners of
Her Majesty's Treasury



EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further amendments to the Teachers' Superannuation (Scotland) Regulations 2005 ("the 2005 Regulations"), The Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 ("the 1996 Regulations") and The Teachers' Superannuation (Additional Voluntary Contributions)(Scotland) Regulations 1995 ("the AVC Regulations").

Amendment of the 2005 Regulations

Regulation 3 amends regulation C2 which allows a teacher aged 50 or above whose salary is reduced or who takes up employment at a lower salary to elect that contributions should continue to be paid on the salary before the reduction. The effect of the amendment is that regulation C2 only applies where the reduction in salary or the taking up of employment at a lower salary occurs before 2nd December 2006.

Regulation 4 amends regulation E23 so that where a pension is commuted in exceptional circumstances of serious ill health the whole pension, rather than so much of it as exceeds the teacher's guaranteed minimum, is commuted. Under the power in section 12(1) of the Superannuation Act 1972 this regulation shall have effect from 14th June 2006.

Amendment of the 1996 Regulations

The amendments to regulation 16A(1) removes the requirement that regulation 16B, which provides for discretionary compensation on the termination of employment, only applies to teachers who are not entitled to retirement benefits under the Teachers' Superannuation (Scotland) Regulations 2005. Under the substituted regulation 16B the maximum compensation which can be paid is 66 weeks pay, less any redundancy payments to which the teacher is entitled and any compensation paid under Part IIIA of the regulations. This amendment shall have effect from 2nd December 2006.

Amendment of the AVC Regulations

Regulation 8 amends regulation 11 to extend the circumstances under which an outward transfer value may be made. The amendment shall have effect from 30th June 2006.

