

SCOTTISH STATUTORY INSTRUMENTS

2005 No.

PENSIONS

The Teachers' Superannuation (Scotland) Amendment Regulations 2005

Made ... 2005

Laid before the Scottish Parliament ... 2005

Coming into force 5th December 2005

The Scottish Ministers, in exercise of the powers conferred by sections 9, 12 and 24 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 2005 and shall come into force on 5th December 2005.

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 27 of these Regulations.

Additional contributions for family benefits

3. In Regulation C9 -

After paragraph (2) insert the following:

⁽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 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, 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, 2002/288, 2003/423 and 2004/89.

“(3) Parts IIA and III of Schedule 6 have effect for enabling family benefit contributions in respect of a civil partner’s reckonable service before 6th April 1988 to be paid”.

Overriding provisions as to guaranteed minimum pension

4. In Regulation E1 –

After paragraph (2)(d) insert the following paragraph:

“(e) in the case of a teacher who dies at any time leaving a surviving civil partner who is not entitled to a pension as a surviving civil partner at a higher rate under these Regulations, the surviving civil partner is entitled to a pension in the circumstances and for the period set out in or prescribed under Section 17 of the 1993 Act.”.

Allocation of part of retirement pension

5. In Regulation E12 –

(1) In paragraph (2)(a) after “a surviving spouse” insert “, surviving civil partner”.

(2) In paragraph (2)(b) after “spouse”, in the three places where it occurs, insert “or civil partner”.

(3) In paragraph (4) after ““spouse”” insert “or “civil partner””.

Death gratuities

6. In Regulation E19 -

(1) In paragraph (6)(b) after “surviving spouse” insert “, surviving civil partner”.

(2) In paragraph (7) after “spouse” insert “or civil partner,”.

Deficiency grants

7. In regulation E20 -

In paragraph (6) after “spouse” insert “or civil partner”.

Family benefits generally

8. In Regulation E21 –

(1) In paragraph (1) after “widowers,” insert “surviving civil partners,”

(2) In paragraph (6) for “while he is unmarried” substitute “while he or she is neither married nor a civil partner”.

Nomination of beneficiaries

9. In Regulation E22 -

(1) In paragraph (1) for “an unmarried person” substitute “a person who is neither married nor a civil partner”.

(2) For paragraph (3) substitute the following:

“(3) The eligible persons are –

(a) a parent, brother or sister of the appointor who is not married or is not a civil partner and has never been married or a civil partner, and

(b) a parent, step-parent, brother or sister of the appointor who is widowed or is a surviving civil partner.”.

(3) For paragraph (4)(a) substitute the following:

“(a) if the person nominated dies, marries or forms a civil partnership, or”.

(4) For paragraph (4)(b) substitute the following:

“(b) if the appointor marries or forms a civil partnership.”.

Entitlement to short-term family benefits

10. In Regulation E23 -

(1) In paragraph (2)(a) after “surviving spouse” insert “or surviving civil partner”.

(2) In paragraph (4)(b) after “surviving spouse” insert “, surviving civil partner”.

Amount and duration of short-term family benefits

11. In Regulation E24 -

(1) In paragraph (2) after “surviving spouse” insert “or surviving civil partner”.

(2) In paragraph (3) and the Table after “spouse”, in the two places where it occurs, insert “, civil partner”.

Entitlement to long-term family benefits

12. In Regulation E25 -

(1) In paragraph (3), for “paragraph (2)” substitute “paragraphs (2) and (4A)”;

(2) In paragraph (4), for “paragraph (3)”, where it first appears substitute “paragraph (3) or (4A)”;

(3) After paragraph (4) insert the following-

“(4A) Where the deceased is survived by a surviving civil partner, the deceased’s relevant service comprises, subject to paragraph (2)-

(a) any period of pensionable employment after 5th April 1988,

(b) any period beginning after 5th April 1988 in respect of which additional contributions have been paid under regulation C8 or C8A,

(c) any period in respect of which additional contributions have been paid under regulation C3 or C4 in accordance with an election made on or after 6th April 1988,

(d) any period of reckonable service in respect of which family benefit contributions have been paid under Part IIA of Schedule 6 or are treated as having been paid under Part III of Schedule 6 in respect of an election made under Part IIA,

(e) where a transfer value has been accepted in respect of comparable British service, any period which consists of or is attributable to service after 5th April 1988, and

(f) where the deceased entered pensionable employment after 5th April 1988 and a transfer value (other than one mentioned in sub-paragraph (e)) was accepted, any period counting as reckonable service by virtue of the acceptance of the transfer value.”.

(4) In paragraph (5)(a) after “surviving spouse” insert “or a surviving civil partner”.

(5) In Paragraph (9) -

(a) after “surviving spouse” insert “or surviving civil partner”; and

(b) “for regulation E1(2)(c) or (d)” insert “for regulation E1(2)(c), (d) or (e)” .

Amounts of spouses’ and nominated beneficiaries’ long-term pensions

13. Regulation E26 shall have a new heading “Amount of surviving spouses’, surviving civil partners’ or nominated beneficiaries’ long-term pensions”.

14. In Regulation E26-

(1) In paragraph (1) after “surviving spouse” insert “, surviving civil partner”.

(2) In paragraph (2A) for “of a nominated beneficiary” substitute “, surviving civil partner or a nominated beneficiary.

(3) In paragraph (6) after “paragraphs (3)” insert “, (6A)”.

(4) After paragraph (6) insert the following –

(6A) If the pension is payable to a surviving civil partner, the deceased’s family benefit service, subject to paragraphs (3) and (8) to (10), comprises the relevant service described in regulation E25(4A).”.

(5) In paragraph (9) for “paragraphs (3) to (6)” in both places where it occurs, substitute “paragraphs (3) to (6A)”.

Amounts of children’s long-term pension

15. In Regulation E27 –

In paragraph (1)(a) after “surviving spouse” insert “, surviving civil partner”.

Commencement and duration of long-term family pensions

16. In Regulation E28 –

(1) In paragraph (1) after “surviving spouse” insert “, surviving civil partner”.

(2) In paragraph (3)(a) for “during any subsequent marriage or any period of cohabitation outside the marriage” substitute “after the person to whom it was payable marries or forms a civil partnership or while he or she lives with someone as if they were husband and wife or as if they were civil partners”.

(3) In paragraph (3)(b) for “widow or widower or on the termination of any such marriage or” substitute “widow, widower or surviving civil partner or on the termination of any such marriage, civil partnership or”.

(4) After paragraph (3) insert the following –

“(3A) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were instead two people of the opposite sex.”.

(5) In paragraph (4)(a) after “surviving spouse” insert “, surviving civil partner”.

Pensionable Salary

17. In Regulation E29 –

In paragraph (14)(b)(ii) for “E26 (spouses’ and nominated beneficiaries’ long-term pensions)” substitute “E26 (amount of surviving spouses’, surviving civil partners’ or nominated beneficiaries’ long-term pensions)”.

Pension sharing

18. In Regulation J2 –
In paragraph (2) after “surviving spouse” insert “, surviving civil partner”.
19. In Regulation J7 –
 - (1) In paragraph (1) after “ex-spouse” insert “or ex-civil partner”
 - (2) In paragraph (3) after “ex-spouse” insert “or ex-civil partner”
20. In Regulation J9 –
 - (1) in each place in which it occurs, omit “matrimonial”.
 - (2) in paragraph (2)(b) after “divorce” insert “,dissolution”.
21. In Regulation J10 -
 - (1) In the heading and in paragraph (5) after “ex-spouse” insert “or ex-civil partner”.
 - (2) In paragraph (7) after “spouse” insert “or civil partner”.
22. In Regulation J16 –
In paragraph (4) for “or his spouse” in the two places where it occurs, substitute “, his or her spouse or his or her civil partner”.

GLOSSARY OF EXPRESSIONS

23. In Schedule 1 -
After the definition of “Child” insert the following –

““ Civil partnership”	A civil partnership which exists under or by virtue of the Civil Partnership Act 2004 ⁴ (and any reference to a civil partner is to be read accordingly).”.
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24. In Schedule 1A –
After the definition of “Appropriate rights” insert the following –

⁴ 2004 c.33

“Ex-civil partner

Means a former civil partner to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order.”

In the definition of “Ex-spouse” for “an individual” substitute “a former spouse”.

FAMILY BENEFITS

25. In Schedule 6 -

(1) After Part II insert the following –

“PART IIA CONTRIBUTIONS: CIVIL PARTNERS

12A. – (1) A teacher is a qualifying teacher for the purposes of this Part if he or she is

- (a) a civil partner, and
- (b) in pensionable employment.

(2) A qualifying teacher may by giving notice in writing to the Scottish Ministers before the end of the election period elect to pay family benefit contributions attributable to a period of his or her reckonable service which ended before 6th April 1988.

(3) If a qualifying teacher dies before the end of the election period without making an election under sub-paragraph (2), his or her surviving civil partner may by giving notice in writing to the Scottish Ministers within 3 months of the qualifying teacher’s death elect to pay family benefit contributions attributable to a period of the qualifying teacher’s reckonable service which ended before 6th April 1988.

(4) The election period begins on the day on which a teacher first becomes a qualifying teacher (in respect of each civil partnership he or she forms) and ends on the earlier of the day on which –

- (a) any election he or she makes under regulation B6 has effect, and
- (b) he or she has been a qualifying teacher for a continuous period of 6 months.

(5) The teacher who makes an election under this paragraph must specify in the notice the period in respect of which the election is made, which must be either the whole of the qualifying teacher’s reckonable service which ended before 6th April 1988 or such part of such service as consists of one or more whole years.

(6) Where an election is made under sub-paragraph (2), the qualifying teacher must state in the notice whether family benefit contributions are to be paid by Method 1 (monthly payments) or Method 2 (lump sum) and, if the former, must specify the percentage rate of his or her contributable salary at which they are to be paid and which must comply with paragraphs 14(2) and (3).

(7) Where a qualifying teacher's pensionable employment is part-time, for the purpose of specifying (under sub-paragraph (6)) a percentage rate at which family benefit contributions are to be paid or varying (under paragraph 14(4)) that rate, sub-paragraph (6) and paragraph 14(2) have effect as if the reference to the qualifying teacher's contributable salary were to his or her full-time equivalent salary.

(8) Except as provided in paragraph 14(4), an election under this paragraph is irrevocable.

12B. – (1) This paragraph applies where –

(a) the qualifying teacher states under paragraph 12A(6) (in accordance with an election made under paragraph 12A(2)) that the family benefit contributions are to be paid by Method 1, and

(b) the payment period exceeds a year.

(2) Where this paragraph applies, except as otherwise provided in Part III, the qualifying teacher must pay family benefit contributions to the Scottish Ministers by way of monthly payments from his or her contributable salary at the percentage rate specified under paragraph 12A(6) or, where the rate is varied under 14(4), at the specified higher rate for the duration of the payment period.

(3) Except as otherwise provided in Part III, the payment period (in years) is the period (in years) specified under paragraph 12A(5) multiplied by the multiple ascertained from Table 5A below.

Table 5A

<i>Rate specified under paragraph 12A(6)</i>	<i>Multiplier Where qualifying teacher is a man</i>	<i>Multiplier Where qualifying teacher is a woman</i>
1%	1.90	1.70
2%	0.95	0.81
3%	0.64	0.54
4%	0.48	0.39
5%	0.38	0.32
6%	0.31	0.26
7%	0.27	0.21
8%	0.24	0.19
9%	0.21	0.16

(4) Where the payment period would (apart from this sub-paragraph) end on a day other than the last day of a month, the payment period ends with the last day of the month in which it would otherwise end.

12C.- (1) Except where paragraph 12B applies, the teacher who makes an election under paragraph 12A must pay family benefit contributions to the Scottish Ministers by way of a lump sum calculated in accordance with the Method 2 formula in subparagraph (2) within 3 months of receiving written notice of the amount of the lump sum.

(2) The Method 2 formula is $A \times B \times C$,

where-

A is 1.9% if the qualifying teacher is a man and 1.7% if the qualifying teacher is a woman,

B is the period (in years) specified under paragraph 12A(5), and

C is the annual rate of the qualifying teacher's contributable salary."

In PART III

(3) In paragraph 13(1)(a) omit "or"

(4) In paragraph 13(1)(b) for "Method A." substitute "Method A, or".

(5) After paragraph 13(1)(b) insert the following-

"(c) family benefit contributions are payable by monthly payments under paragraph 12B (Method 1)."

(6) In paragraph 15 for "or widower" substitute ", widower, surviving civil partner".

26. Schedule 10 shall be amended as follows -

In paragraph 10(4) after "surviving spouse" insert "or surviving civil partner".

27. Schedule 11 shall be amended as follows -

(1) In paragraph 4, in each place in which it occurs, after "spouse's" insert "or civil partner's";

(2) In paragraph 5(b) after "spouse's" insert "or civil partner's";

(3) In paragraph 13(a) after "marital" insert "and civil partnership";

(4) After paragraph 13, insert -

"13A. In paragraph 12(a), "marital and civil partnership status", in relation to a teacher, means whether that teacher has previously formed a marriage or a civil partnership, and if so, whether that marriage or civil partnership has ended.

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

28. The Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 shall be amended in accordance with regulations 28 to 30.

Interpretation

29. In Regulation 2

(1) In paragraph (3) after the definition of “child” insert the following-

““civil partner” and “civil partnership” are to be construed in accordance with the 1992 Regulations:”.

Payment of compensation under regulations 7,8 and 9

30. In Regulation 10

(1) In the TABLE in paragraph (1) after “spouse”, in the three places where it occurs, insert “, civil partner”.

(2) In paragraph (3)(a) for “during any marriage or period of cohabitation as man and wife outside marriage” substitute “after the person to whom it was payable marries or forms a civil partnership or while he or she lives with someone as if they were husband and wife or as if they were civil partners”.

(3) In paragraph (3)(b) for “widow or widower or on the termination of any such marriage or” substitute “widow, widower or surviving civil partner or on the termination of any such marriage, civil partnership or,”.

(4) After paragraph (3) insert the following-

“(3A) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were instead two people of the opposite sex.”.

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

31. The Teachers’ Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 shall be amended in accordance with regulations 31 and 33.

32. In Regulation 2

(1) In paragraph (3) after the definition of “cash equivalent” insert the following-

““civil partner” is to be construed in accordance with the 1992 Regulations”.

(2) In paragraph (3) in the definition of “dependant” after “any surviving spouse” insert “or surviving civil partner”.

33. For the heading of regulation 13A substitute “Pension sharing on divorce or on the dissolution of a civil partnership”.

34. **Right to opt out**

(1) This regulation shall apply in the case of any person (“a relevant beneficiary”) to whom any benefit is or may become payable, being a benefit (“a relevant benefit”) being paid or which may become payable under the 1992 Regulations to or in respect of a person who before 5 December 2005-

(a) ceased to be in pensionable employment; or

(b) died while still in employment.

(2) If, in relation to a relevant benefit, a relevant beneficiary –

(a) would be placed in a worse position than he would have been in if a provision made by these Regulations (“the relevant provision”) had not applied in relation to the relevant benefit, and

(b) so elects, by notice in writing given to the Scottish Ministers before 5 December 2005,

then, in relation to that benefit, the 1992 Regulations shall have effect as if the relevant provision had not been applied to the relevant benefit.

(3) If an election under paragraph (2) is made in relation to a relevant benefit of a teacher who is in pensionable employment or who subsequently becomes re-employed in pensionable employment –

(a) the election shall have effect in relation to a relevant benefit only to the extent that it accrues or has accrued by virtue –

(i) of periods of reckonable service before the cessation referred to in paragraph (1) (or, if there had been more than one cessation, the last of them before 5 December 2005); or

(ii) of contributions paid in respect of such periods of reckonable service; and

(b) in determining entitlement to, or to the amount of, the benefit to that extent he or she shall be treated as if he or she had never re-entered pensionable employment again at any time after the cessation referred to in paragraph (1) (but without prejudice to the application of this paragraph),

and the 1992 Regulations shall apply accordingly.

St Andrew's House
Edinburgh

Authorised to sign by
the Scottish Ministers

We consent,

Two of the Lords Commissioners of
Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, which come into force on 5th December 2005 make further amendments to The Teachers' Superannuation (Scotland) Regulations 1992 ("the 1992 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 1995 Regulations").

The amendments in these Regulations make provision following the introduction of the new status of civil partner by the Civil Partnership Act 2004. The following changes of substance are made.

Regulations 3 and 25 amend regulation C9 and Schedule 6 to enable a teacher who forms a civil partnership to pay family benefit contributions in respect of periods of his or her service prior to 6th April 1988.

Regulation 4 amends regulation E1 to require a pension to be paid in certain circumstances to a surviving civil partner of a teacher who had a guaranteed minimum (within the meaning of the Pensions Schemes Act 1993).

Regulations 5 and 26 amend regulation E12 and Schedule 10 to enable a teacher to allocate his or her pension to provide an alternative benefit for his or her civil partner.

Regulations 6, 7 and 19(1) and (2) amend regulations E19, E20 and J7 to require any death gratuity or deficiency payment to be paid, in the absence of a nominee, to the teacher's surviving civil partner in the first instance.

Regulation 8(2) amends regulation E21 so that a "child" for the purposes of the 1992 Regulations does not include someone who is a civil partner.

Regulation 9 amends regulation E22 so that a civil partner cannot nominate, or be nominated as, a beneficiary to receive a survivor's pension.

Regulations 8(1), 10, 11, 12, 13, 14(1), (2), (5) and (6) amend regulations E21 and E23 to E26 to provide for short- and long-term pensions to be paid to surviving civil partners of teachers.

Regulation 15 amends regulation E27 to provide for the calculation of long-term pensions payable to the children of Scheme members who are civil partners.

Regulation 16 amends regulation E28 which provides for the circumstances in which a survivor's pension ceases to be payable.

Regulations 18 to 22 amend the pension sharing arrangements to reflect the provision that pension sharing may apply to civil partnerships which are dissolved through a formal court process.

Regulation 30 amends regulation 10 of the 1996 Regulations to provide for the period for which short- and long-term compensation is payable to the surviving civil partner of a teacher who was credited with a period of service on termination of employment.

Regulation 32(1) amends regulation 2(3) of the 1995 Regulations so that “dependant” includes a surviving civil partner.

Regulation 34 makes transitional provision for opting out where rights relating to former teachers are adversely affected.

Some Scheme employers are in the business, charity and voluntary sectors. An assessment of the impact on these sectors together with the cost implications to public sector pension schemes of the provision of this instrument is included in the regulatory impact assessment published with the Civil Partnership Act 2004. A copy of that assessment can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>.