

Commentary on the Teachers' Superannuation (Scotland) Regulations 2007

These regulations amend:

- **The Teachers' Superannuation (Scotland) Regulations 2005**
- **The Teachers (Compensation for Premature Retirement and Redundancy) Regulations 1996**
- **The Teachers (Additional Voluntary Contributions) (Scotland) Regulations 1995**

The Teachers' Superannuation (Scotland) Regulations 2005

Regulation 3 amends **Regulation B1 (Full-time service)**, **B4 (Continuing employment)** and **B5 (Accepted school)** to reflect the deletion of regulation B9.

Regulation 4 amends **Regulation B2 (Part-time service)** to cater for those part-time teachers who are not existing members of the Scottish Teachers' Superannuation Scheme (STSS), but who elect to join on or after 1 April 2007 and consequently have either mixed service or are a "2007 or later entrant" and elect to backdate contributions.

Regulation 5(2) amends **Regulation B6 (Employment not pensionable)** to raise the upper membership age of the scheme from 70 to 75 and paragraph (3) transfers the provisions in Regulation B9(2) to clarify that a teacher is not in pensionable employment where the re-employment commences between 1 April 1997 and 30 September 2001 unless he or she makes an election under Regulation B8.

Regulation 6 amends **Regulation B7 (Election for employment not to be pensionable ie Opting Out)** to make it clear that where a teacher has concurrent pensionable contracts of employment, he or she can only opt out in relation to all of the employments.

Regulation 7 amends **Regulation B8 (Resumption of pensionable status ie Opting In)** to cover teachers who were in post-retirement employment before 1 April 2007, but had not made an election under Regulation B8 that the employment should be pensionable. Such employment does not become pensionable automatically by virtue of the omission of regulation B9 but such a teacher can elect to join on or after 1 April 2007 with a normal pension age of 65 (classed as a new entrant). The employer and employee can pay back contributions to cover earlier service.

Regulation 8 omits **Regulation B9 (Further employment)** which is redundant because re-employed teachers will automatically be included in the STSS membership by virtue of regulations B1 and B2. The provisions of B9(2) have been transferred to Regulation B8.

Regulation 9 amends **Regulation C2 (Salary on which contributions are payable – election)** to make consequential changes because of the removal of the provisions for buying current added years (CAY) and past added years (PAY). Paragraph (11) is omitted because the definition of the "retail prices index" is now in Schedule 1.

Regulation 10 substitutes **Regulation C3 (Ordinary contributions)** to set out how member contributions will be determined. It gives effect to the agreement that member contributions will increase from the current 6% to 6.4% on 1 April 2007 and that future member contribution rates will be set as equal to the member rate applied at the equivalent scheme valuation in the Teachers' Pension Scheme (England and Wales). This rate will have been set following a process that leads to the sharing of most additional costs or savings between the member and employer contribution rates.

If the difference between the Scottish net contribution rate (defined in Regulation H3(1)(b)) and the net contribution rate in the Teachers Pension Scheme (England and Wales) (defined in Regulation G5(1)(b) of The Teachers' Pension Scheme (Reform Amendments) Regulations 2006 (SI 2006/3122)) exceeds 1% following an equivalent scheme valuations, the link between the future Scottish member contribution rate and that set in the Teachers Pension Scheme (England and Wales) will be reviewed. In such cases, the Scottish Ministers (after consultation or with the consent of the Treasury, and following appropriate consultation with stakeholders and teachers' representatives) may consider setting more appropriate ordinary contribution and employer contribution rates.

Regulation 11 inserts new **Regulation C4A (Contributions where an election under regulation B8(1A) is to take effect from an earlier date)** and a new **Regulation C4B (Election in respect of additional benefits)**. **Regulation C4A** makes provision for the payment of contributions to be paid where an election under Regulation B8 is made and is to take effect from an earlier date. **Regulation C4B**, which together with the new Schedule 2A allows a member or his or her employer to make an election to purchase an amount of additional pension. The amount of additional pension purchased will be increased in line with the Retail Prices Index (RPI) between the date of the election and the date the benefit is drawn (see the new regulation E7A). Once in payment, the additional pension will, in the same way as the main retirement pension, be increased in accordance with the Pensions Increase Act. The election can cover either personal benefits or personal and dependant benefits. The limits are specified in the new **Schedule 2A**.

Regulation 12 omits **Regulation C5 (Additional contributions to purchase past added years) and Regulation C6 (Additional contributions to purchase past added years in the case of a deceased teacher)** thereby removing the provisions to purchase PAY by the member and the facility for the beneficiary to complete the payments on the early death of the member. Transitional arrangements are in place to cover those elections already in place. These provisions are being replaced by the provision to purchase additional pension benefits, see new **Regulation C4B** mentioned above.

Regulation 13 substitutes **Regulation C7 (Additional contributions to purchase past added years in the case of a deceased teacher)**, which, when taken with the existing Schedules 3 and 4 of the 2005 Regulations, allows persons purchasing PAY to continue purchasing PAY until the end of the arrangement.

Regulation 14 omits **Regulation C8 (Additional contributions to purchase current added years)** and so removes the ability to purchase CAY (although transitional provisions in paragraph 5 of Schedule 2 allow for a person to continue to purchase CAY until the end of the arrangement).

Regulation 15 amends **Regulation C9 (Additional contributions for current period: service in a reserve force)** to cater for the change in the employee's contribution rate.

Regulation 16 amends **Regulation C10 (Additional contributions for family benefits)**. This regulation, together with Schedule 6 (which is amended by inserting new Part IIB), deals with payment of additional contributions to cover pre-1 April 2007 service which would not otherwise count for the purpose of paying a survivor's pension to the surviving partner of a member nominated in accordance with new Regulation E22A.

Regulation 17(2) amends **Regulation C11 (Return of contributions)** to reflect the deletion of CAY and **paragraph (3)** raises the age for the return of contributions to 75 where a teacher does not qualify for benefits and a refund has not been claimed. This reflects the change to Regulation B6 whereby teachers can contribute to the STSS up until their 75th birthday.

Regulations 18 amends **Regulation C12 (Calculation of the purposes of regulation C11)** to reflect the removal of the PAY and CAY provisions.

Regulation 19 amends **Regulation C14 (Repayment of returned contributions)** to reflect the removal of regulations B9 and C8.

Regulation 20 amends **Regulation C15 (Deduction, payment and recovery of contributions)** as a consequence of the new Regulations C4A and C4B.

Regulation 21 amends **Regulation D4 (Current added years for which additional contributions have been paid)** to reflect the removal of Regulation C8.

Regulation 22 introduces new **Regulation EA1 (Meaning of various terms)** which sets out the criteria for existing member, new entrant and mixed service member. It explains that any break in service of more than 5 years will result in a change in status for existing members and that to retain their normal pension age, 60 days pensionable employment or 30 days reckonable service (whether continuous or not) over a 12 month period within that 5 year period will be required. It also stipulates the definition of normal pension age in relation to each type of member, which is a theme of the amendments throughout the document whereby "the age of 60" is replaced by "the normal pension age" or "65th birthday" is added to "60th birthday". Not every amendment has been listed to save repetition. Regulation E1A(12) provides added protection to those who are making contributions using the Current Added Years facility and to cover service in a reserve force. Such members will be treated as if they are in pensionable employment for the purposes of determining their status within the scheme.

Regulation 23 amends **Regulation E2 (Residual liability for guaranteed minimum pensions and for section 9(2B) rights)** to cater for NPA 65.

Regulation 24 amends **Regulation E4 (Nature of retirement benefits)** to introduce the ability to increase the amount of tax-free lump sum at retirement from the 3/80ths currently allowed.

Regulation 25 amends **Regulation E5 (Qualification for retirement benefits)** to reflect the deletion of regulation B9.

Regulation 26 substitutes **Regulation E6 (Entitlement to payment of retirement benefits)** mainly to simplify numbering of paragraphs and subparagraphs. Changes of substance are:

- deferred members must meet the total incapacity standard to be eligible for benefits; and
- the minimum retirement age (MRA) in relation to premature retirement ie the minimum age at which a member who is not a “post 30th June entrant” can be entitled to benefits under Regulation E6 is raised from 50 to 55 where the member has not reached the age of 50 before 6th April 2010.

Regulation 27 inserts new **Regulation E6A (Eligibility for payment of phased retirement benefits)** which allows a teacher to elect to receive some of his or her accrued benefits without the requirement of having to retire, known as phased retirement benefits. To be eligible, a member needs to have reached the age of 55 and either is to continue in his or her employment or has secured further employment elsewhere. In both cases, the teacher’s employer has to certify that the member has taken a minimum reduction in salary of 25% compared to before he or she applied for phased retirement benefits. A member can choose to make up to two such elections of his or her pension benefits before retirement. The amount of phased retirement benefits is calculated as set out in regulation E7 and (where applicable) E8 but taking into account actuarial reduction. The pensionable salary is calculated as the teacher’s pensionable salary immediately before the change in employment and the effective reckonable service is the percentage of the election up to the date of that change. Similar adjustment is made for any additional benefits to be paid as part of the phased retirement benefits.

Regulation 28 replaces the current **Regulation E7 (Amount of retirement pension)** to insert the differences in application between the 1/80th and 1/60th arrangements in respect of pension calculation. Regulation E7(9) and (10) introduce actuarial enhancements for those who are covered by the NPA 65 arrangements (whether as a new entrant or with mixed service) and who work beyond NPA 65.

Regulation 29 inserts a new **Regulation E7A (Retirement pension when election has been made under regulation C4B)** which makes provision for the calculation and payment of additional pension at retirement where the member had previously made an election to purchase additional pension under Regulation C4B.

Regulation 30 replaces the current **Regulation E8 (Amount of retirement lump sum)** to insert differences in application between the 1/80th and 1/60th arrangements in respect of lump sum. Regulation E8(4) of the substituted Regulation E8 provides that a member’s lump sum cannot exceed his “permitted maximum” defined in Schedule 1 by reference to the Finance Act 2004; paragraph (6) provides that a teacher aged 75 or over cannot receive a lump sum.

Regulation 31 introduces new **Regulations E8A (Lump sum in place of part of pension) and E8B (Teachers aged 75 or over)**. **Regulation E8A** indicates the commutation factors to be applied to the tax-free lump sum conversions from pension and the requirement for it to be within the maximum 25% of the fund value and **Regulation E8B** provides that where a member is prevented from receiving a lump sum because he or she is 75 years of age or over, he or she will receive an increased pension.

Regulation 32 amends **Regulation E10 (Enhancement of retirement benefits in case of incapacity)** and inserts a new **Regulation E10A**. **Regulation E10** is amended so that existing service enhancements are only applied in respect of applications received before 1 April 2007 and consequently the heading has been changed. **Regulation E10A** is inserted to cater for those whose application is received on or after 1 April 2007. E10A(2) details the conditions for enhancement to apply and E10A(3) to E10A(5) explain how enhancement will be calculated. E10A(6) confirms that enhancement will be calculated to the Normal Pension Age (NPA) of 65 in cases of mixed NPA 60 and NPA65 service and E10A(7) confirms that the enhancement (Total Incapacity Benefit), although separate to the retirement pension (Partial Incapacity Benefit), is paid at the same time. Under the new provisions, a member who is not in pensionable employment is only entitled to benefits if, as well as being incapacitated, his or her ability to carry out work is impaired by more than 90% and is likely permanently to be so. Where however a member is in pensionable employment or taking unpaid leave immediately following pensionable employment and is entitled to benefits he or she will also be entitled to payment of an additional “total incapacity pension” and, where applicable, lump sum if his or her ability to carry out work is impaired by more than 90% and is likely permanently to be so.

Regulation 33 amends **Regulation E11 (Avoidance of duplicate pensions)** to reflect the removal of CAY.

Regulation 34 omits **Regulation E14 (Allocation of part of retirement pension)** and thereby the ability to allocate part of a member’s pension to a dependant. Due to changes relating to unmarried partner benefits it is felt to be no longer relevant. Arrangements will remain in place whereby current allocation elections will be honoured.

Regulation 35 amends **Regulation E16 (Suspension and resumption of incapacity pension)** to reflect the renumbering of Regulation E6.

Regulation 36 amends **Regulation E17 (Withdrawal of incapacity pension)** so that it only relates to applications received before 1 April 2007.

Regulation 37 inserts new **Regulation E17A (Withdrawal of incapacity pension where application for payment was received on or after 1st April 2007)** for those teachers whose application is received on or after 1 April 2007. In essence, it sets out how those teachers with Total Incapacity Benefit can take up employment outside teaching if they have a medical certificate confirming that total incapacity still exists. Otherwise, it replicates the existing Regulation E17 in determining the dates from which incapacity has ceased and future retirement benefits become payable. Where the member has received the additional total incapacity pension but the member’s ability to carry out work ceases to be impaired by more than 90% the total incapacity pension ceases to be payable. If a member ceases to be incapacitated his or her retirement pension ceases to be payable. If a member takes up certain types of employment his or her ability to carry out work is treated as ceasing to be 90% impaired or (as the case may be) he or she is treated as ceasing to be incapacitated.

Regulation 38 amends **Regulation E18 (Abatement of retirement pension)** to reflect, where appropriate, the new pensionable salary arrangements in the determination of a member’s ‘salary of reference’. From 1 April 2007 onwards, the ‘salary of reference’ used to determine a teacher’s ‘earnings margin’ will depend on the date of cessation of employment or re-employment:

(a) cases where the member became entitled to pension before 1 April 2007 (regulation E18(3A)): the ‘salary of reference’ will be determined as per Regulation E18 as it currently stands.

(b) cases where the member became entitled to pension on or after 1 January 2009 (regulation E18(3B)): the ‘salary of reference’ will be based on the highest salary during the final 365 days (if used to calculate pension) OR the highest salary during the best three-year average period (if used to calculate pension).

(c) cases where the member became entitled to pension on or after 1 April 2007 and before 1 January 2009 (regulation E18(3C)): the better of (a) or (b).

Regulation 39 amends **Regulation E19 (Retirement benefits on cessation of further employment which began on or before 30th September 2001)** to reflect the omission of regulations B9, E14 and the renumbering of E6.

Regulation 40 amends **Regulation 20 (Retirement benefits on cessation of further employment where regulation E19 does not apply)** as a consequence of the deletion of Regulation B9.

Regulation 41 amends **Regulation E23 (Commutation: exceptional circumstances of ill-health)** to reflect the renumbering of paragraphs in Regulation E6.

Regulation 42 amends **Regulation E24 (Death grants)** to raise the death grant to three times the pensionable salary of the teacher for those who have service on or after 1 April 2007.

Regulation 43 amends **Regulation E25 (Deficiency grants)** to require any deficiency grant to be paid, in the absence of a nominee, to a surviving nominated partner.

Regulation 44 amends **Regulation E26 (Family benefits generally)** to provide for short and long-term pensions to be paid to a surviving nominated partner and to provide that a person nominated under regulation E27 does not receive a pension if he or she is co-habiting at the date of the member’s death.

Regulation 45 inserts new **Regulation E26A** to enable scheme members who are cohabiting as partners in an exclusive, committed long-term relationship to nominate their partner to receive a beneficiary’s pension.

Paragraphs (1) and (2) prescribe the conditions that must be met for a partner to be nominated. The scheme member (Person A) and the partner (Person B) are required to make a joint declaration that the following conditions have been met for a continuous period of two years when the nomination is made:

(a) both partners must be legally free to marry or enter a civil partnership;

(b) the couple must have been living together as if they were husband and wife or as if they were civil partners;

(c) neither A or B is living with a third person as if they were husband and wife or as if they were civil partners;

(d) either B is financially dependent on A, or A and B are financially interdependent.

Paragraph (3) deals with the situation where it comes to light that the conditions were not satisfied (ie the declaration was falsely made by either party). In such circumstances the nomination would have no effect and the Scottish Ministers would have power to reclaim any pension incorrectly paid.

Paragraph (4) deals with the circumstances under which a nomination ceases to have effect ie

(a) either party may give written notice to revoke;

(b) Person A makes a subsequent nomination;

(c) Person A marries or forms a civil partnership;

(d) Person B marries or forms a civil partnership.

Regulation 46 amends **Regulation E27 (Nomination of beneficiaries)**, which relates to the nomination of a close relative to receive benefits. This regulation is given a new heading to avoid confusion with new regulation E26A. Amendments are made to provide that, if a partner is nominated under regulation E26A, any previous nomination made under Regulation 27 ceases to have effect and no such nomination may be made while the nomination under Regulation E26A is current.

Regulations 47, 48, 49 and 50 amend **Regulations E28 (Entitlement to short-term family benefits), E29 (Amount and duration of short-term family benefits), E30 (Entitlement to long-term family benefits) and E31 (Amounts of surviving spouses', surviving civil partners' or nominated beneficiaries' long-term pensions)** respectively to provide for short and long-term pensions to be paid to the surviving nominated partner. The service that counts for the purpose of calculating a surviving nominated partner's pension is specified in new paragraph (4B) of Regulation E30.

Regulation 51 amends **Regulation E32 (Amount of children's long-term pension)** to provide for the calculation of long-term pensions payable to children where a pension is payable to a surviving nominated partner.

Regulation 52 inserts new **Regulation E32A (Additional dependant's pension where election made under regulation C4B)** to provide that if the scheme member has purchased additional pension for survivor partner, (widow, widower, civil partner or surviving nominated partner) purposes, the rate of the survivor pension would be half the rate of the additional pension purchased.

Regulation 53 amends **Regulation E33 (Commencement and duration of long-term family pensions)** so that survivor pensions are payable for the lifetime of the recipient. Widow, widower and civil partner pensions payable from a date prior to 1 April 2007 will remain liable to cessation on remarriage, civil partnership or cohabitation.

Regulation 54 amends **Regulation E34 (Pensionable salary)** to make new provisions for determining a member's pensionable salary on which benefits are calculated. The effect of the amendments, when taken with section 8(2)(a) of the Pensions (Increase) Act 1971, is that a member's pensionable salary is either the salary in the last 365 days of service or the average of the salary, index linked up to the date when the pensionable salary service ended, for the best 1095 consecutive days of service in the previous ten years. Consequential amendments are made to Regulation E18. Under transitional provisions, the existing provisions continue to apply where a member's entitlement to benefits took effect before 1 April 2007. Where a member became entitled to benefits on or after 1 April 2007 but before 1 April 2009, the pensionable salary will either be that calculated under the old provisions or that calculated under the new provisions whichever is the higher.

Regulation 55 inserts new **Regulation E34A (Pensionable salary – supplemental)** which describes the alternative pensionable salary calculation which is based on the best 1095 consecutive days of service in the last 10 years, index linked up to the date when the pensionable salary service ended. Sub-paragraphs (4) to (6) explain how this average salary works in conjunction with the Pensions Increase Act 1971 to provide the right level of benefits. Sub-paragraph (7) describes how service need not be continuous but that it may be necessary to look back further than 10 years in order to achieve 1095 days of service. Sub-paragraphs (8) and (9) repeat the leap year clarifications given in new regulations E34(14A) and (14B).

Regulation 56 amends **Regulation E35 (Effective reckonable service)** by removing the 40 years limit on reckonable service by age 60 whilst retaining the overall 45 years service limit overall.

Regulation 57 amends **Regulation E36 (Payment of benefits)** to provide that any application for benefits must be made in writing. It also makes clear that it is the responsibility of the applicant and the employer to provide the relevant medical evidence which supports the application.

Regulation 58 amends **Regulation E37 (Interest on late payment of certain benefits)** to provide that no interest is payable on any late payment of phased retirement benefits under regulation E6A and to provide for the date from which interest is payable when ill-health pensions are restored retrospectively.

Regulation 59 amends **Regulation F1 (Pension sharing mechanism: shareable rights)** to clarify that a pension paid to a surviving nominated partner is not a shareable right.

Regulation 60 amends **Regulation F9 (Failure to discharge liability in respect of pension credit within the implementation period – death of ex-spouse or ex-civil partner within period)** to take account of the increase in normal pension age.

Regulation 61 amends **Regulation F10 (Appropriate rights and pension credit members under the scheme)** to make clear that the lump sum amounting to three times the annual pension only relates to those credit members with a normal pension age of 60.

Regulation 62 inserts a new **Regulation F10A (Normal pension age)** which sets out the process for defining the normal pension age for a pension credit member and also for when the pension debit member has mixed service.

Regulation 63 amends **Regulation F13 (Commutation: exceptional ill-health)** to take account of the increase in normal pension age.

Regulation 64 inserts a new **Regulation F13A (Commutation on election by pension debit member)** to allow increased lump sum flexibility for pension credit members in line with those for the pension debit members, by way of commutation.

Regulation 65 amends **Regulation G1 (Payment of transfer values)** to reflect normal pension age of 65 in respect of transfer values as well as normal pension age 60.

Regulation 66 substitutes **Regulation H3 (Employers' contributions)** to set out how employers' contribution rate will be determined. The employer contribution rate is the balance between the overall Scottish valuation scheme cost (the net contribution rate) and the member rate that is set according to revised regulation C3. This amendment also makes provision for the increase in the employers' contribution rate from 12.5% to 13.5% from 1 April 2007.

Regulations 67 inserts new **Regulation H5A (Employers' contributions in respect of further employment)** and new **Regulation H5B (Employers' contributions in respect of additional benefits)**. **Regulation H5A** makes provision for the payment of employers' contributions where a teacher has become re-employed and contributions are to be backdated and **Regulation H5B** makes provision for payment of employers' contributions where the employer elects to purchase additional benefits on behalf of a teacher.

Regulation 68 amends **Regulation H6 (Payment by employers to Scottish Ministers)** to reflect the removal of PAY.

Regulation 69 amends **Regulation J1 (Modified application in case of employment at reduced salary)** which relates to 'stepping down' elections, which, with the introduction of the new pensionable salary arrangements will no longer be necessary. The effect of the amendments is that a reduction in salary will have to take place before 1 April 2007 and an election must be made by 1 July 2007 for a member to make use of the current provision.

Regulation 70 amends **Regulation J2 (Winding down employment)** to extend the winding down scheme to NPA 65 members and to allow a teacher to have a break of more than 5 years, but allowing only 5 years of any break to count towards the requirement of having 25 years teaching service. Consequently the required 25 years teaching service does not have to be immediately prior to winding down.

Regulation 71 amends **Regulation J6 (Repayment of contributions where an election is not made under regulation H6(5))** to reflect the removal of PAY.

Regulation 72 inserts new **Regulation J6A (Declaration where lump sum payments are made)** to introduce a requirement for a declaration to be signed prior to payment of benefits whereby the individual undertakes not to re-cycle any lump sum from the TPS into another pension-savings vehicle.

This amendment is necessary because the Finance Act 2006 amended the Finance Act 2004 to provide that from 6 April 2006 where individuals who use their tax-free lump sum, as a

result of accessing retirement benefits, to invest in other pension-saving vehicles, except where a low value exemptions apply, the lump sum will be an “unauthorised” payment and in consequence subject to tax charges.

If no declaration is received, any lump sum which would have been paid as a result of regulation E8 (pre-2007 and mixed service members) and regulation F10 (pension credit members) may be converted to an additional pension. Where the payment would have been a lump sum paid as a result of regulation E6A (phased retirement benefits), or E8A or F13A (lump sum in place of part of pension), then the election will have no effect.

Regulation 73 amends **Schedule 1 (Glossary of expressions)** which contains definitions. It includes a definition of ‘permitted maximum’ in relation to the tax-free lump sum by reference to the Finance Act 2004. It also changes the definition of the ‘appropriate factor’ so that, instead of there being set out in tables in Schedule 10, the factors are determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary). This approach, which is now common throughout the amending regulations, addresses the issue of reducing the need for formal legislative change at each minor amendment to factors. The removal of the many actuarial tables will also reduce the size and complexity of the regulations themselves.

Regulation 74 inserts a new **Schedule 2A (Elections in respect of additional benefits)**.

Detailed provisions include:

- Paragraphs 2 to 5 allow for a member to make an election to buy additional pension either by a lump sum payment or by monthly deductions from salary, and to define the period over which the monthly contributions will be made. This period is limited to either 20 years or the member’s NPA, whichever is sooner. Paragraph 7 provides for an election to be made to purchase additional pension in units of a value determined by the Scottish Ministers.
- Paragraph 8 provides that the member must make a health declaration when purchasing additional pension to protect the scheme where the member is more likely to access ill health benefits or to have a reduced life expectancy.
- Paragraphs 11 to 16 allow for the employer of a member to elect to purchase additional pension on his or her behalf by means of a lump sum payment.
- Paragraphs 18 to 22 set out the maximum additional pension that can be purchased. This limit is initially £5,000 but will increase annually in line with retail prices and be subject to periodic review by HM Treasury.
- Paragraph 23, taken together with paragraph 37, provides for the Scottish Ministers to vary the cost of purchasing additional pension and for any changes in the cost to be reflected in the payments made by members.
- Paragraphs 25 and 26 allow a member who is paying by monthly contributions to revoke the election that has been made and to be credited with the additional pension having regard to contributions already paid.

- Paragraph 28 provides that, where a teacher ceases to be in pensionable employment before the end of the payment period, he or she may elect to make a lump sum payment to cover the remainder of the election or to receive additional pension equivalent to the contributions already made.
- Paragraph 31 provides for the return of contributions where a teacher becomes eligible for benefits through incapacity within one year of an election to buy added pension benefits. Where the retirement is more than 12 months after the election, the member will be credited with the benefits he or she had elected to purchase.
- Paragraphs 34 to 36 provide that, in the event of a teacher's death within one year of making an election, any contributions made by the member will be returned to his or her estate and any contributions from an employer will be returned to the employer. The teacher's dependants will not receive any additional benefits under that election. Where the death occurs after one year, the dependants will be credited with the full amount of the additional pension specified in the election.

Regulation 75 amends **Schedule 3 (Maximum purchase of added years)** to reflect the removal of PAY and CAY provisions and the renumbering of Regulation E6.

Regulations 76 and 77 amend **Schedule 4 (Additional contributions to purchase past added years)** and **Schedule 5 (Additional contributions to purchase added years under earlier provisions)** respectively to reflect the removal of PAY and CAY provisions.

Regulation 78 amends **Schedule 6 (Family benefits)**. The tables of factors for the payment of additional contributions to purchase pre-6 April 1988 service for widower and civil partner pension purposes have been taken out of Parts II and IIA of the Schedule. The relevant paragraphs now refer instead to “multipliers determined from time to time by the Scottish Ministers (after taking advice from the Government Actuary).” A new Part IIB is inserted into Schedule 6 to give scheme members who have made a SNP nomination and who are in pensionable employment, the opportunity to pay additional contributions to convert service before 1 April 2007. Scheme members wishing to pay additional contributions for SNP purposes are required to make a health declaration.

Regulation 79 amends **Schedule 7 (Incomplete payment of additional contributions)** to reflect the renumbering of Regulation E6.

Regulation 80 amends **Schedule 9 (Modified application in certain cases)** to cater for NPA 60 and NPA 65 and to reflect the renumbering of Regulation E6..

Regulation 81 omits **Schedule 10 (Early Retirement Factors)** and **Schedule 11 (Allocation of part of retirement pension)**. Schedule 10 contains early retirement factor tables. This links in with the definition of “appropriate factor” (see regulation 70 above) and Schedule 11 relates to Regulation E11 (Allocation of part of retirement pension) which is being removed.

Regulation 82 amends **Schedule 12 (Transfer values)** to reflect the removal of PAY and CAY provisions.

Regulation 83 inserts **Schedule 2** to these regulations to make savings and transitional provisions.

Regulations 84 to 103 amend the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996

The majority of the amendments to these regulations are simply changing the references to the regulations of the 2005 Regulations following consolidation. Changes of substance are as follows:-

Regulation 88 omits **Regulation 6 (Allocation of part of annual compensation)** to remove the allocation provision in line with the changes to the Teachers' Superannuation (Scotland) Regulations 2005. Arrangements will remain in place whereby current allocation elections will be honoured.

Regulation 92 amends **Regulation 10 (Payment of compensation under regulation 7, 8 and 9)** to make provision for short-term compensation to be payable to surviving nominated partners (paragraph (2)) and to clarify that long-term compensation is only subject to cessation upon remarriage, formation of a civil partnership or cohabitation where the compensation pension arose from a death occurring prior to 1 April 2007 (paragraph 3).

Regulation 100 inserts new **Regulation 19B (Declaration where lump sum payments are made)** to allow the former employer (as "the compensating authority") to require an individual to sign a declaration stating that the lump sum element to his or her mandatory premature retirement compensation will not be re-cycled into another pension-saving vehicle. The background to this provision is explained under Regulation 66 above.

Regulations 104 to 110 amend the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995

Regulation 105 amends **Regulation 2(3) (Interpretation)** to insert a definition of normal pension age giving it the same meaning as that with the 2005 Regulations. The definition of "retire" has been removed to reflect the change in approach to retirement and the fact that as the AVC scheme is regarded, for tax purposes, as a separate entity from the main scheme benefits. Paragraph 1(b) amends regulation 2 so that "dependant" includes a person in whose favour a nomination under regulation E26A of the 2005 Regulations has effect.

Regulation 106 amends **Regulation 5(4) (Allocation of lump sum death benefit to provide dependants' pensions)** which stipulates that anyone working beyond age 60 has to elect annually to pay further contributions to the AVC scheme. This reflects the fact that the STSS will have two normal pension ages that will apply from 1 April 2007.

Regulation 107 amends **Regulation 8(2)(c) (Contributor)** to reflect the removal of CAY.

Regulation 108 amends **Regulation 12 (Retirement and dependants' pensions)** to introduce the term 'relevant date' which enables the benefits from the AVC scheme to be realised separately from the main scheme and any time after reaching the age of 55. The exceptions to this age requirement are when the main scheme benefits have been paid earlier through regulation E6 of the main scheme regulations eg ill-health or premature retirement, when AVC benefits can be paid earlier.

Paragraph (5) replaces Regulation 12(6) to amend the provisions relating to the payment of the balance of a pension after a teacher's death, where the teacher has notified the pension provider that he or she wishes the pension to continue if the teacher dies within 5 years. In place of the current provision whereby the balance is paid as a lump sum (which would be an unauthorised payment under the Finance Act 2004) the method of payment of the balance is at the discretion of the pension provider.

Regulation 109 amends **Regulation 13A (Pension sharing on divorce)** to make similar changes in relation to arrangements created through a pension-sharing order.

Regulation 110 amends **Regulation 16 (Payment by Scottish Ministers)** by introducing a declaration to the application form to access the accumulated AVC fund. To protect the scheme from sanction charges which might otherwise be imposed by HMRC, in respect of an unauthorised payment the declaration will ask the individual to confirm that he or she does not intend to recycle any lump sum into another pension-savings vehicle. It also provides that, where an individual refuses to sign the declaration that the lump sum will not be recycled, any election under the existing regulation 12 for the provision of a lump sum, may have no effect and the whole accumulated fund will then be used to purchase an annuity (pension) and no lump sum element would be made available.