SCOTTISH STATUTORY INSTRUMENTS

2009 No.

PENSIONS

The Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 2009

Made - - - -	*2009*
Laid before the Scottish Parliament	*2009*
Coming into force - -	*[1st April 2009]*

ARRANGEMENT OF REGULATIONS

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.

(**a**) 1972 c.11; 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, 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).

In accordance with section 9(5) of that Act they 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(**a**).

Citation and commencement

1.— These Regulations may be cited as the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 2009 and come into force on [1st April 2009].

Interpretation

2.— In these Regulations, unless the context otherwise requires–

"the 1995 Regulations" means the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995(**b**);

"the 1999 Act" means the Welfare Reform and Pensions Act 1999(**c**);

"the 2004 Act" means the Finance Act 2004(**d**);

"the 2005 Regulations" means the Teachers' Superannuation (Scotland) Regulations 2005(**e**);

"actuarial" has the meaning assigned to it by Schedule 1 to the 2005 Regulations;

"authorised provider" has the meaning assigned to it by section 9(6) of the Superannuation Act 1972;

"the AVC Scheme" means the occupational pension scheme (within the meaning of section 1(1) of the Pension Schemes Act 1993(**f**)) established under section 9 of the Superannuation Act 1972 and these Regulations;

"cash equivalent" means a cash equivalent referred to in section 94(1) of the Pension Schemes Act 1993(**g**);

"contributor" is to be construed in accordance with regulation 8;

"dependant" in relation to either a participator or a contributor means–

(a) any surviving spouse, surviving civil partner or surviving nominated partner;

(b) any person who is a child of the participator or contributor, "child" being construed in accordance with regulation E26 of the 2005 Regulations; and

(c) any person in respect of whom at the time of death of the participator or the contributor a nomination under regulation E26A or E27 of the 2005 Regulations has effect;

"the Index" means the index of retail prices published by the Office for National Statistics;

"Investment Linked Pension" means a pension which is linked to the performance of investments after it becomes payable and which is payable from the proceeds of an annuity

(**a**) 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.
(**b**) S.I. 1995/2814, amended by S.I. 2001/3649, S.S.I. 2000/444, 2001/292, 2005/543, 2006/308 and 605, 2007/189 and 2008/227.
(**c**) 1999 c.30.
(**d**) 2004 c.12.
(**e**) S.S.I. 2005/393, amended by S.S.I. 2005/543, 2006/308 and 2214, 2007/189 and 2008/227.
(**f**) 1993 c.48, section 1 was amended by section 18 and Schedule 2, paragraph 3 of the Welfare Reform and Pensions Act 1999 (c.30), article 4 and Schedule 2, paragraph 113 of the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820), section 239 of the Pensions Act 2004 (c.35), Schedule 20, paragraph 23 and Schedule 27, Part 3 of the Finance Act 2007 (c.11) and regulation 2, Schedule, paragraph 1 of the Occupational Pension Schemes (EEA States) Regulations 2007 (S.I. 2007/3014).
(**g**) 1993 c.48, section 94(1) was amended by section 154 of the Pensions Act 1995 (c.26) and section 84 and Schedule 12, paragraph 35 of the Welfare Reform and Pensions Act 1999 (c.30).

policy authorised by the Scottish Ministers for the purposes of these Regulations and purchased from an authorised provider selected by them;

"lump sum death benefit" means a lump sum which will become payable in the event of a person dying while paying regular contributions to provide for it;

"normal pension age" is to be construed in accordance with the 2005 Regulations;

"old regulation C8" has the meaning given to it in Schedule 1 to the Superannuation Regulations;

"participator" means–

(a) a contributor who has made a benefits election under regulation 12(6);

(b) a person who has ceased to be a contributor, not being a person in respect of whom the Scottish Ministers have paid a transfer value under regulation 11; or

(c) a person in respect of whom a transfer value has been accepted under regulation 10;

"pension credit" means a credit under section 29(1)(b) of the 1999 Act or under corresponding Northern Ireland legislation;

"pension credit benefits" means in relation to the AVC Scheme the benefits payable under that Scheme which are attributable (directly or indirectly) to a pension credit;

"pension credit member" means a person who has rights under the AVC Scheme which are attributable (directly or indirectly) to a pension credit either solely or wholly separately from any other rights under the AVC Scheme;

"pension debit" means a debit under section 29(1)(a) of the 1999 Act or under corresponding Northern Ireland legislation;

"pension debit member" means a person who has rights under the AVC Scheme and whose shareable rights under that Scheme are subject to a pension debit;

"pension element" has the meaning given by regulation 5(2);

"pension sharing order" means a pension sharing order or other provision referred to in section 28(1) of the 1999 Act or article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(**a**);

"pensionable employment" shall be construed in accordance with Part B of the 2005 Regulations;

"reckonable service" shall be construed in accordance with Part D of the 2005 Regulations;

"registered pension scheme" shall be construed in accordance with section 150(2) of the 2004 Act;

"regular contributions" means contributions which a person has elected to pay under regulation 4(1)(a) or 4(1)(c);

"retirement pension" has the meaning given by regulation 12(3);

"salary" means–

(a) in relation to pensionable employment, the salary calculated in accordance with regulation C1 of the 2005 Regulations; and

(b) in relation to contributions payable under old regulation C8 or regulation C9 of the 2005 Regulations, the notional salary determined in accordance with the provisions of those regulations for the purposes of calculating the said contributions;

"shareable rights" means any right a person has under the AVC Scheme except those rights referred to in regulation 2 of the Pension Sharing (Valuation) Regulations 2000(**b**);

"surviving nominated partner" means a person nominated in accordance with regulation E26A of the 2005 Regulations; and

"tax year" means the 12 months beginning with 6th April in any year.

(**a**) S.I. 1993/3147 (N.I. 11).

(**b**) S.I. 2000/1052; relevant amending instruments are S.I. 2005/2877 and 2006/744. See the Welfare Reform and Pensions Act 1999, section 27(2).

(2) Subject to the provisions of this regulation and except where the context otherwise requires, other expressions in these Regulations have the same meaning as in the 2005 Regulations.

Making and acceptance of elections

3.—(1) Any election under these Regulations–

(a) is to be made by giving written notice to the Scottish Ministers; and

(b) shall, subject to paragraphs (2) and (3), be accepted by them.

(2) No election under these Regulations shall be accepted if the minimum imposed by regulation 4(3) is not met.

(3) An election falling within regulation 17(2) shall not be accepted if any information required by that regulation is not given.

Election to pay additional voluntary contributions

4.—(1) A person in pensionable employment may at any time elect to pay–

(a) regular contributions for investment under regulation 9(1);

(b) a single payment contribution for investment under regulation 9(1); or

(c) regular contributions to provide for a lump sum death benefit under these Regulations.

(2) The notice of such an election shall specify–

(a) in the case of an election under paragraph (1)(a), the amount of each regular contribution or, if expressed as a percentage of salary, that percentage;

(b) in the case of an election under paragraph (1)(b), the amount of the contribution;

(c) in the case of an election under paragraph (1)(a) or (b), the fund or funds in which contributions are to be invested; and

(d) in the case of an election under paragraph (1)(c), the amount of each regular contribution.

(3) In the case of an election under paragraph (1)(c), the amount to be assured must be not less than £5,000 and shall be calculated by reference to regular contributions, in accordance with publicly available tables provided by the Scottish Ministers.

Allocation of lump sum death benefit to provide dependants' pensions

5.—(1) This regulation shall apply where a person elects under regulation 4(1) to pay regular contributions to provide for a lump sum death benefit.

(2) A person who elects to pay regular contributions to provide for a lump sum death benefit may at the same time, or at any time while paying those contributions, elect that if the lump sum becomes payable, the whole or part of it (the pension element) shall be applied by the Scottish Ministers for the purchase of a pensions policy from an authorised provider to provide a pension or pensions for one or more dependants.

(3) The notice of an election under paragraph (2) shall specify–

(a) for whom a pension is, or pensions are, to be provided;

(b) if more than one pension is to be provided, the proportion of the pension element that is to be applied to the purchase of each of them; and

(c) in respect of every pension to be provided, whether the annual rate of the pension–

(i) is to be fixed; or

(ii) is to vary in accordance with the Index; or

(iii) is to increase yearly by a specified percentage or, if lower than that percentage, by any increase in the Index for the year in question; or

(iv) is to be an Investment Linked Pension.

(4) A person who has continued to pay regular contributions up to his or her normal pension age but does not then cease to be in pensionable employment may elect to pay regular contributions up to the person's first birthday after the person reached the normal pension age to provide for a lump sum death benefit; and so long as the person has not ceased to be in pensionable employment further elections may be made annually in respect of years commencing on the person's first birthday after the person reached the normal pension age and subsequent birthdays.

(5) Any election made by a person under paragraph (4) shall lapse if the person retires or ceases to be in pensionable employment during the year in question.

(6) An election under regulation 4(1) to provide a lump sum death benefit or an election under paragraph (4) shall have effect for the purpose of entitlement to benefit from the date when the election is accepted by the Scottish Ministers.

Variation and cancellation of elections

6.—(1) A contributor who has elected under regulation 4(1) to pay regular contributions for the purpose of investment under regulation 9(1) may at any time by giving written notice to the Scottish Ministers–

(a) alter the amount of the regular contributions;

(b) require them to be invested in future, under regulation 9(1), in a different way; or

(c) cancel the election under regulation 4(1).

(2) A contributor who has elected under regulation 4(1)(b) to pay a single payment contribution may at any time by giving written notice to the Scottish Ministers require the Scottish Ministers to realise any investment and to reinvest the proceeds, under regulation 9, in a different way.

(3) A contributor who has elected under regulation 4(1) to pay regular contributions to provide a lump sum death benefit may at any time by giving written notice to the Scottish Ministers–

(a) elect that a specified larger sum is to be assured and the regular contributions increased accordingly; or

(b) if the contributor has made an election under regulation 5(2), cancel it or alter in any specified way the manner in which the pension element is to be applied; or

(c) cancel the election made under regulation 4(1).

(4) A contributor who has elected under regulation 4(1) to pay regular contributions for the purpose of investment under regulation 9(1) may at any time by giving written notice to the Scottish Ministers require the Scottish Ministers to realise any investments and to reinvest the proceeds in a different fund to be specified by the contributor.

(5) A person paying further regular contributions under regulation 5(4) may at any time make an election under regulation 5(2) or do anything authorised by paragraph (3) above.

(6) The Scottish Ministers shall give effect as soon as is reasonably practicable to the terms of any notice given under this regulation.

Payment and amount of additional voluntary contributions

7.—(1) Regular contributions shall be paid to the Scottish Ministers at intervals of one month.

(2) Payment of regular contributions under paragraph (1) shall be effected by deduction by the contributor's employer of the appropriate amounts from the contributor's salary and such deductions shall commence to be made from the salary in respect of the first whole pay period falling after the date the employer receives authorisation to make these deductions, which shall be remitted to the Scottish Ministers within 7 days after their deduction.

Contributor

8.—(1) Subject to paragraph (2), a person is a contributor while an election under regulation 4(1)(a) or (c) has effect or if the person has paid a single payment contribution pursuant to an election under regulation 4(1)(b).

(2) A person who–

(a) receives retirement benefits under the 2005 Regulations; or

(b) has, under regulation 6(1)(c) or 6(3)(c), cancelled the election or elections to pay regular contributions; or

(c) subject to paragraph (3), has ceased to be in pensionable employment and is not paying contributions under old regulation C8(**a**) or regulation C9(**b**) of the 2005 Regulations (contributions for current added years); or

(d) is in employment which is not pensionable employment by virtue of an election under regulation B7 of the 2005 Regulations,

ceases to be a contributor.

(3) For the purpose of this regulation a person who–

(a) has ceased to be in pensionable employment; and

(b) has re-entered pensionable employment within 3 months,

is to be treated as having continued to be in pensionable employment.

Investment of contributions

9.—(1) Any contributions paid by a contributor for investment under this regulation shall be invested by the Scottish Ministers, in accordance with any notice under regulation 4(2), 6(1) or 6(2) in one or more of the funds authorised by them for the purposes of these Regulations managed by an insurer selected by them.

(2) Regular contributions to provide for a lump sum death benefit shall be invested by the Scottish Ministers with an insurer selected by them so as to assure the payment of a lump sum death benefit of the amount determined in accordance with notice of election made under regulation 4(1) and (2) and, as appropriate, regulation 6(3).

(3) In this regulation "insurer" means–

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(**c**) to effect or carry out contracts of long-terms insurance; or

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance.

(4) Paragraph (3) must be read with–

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section;

(c) Schedule 2 to that Act.

Inward transfers

10.—(1) Where a person in pensionable employment has paid contributions to a registered pension scheme for the purposes of the 2004 Act, that person, whether or not he or she becomes

(**a**) Regulation C8 was repealed by regulation 14 of the Teachers' Superannuation (Scotland) Amendment Regulations 2007 (S.S.I. 2007/189) but continues to have effect in relation to any teacher who left pensionable employment before 1 April 2007 under paragraph 5(1) of Part 1 of Schedule 2 to those Regulations.

(**b**) Regulation C9 was amended by regulation 15 of the Teachers' Superannuation (Scotland) Amendment Regulations 2007 (S.S.I. 2007/189)

(**c**) 2000 c.8.

a contributor (within the meaning of these Regulations) may give written notice to the Scottish Ministers that he or she wishes the Scottish Ministers to accept from the trustees or managers of that scheme a transfer value representing the value of the investments from those contributions.

(2) Where a transfer value is accepted by the Scottish Ministers it shall be invested by them, in accordance with the wishes of the person in pensionable employment, in one or more of the funds authorised by the Scottish Ministers for the purposes of these Regulations managed by an insurer selected by them.

Outward transfers

11.—(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 be payable under 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 29th January 2007 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 2005 Regulations.

(3) Where a transfer value is payable under paragraph (1), the Scottish Ministers shall make payment by whichever is the earlier of the following–

(a) the date 6 months after the guarantee date; or

(b) the date on which the applicant attains the normal pension age where the applicant–

(i) ceased to be a contributor in accordance with regulation 8(2)(c) or (d) on a date which falls at least one year before the date on which the applicant attains the normal pension age; and

(ii) made an application for payment of a transfer value within 6 months of that date.

(4) The Scottish Ministers may pay a transfer value representing the value of a person's pension credit or of investments made under regulation 13A(2) in the circumstances of Chapter II of Part IVA of the Pension Schemes Act 1993(**a**) and regulations made under that Chapter(**b**).

Retirement and dependants' pensions

12.—(1) In this regulation "the relevant date", in relation to a contributor or participator, means–

(a) the date on which he or she attains the age of 55; or

(b) the date on which he or she becomes entitled to payment of retirement benefits under regulation E6 of the 2005 Regulations,

whichever is the earlier.

(2) The benefits that may be provided at any time after the relevant date in accordance with this regulation under a pension policy purchased as described in paragraph (8) are a retirement pension, one or more dependants' pensions or a lump sum which is a pension commencement lump sum for the purposes of Part 1 of Schedule 29 to the 2004 Act.

(**a**) Part IVA was inserted into the Pension Schemes Act 1993 by section 37 of the Welfare Reform and Pensions Act 1999 (c.30). Chapter II was amended by article 122 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649) and Schedule 12, paragraph 15 of the Finance Act 2004 (c.35).

(**b**) See Part III of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054). Relevant amending instruments are S.I. 2000/1054, 2000/2691, 2003/1727, 2005/706, 2006/34 and 2007/60.

(3) A retirement pension is a pension commencing not earlier than the relevant date and is payable to the participator for life.

(4) A dependant's pension is a pension which would become payable to a dependant on the death of the participator after the participator's retirement and is payable for life, except that, in the case of a dependant who is a child as defined in the 2005 Regulations, it shall cease to be payable when that person ceases to be a child within the meaning of those Regulations.

(5) A pension policy purchased as described in paragraph (8) shall not provide for any retirement pension or dependant's pension to be capable in whole or in part of surrender, commutation or assignment (except as provided by paragraphs (10) and (11)).

(6) A contributor may, at any time but not earlier than one month before the relevant date, by giving written notice to the Scottish Ministers make a benefits election which shall specify–

(a) whether a retirement pension is to be provided;

(b) for whom, if anyone, dependants' pensions are to be provided;

(c) if more than one pension is to be provided, either–

(i) the proportion of the amount assured by the investments made under regulation 9(1) or 10(2) that is to be applied to the purchase of each of them; or

(ii) the dependants' pensions to be provided expressed as a percentage of the retirement pension;

(d) in respect of every pension to be provided, whether the annual rate of the pension–

(i) is to be fixed; or

(ii) is to vary in accordance with the Index; or

(iii) is to increase yearly by a specified percentage or, if lower than that percentage, by any increase in the Index for the year in question; or

(iv) is to be an Investment Linked Pension;

(e) the authorised provider who is to provide each pension; and

(f) whether a pension commencement lump sum is to be paid, and if so, the amount of such sum.

(7) In the case of a retirement pension, the notice may also specify that, if the participator dies within a period specified in the notice, being a period of no less than 5 years and no more than 10 years beginning when the retirement pension commences, the pension shall continue to be paid during the remainder of that period to such person as the authorised provider or the Scottish Ministers, where they are liable to make payments of the pension pursuant to regulation 16(2), determine.

(8) Subject to paragraphs (10) and (11), upon receipt of the notice of election the Scottish Ministers shall, as soon as is reasonably practicable, realise the investments made under regulation 9(1) or 10(2) and–

(a) out of the amount obtained make any payment of a pension commencement lump sum in accordance with the election; and

(b) apply the balance of the amount obtained to the purchase of a pension policy from an authorised provider chosen by the participator to provide the benefits specified in the election.

(9) Subject to paragraphs (10) and (11), if the participator has not made an election under paragraph (6) before he or she attains the age of 75, the Scottish Ministers may on or after his or her attaining that age realise the investments made under regulation 9(1) and 10(2) and apply the amount obtained to the purchase of a pension policy from the insurer referred to in regulation 9 to provide such benefits as appear to them to be suitable.

(10) If the participator dies before the relevant date, or after the relevant date but before a policy such as is mentioned in paragraph (8) is entered into, the investments made under regulation 9(1) or 10(2) shall be realised and become payable as a lump sum.

(11) In the case of a retirement pension, where there are exceptional circumstances of serious ill-health affecting the participator, the Scottish Ministers may realise the investments without purchasing any pension and in that event the amount becomes payable as a lump sum if such a lump sum would be a serious ill-health lump sum as defined in paragraph 4 of Schedule 29 to the 2004 Act.

(12) The authorised provider may discharge the liability for payment of the benefits under the pension policy by payment of a lump sum representing their capital value if such a lump sum would be a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to the 2004 Act.

Lump sum death benefits

13.—(1) If a contributor who is paying regular contributions to provide a lump sum death benefit dies when no election under regulation 5(2) has effect, the lump sum assured by these contributions shall become payable.

(2) If on the death of a contributor an election under regulation 5(2) has effect–

(a) the Scottish Ministers shall apply the pension element by purchasing a pension policy from the authorised provider determined in accordance with paragraph (3) or (4) to provide the pension or pensions specified in the notice of election; and

(b) any balance of lump sum assured shall become payable.

(3) Any dependant for whom a pension is to be provided pursuant to paragraph (2) who has attained the age of 18 years at the date of death of the contributor may within six months of the date of death of the contributor make an election specifying the authorised provider by whom the pension is to be provided and, where such an election is made, the pension policy shall be purchased from that authorised provider.

(4) Where no election has been made pursuant to paragraph (3) the pension policy shall be purchased from the insurer referred to in regulation 9.

(5) If at the time of death of the contributor any person named in a notification given under regulation 5(3) had died or ceased to be a dependant, the proportion of the lump sum death benefit that was to have been applied to the purchase of a pension for that person shall not be used for that purpose, but shall be added to the balance becoming payable under paragraph (2)(b).

Pension sharing on divorce or on the dissolution of a civil partnership

14.—(1) Pension sharing within the meaning of Part IV of the 1999 Act is available under the AVC Scheme in respect of all or part of a person's shareable rights as set out in this regulation except as otherwise provided and the Scottish Ministers shall discharge their liability in respect of a pension credit which derives from the AVC Scheme in accordance with paragraph 1 of Schedule 5 to the 1999 Act (pension credits: mode of discharge: funded pension schemes).

(2) Upon the taking effect of a pension sharing order, an amount representing the pension credit member's share of the pension debit member's accumulated additional voluntary contributions calculated in accordance with regulation 10(4) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(**a**), shall be invested by the Scottish Ministers in accordance with the wishes of the pension credit member in one or more of the funds authorised by the Scottish Ministers for the purposes of these Regulations managed by an insurance company selected by them.

(3) The benefits that may be provided in accordance with this regulation under a pension policy purchased as described in regulation 12(8) as it applies in the circumstances of this regulation are a pension, one or more dependant's pensions and a lump sum which is a pension commencement lump sum for the purposes of Part 1 of Schedule 29 to the 2004 Act.

(**a**) S.I. 2000/1053, regulation 10(4) was amended by regulation 11(5) of the Pension Sharing (Consequential and Miscellaneous Amendments) Regulations 2000 (S.I. 2000/2691).

(4) The pension will commence not earlier than the date on which the pension credit member attains the normal pension age and is payable for life.

(5) A dependant's pension is a pension which would become payable to a dependant on the death of the pension credit member after his or her pension has commenced as provided in paragraph (4) and is payable for life, except that, in the case of a dependant who is a child as defined in the 2005 Regulations, it shall cease to be payable when that person ceases to be a child.

(6) Upon the death of a person after a pension sharing order has been made but before the Scottish Ministers have discharged their liability in respect of the pension credit to which that person would otherwise be entitled, a lump sum equal to the value of the pension credit at the date of that person's death shall be paid to his or her executors.

(7) Paragraphs (5) to (12) of regulation 12 apply in the circumstances of this regulation with the following modifications–

(a) the reference to participator shall be a reference to pension credit member;

(b) the reference to the relevant date shall be a reference to the date on which the pension commences under regulation 14(4);

(c) the reference to retirement pension shall be a reference to a pension credit member's pension;

(d) the reference to investments made under regulation 9(1) or 10(2) shall be a reference to investments made under regulation 14(2);

(e) the reference to the insurer referred to in regulation 9 shall be a reference to the insurer referred to in regulation 14(2); and

(f) the reference in paragraph (11) to serious ill-health shall be a reference to ill-health which is such as to give rise to a life expectancy of less than one year from the date on which commutation is applied for.

(8) In regulation 16, wherever regulation 12(6), (7) or (10) is referred to, it shall include a reference to that regulation as modified by this regulation in relation to pension credits.

Repayment of investments in certain cases

15.—(1) In the case of a person who–

(a) ceases to be in pensionable employment; and

(b) is entitled to receive a return of contributions under regulation C11 of the 2005 Regulations; and

(c) has applied for and received such a return of contributions,

the Scottish Ministers shall make arrangements for that person to receive a lump sum representing the total realisable value of the investments made by the Scottish Ministers in respect of that person under regulation 9(1) or 10(2).

(2) There shall be deducted from any lump sum payable under paragraph (1) the amount of tax chargeable under section 205 of the 2004 Act.

Payment by the Scottish Ministers

16.—(1) Where pursuant to an election under regulation 5(2), 12(6) or 13(3) the Scottish Ministers purchase a pension policy from an authorised provider specified by the elector other than the insurer referred to in regulation 9, the Scottish Ministers shall not be liable for payment of any pension under that policy.

(2) Where pursuant to an election under regulation 5(2), 12(6) or 13(3) the Scottish Ministers purchase a pension policy from the insurer referred to in regulation 9, the Scottish Ministers shall be liable to make to the person entitled to it any payment of pension under the policy which has not been made by the insurer.

(3) Subject to paragraphs (4) and (5) lump sums payable as mentioned in regulation 12(2) shall be paid by the Scottish Ministers to the participator.

(4) The Scottish Ministers may, before paying any lump sum as mentioned in regulation 12(2) require the person to whom the payment is to be made to provide a declaration as specified in paragraph (5) by a date determined by the Scottish Ministers.

(5) The declaration is a declaration in a form specified by the Scottish Ministers, signed by that person, to the effect that paragraph 3A of Schedule 29 to the 2004 Act does not apply.

(6) Where no such declaration is received by the Scottish Ministers by the date referred to in paragraph (4) the Scottish Ministers may treat the election under regulation 12 for a lump sum benefit as of no effect, and may apply the amount of the lump sum to the purchase of a pension policy from the insurer referred to in regulation 9 to provide such benefits as appear to them to be suitable.

(7) Lump sums payable–

(a) as mentioned in regulation 12(10); or

(b) under regulation 13(1) or 13(2)(b),

shall be paid by the Scottish Ministers to the person to whom any death gratuity is payable under regulation E24(7) of the 2005 Regulations.

(8) Lump sums payable under regulation 12(11), 12(12) or 15 shall be paid by the Scottish Ministers to the former contributor.

(9) The amount of any tax chargeable under the 2004 Act on payments made under these Regulations shall be deducted by the Scottish Ministers before payment.

Information

17.—(1) Persons making elections under these Regulations, and their employers, shall give the Scottish Ministers such information as they may reasonably require for the purposes of their functions under these Regulations.

(2) A person making–

(a) an election under regulation 4(1) or 5(4) to provide a lump sum death benefit; or

(b) an election under regulation 6(3)(a); or

(c) an election under regulation 6(5) corresponding to one that could have been made under regulation 6(3)(a),

shall, in particular, give the Scottish Ministers such information about the person's health as the Scottish Ministers may reasonably require.

Payments in respect of deceased persons

18.—(1) This regulation applies where a person dies and the total of–

(a) any sums that were due to him or her under these Regulations; and

(b) any sums payable under these Regulations to his or her executors,

does not exceed the amount specified in any order for the time being in force under section 6(1) of the Administration of Estates (Small Payments) Act 1965(**a**) and applying in relation to the death.

(2) Where this regulation applies the Scottish Ministers may, without requiring the production of confirmation or other proof or title, pay the total sums referred to in paragraph (1)–

(a) to the deceased's executors; or

(b) to the person, or to or among any one or more of any persons, appearing to them to be beneficially entitled to the estate,

(**a**) 1965 c.32; the amount specified in S.I. 1984/539 is £5,000.

and any person to whom such a payment is made, and not the Scottish Ministers, shall thereafter be liable to account for any amount so paid.

Determination of questions

19. The Scottish Ministers shall determine any question concerning any person's rights or liabilities under these Regulations and their decision shall be final. Any dispute shall be resolved in accordance with the dispute resolution arrangements issued from time to time by the Scottish Ministers in accordance with section 50 of the Pensions Act 1995(**a**).

Revocation and transitional provisions

20.—(1) The 1995 Regulations are revoked.

(2) Anything done under or for the purposes of a provision of the 1995 Regulations has effect, if it could have been done under or for the purposes of the corresponding provision of these Regulations, as if done under or for the purposes of that corresponding provision.

(3) Without prejudice to the provisions of section 16 of the Interpretation Act 1978(**b**) the revocation of the 1995 Regulations shall not affect any obligation of the Scottish Ministers to pay any pension pursuant to the 1995 Regulations to or in respect of a person who retired or died before [31 March 2009].

(**a**) 1995 c.26, section 50 was substituted by section 273 of the Pensions Act 2004 (c.35).
(**b**) 1978 c.30.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the payment of additional voluntary contributions by teachers who are members of the Superannuation Scheme as constituted by the Teachers' Superannuation (Scotland) Regulations 2005 (S.S.I. 2005/393) ("the 2005 Regulations"), in order to secure additional benefits financed by investment of those contributions. They revoke and re-enact the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995 (S.I. 1995/2814) ("the 1995 Regulations") with amendments. The Regulations have effect from [1 April 2009].

The Regulations provide for the making of elections of various kinds. Regulation 3 contains general provisions as to their making and acceptance; regulation 4 provides for elections to pay single payment and regular contributions so as to secure additional retirement and dependants' pensions and further provides for elections to pay regular contributions so as to secure a lump sum death benefit in the event of death while paying such contributions; regulation 5 permits teachers who have elected to provide a lump sum death benefit to apply that sum, either in whole or in part, to the purchase of dependants' pensions; regulation 6 allows elections made under regulation 4 to be varied or cancelled.

Regulation 7 deals with the payment of contributions.

When an election has effect a person is a contributor for the purpose of these Regulations but, generally, that person ceases to be a contributor if he or she is no longer in pensionable employment (regulation 8).

Regulation 9(1) requires the Scottish Ministers to invest contributions with the selected insurer in one or more of the specified funds in accordance with any wishes expressed by the contributor. Regulation 9(2), referring to an election to provide a lump sum death benefit, requires contributions to be invested so as to secure payment of the amount specified. Regulation 10 requires a transfer value accepted from another registered pension scheme also to be invested as appropriate, while regulation 11 sets out the provisions regarding payment of a transfer value (representing the value of the investments) to an insurer or a registered pension scheme.

On retirement, investments (except those providing for a lump sum death benefit) are to be realised and retirement or dependants' pensions, or both, are to be purchased with the proceeds from an authorised provider chosen by the participator to provide the benefits specified in the notice of election. Such pensions are generally payable for life, and are not able to be assigned, but provision is made to allow the proceeds of the realisation of investments to be paid as a lump sum in some circumstances (regulation 12).

Regulation 13 provides for the payment of lump sum death benefits secured by contributions under regulation 4.

Regulation 14 provides for pension sharing in the AVC Scheme. The pension credit member's share of his or her former spouse's contributions will be invested by the Scottish Ministers in accordance with the pension credit member's wishes. A pension for life and one or more dependant's pensions for life may be provided from the pension policy purchased under the Regulations. The pension will commence not earlier than the date on which the pension credit member reaches normal pension age. If a person dies after a pension sharing order has been made but before the Scottish Ministers have discharged their liability in respect of it then a lump sum equal to the value of that pension credit at the date of his or her death is paid to his or her executors.

Regulation 15 provides for the realisable value of investments to be repaid where contributions under the 2005 regulations are repaid.

Regulation 16 provides that the Scottish Ministers are not responsible for payments under a pension policy purchased from an authorised provider except in the circumstances specified in regulation 16(2) and makes provision for the payment of lump sums.

Regulation 17 requires the Scottish Ministers to be given information needed for the purposes of their functions under the Regulations.

Regulation 18 provides for any payment, up to a prescribed maximum (which is currently £5,000 on the date these Regulations are made), payable to the executors of deceased persons, to be made without confirmation or proof of title.

Regulation 19 provides for questions to be determined by the Scottish Ministers.

Regulation 20 revokes the 1995 Regulations.

These Regulations make minor and drafting alterations only and do not make any changes of substance.

Tables of Derivations and Destinations have been prepared identifying individual regulations in the 2009 consolidated Regulations with the equivalent provisions in the superseded Regulations and vice versa. Copies of the Tables may be obtained from the Scottish Public Pensions Agency (Policy Branch), 7 Tweedside Park, Tweedbank, Galashiels, TD1 1TE and online at *www.sppa.gov.uk/scot_teachers/regs.htm*. The Tables have been prepared to assist readers of the Regulations and do not have any legal effect.