SCOTTISH STATUTORY INSTRUMENTS

# 2016 No.

# PENSIONS

# The Teachers' Superannuation and Pension Scheme (Additional Voluntary Contributions) (Scotland) Regulations 2016

| | |
|---|---|
| *Made - - - -* | *2016* |
| *Laid before the Scottish Parliament* | *2016* |
| *Coming into force - -* | *[1st December 2016]* |

## 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.

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, commencement and effect**

**1.**— (1)These Regulations may be cited as the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 2016 and come into force on 1 December 2016.

(2) These Regulations have effect from 1st April 2015 except regulations 7 and 12, which have effect from 6 April 2015.

**Interpretation**

**2.** (1)— In these Regulations, unless the context otherwise requires–

"the 1993 Regulations" means The Teachers' Superannuation (Scotland) Regulations 1993

"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

"the 2014 Regulations" means The Teachers' Pension Scheme (Scotland) (No.2) Regulations 2014

(2)

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

"AVC policy age" means –

(a) except in the circumstances mentioned in sub-paragraphs (b), (c), (d) or (e), a person

(P)'s normal pension age on the date P makes an election under regulation 4;

(b) if a transfer is made under regulation 10, a person (P)'s normal pension age at the date

that written notice from P under regulation 10(1) is received by Scottish Ministers;

(c) in respect of a pension credit member, the pension debit member's normal pension age on the date that an election under regulation 4 is made by the pension debit member or notice from the pension debit member under regulation 10 (1) is received by Scottish Ministers;

(d) if a contributor or participator (P) realises all of the funds invested on P's behalf under regulation 9(1) and 10(2) and makes a subsequent election under regulation 4, P's normal pension age at the date of the subsequent election;

(e) if a person (P) is in pensionable service under the 2005 Regulations at the time of making an election under regulation 4, and has more than one normal pension age under regulation EA1 (8) of those Regulations, P's normal pension age in relation to P's pensionable service on the date P makes the election;

---

(**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.

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

"civil partner" is to be construed in accordance with section 1 of the Civil Partnership Act 2004

"contributor" is to be construed in accordance with regulation 7;

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

(a) any surviving spouse or surviving civil partner;

(b) any person who is an eligible child as in accordance with regulation E26 of 2005 regulations or regulation 134 of the 2014 regulations;

(c) any person in respect of whom at the time of death of the participator or contributor a nomination under regulation E26A or E27 of the 2005 Regulations or 132 or 133 of the 2014 regulations has effect;

(d) any surviving adult as defined in regulation 131 of the 2014 Regulations;

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

"insurance company" means

(a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term 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 (1) of that Schedule) to effect or carry out contracts of long-term insurance;

"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 policy authorised by the Scottish Ministers for the purposes of these Regulations and managed by an insurance company 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" in the case of a person who, at the time of making an election under regulation 4, is in pensionable service under the 2005 Regulations is to be construed in accordance with the 2005 Regulations, and in the case of a person who, at the time of making an election under regulation 4, was in pensionable service under the 2014 Regulations is to be construed in accordance with the 2014 Regulations;

"participator" means–

(a) a contributor who has made a benefits election under regulation 12(5) in respect of all investments made under regulation 9(1) and 10(2) and has not made a further election under regulation 4 in respect of further pensionable service;

(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 and who is not otherwise a contributor;

"pension commencement lump sum" is to be construed in accordance with Part 1 of Schedule 29 to the 2004 Act;

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

---

(**a**) 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).

"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;

"pensionable service" is to be construed in accordance with section 37 of the Public Service Pensions Act 2013;

"person" (P) a person in eligible employment as a teacher in accordance with Schedule 1 and 2 of the 2005 regulations and Schedule 1 of the 2014 regulations;

"qualifying recognised overseas pension scheme" is to be construed in accordance with section 169 of the 2004 Act;

"registered pension scheme" has the same meaning as in 150(2) of the 2004 Act;

"regular contributions" means contributions, paid pursuant to an election under regulation 4(1)(a) or (c);

"retirement pension" has the meaning given by regulation 12(2);

"salary" means–

(a) where a person is in pensionable service under the 2005 Regulations at the time the contribution is paid, the salary calculated in accordance with regulation C1 of the 1993 regulations and C1 of the 2005 Regulations;

(b) where a person in in pensionable service under the 2005 Regulations at the time the contribution is paid in relation to contributions payable under regulation C9 of the 2005 Regulations the salary determined in accordance with the provisions of those regulations for the purposes of calculating those contributions;

(c) where a person is in pensionable service under the 2014 Regulations at the time the contribution is paid, in relation to pensionable earnings under Chapter 4 of Part 3 of the 2014 Regulations, the earnings determined in accordance with the provisions of that Chapter;

"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;

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

"uncrystallised fund pension lump sum" is to be construed in accordance with section 166 of the 2004 Act.

(3)

The definition of "insurance company" in paragraph(3) must be read with –

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

(b) any relevant order under that section; and

(c) Schedule 2 to that Act

(4)

For the purposes of these Regulations the annual equivalent of any lump sum is that lump sum divided by 12.

**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 –

(a) in the case of an election under regulation 4 (1)(c), the amount specified in the election as the amount to be secured is less than the amount specified in regulation 4(2)(d).

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

(4) The date of an election under these Regulations shall be the date on which written notice is received by the Scottish Ministers.

**Election to pay regular and lump sum contributions**

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

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

(b) a lump sum 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 is to specify–

(a) in the case of an election under paragraph (1)(a) or (c), 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 to be secured which must not be less than £5,000.

**Provision for lump sum death benefit**

**5.**—(1) This regulation shall apply where a person elects under regulation 4(1)(c) 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 an annuity 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,

(ii) is to vary in accordance with the Index,

(iii) is to increase yearly by a specified percentage,

(iv) where the authorised provider offers pensions which vary in accordance with an index of prices other than the Index, is to vary in accordance with the index specified in the notice, or

(v) is to be an Investment Linked Pension.

(4) A person (P) who has continued to pay regular contributions up to P's AVC policy age, but does not then cease to be in pensionable service, may elect to pay regular contributions up to P's first birthday after P reached AVC policy age to provide for a lump sum death benefit unless the authorised provider determines that provision under this regulation shall continue without the need for the authorised provider to verify P's entitlement to that provision; and, so long as P has not ceased to be in pensionable service, further elections may be made annually in respect of years commencing on P's first birthday after P reached AVC policy age and subsequent birthdays.

(5) An election made by P under paragraph 4 lapses if P retires, ceases to be in pensionable service during the year in question or ceases to pay contributions pursuant to an election under regulation 4(1).

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

**Variation and cancellation of elections**

**6.**—(1) A contributor who has elected under regulation 4(1)(a) to pay regular contributions may at any time by giving written notice to the Scottish Ministers -

(a) alter the amount of the regular contributions,

(b) require any contributions payable pursuant to the election to be invested in future under regulation 9 in a different way,

(c) require the Scottish Ministers to realise any investment and to reinvest the proceeds under regulation 9 in a different way, or

(d) cancel the election under regulation 4(1)(a).

(2) A contributor who has elected under regulation 4(1)(b) to pay a lump sum contribution may at any time by giving written notice to 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 to pay regular contributions under regulation 4(1)(c) may at any time by giving written notice to Scottish Ministers–

(a) elect that a specified larger sum is to be secured 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)(c).

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

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

**Contributor**

**7.**—(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 lump sum pursuant to an election under regulation 4(1)(b).

(2) Before 6th April 2015, a person ceases to be a contributor if that person –

(a) has become entitled to retirement benefits under regulation E6 of the 2005 Regulations

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

(c) subject to paragraph (3), has ceased to be in pensionable service and is not paying contributions under regulation C9 of the 2005 or regulation 25 of the 2014 Regulations.

(3) On and from 6th April 2015 onwards, a person (P) ceases to be a contributor if P –

(a) has realised all of the funds invested on P's behalf under regulations 9(1) and 10(2) and has not made a subsequent election under regulation 4 in respect of further pensionable service;

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

(c) subject to paragraph (3), has ceased to be in pensionable service and is not paying contributions under regulation C9 of the 2005 Regulations or regulation 25 of the 2014 Regulations.

(4) For the purposes of this regulation a person who-

(a) has ceased to be in pensionable service, and

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

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

**Payment of contributions and amount of regular contributions**

**8.**—(1) Regular contributions shall be paid to 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 on which the employer receives authorisation to make these deductions and be remitted to Scottish Ministers within 7 days after their deduction.

**Investment of contributions**

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

(2) Regular contributions to provide for a lump sum death benefit shall be invested by the Scottish Ministers with an insurance company selected by them so as to secure the payment of a lump sum death benefit of the amount required by any notice under regulation 4(2) or 6(3).

**Inward transfers**

**10**.—(1) Where a person in pensionable service (P) has been a member of a registered pension scheme or a qualifying recognised overseas pension scheme, P, whether or not P becomes a contributor (within the meaning of these Regulations), may give written notice to Scottish Ministers that P wishes the Scottish Ministers to accept from the trustees or manager of that scheme a value of the transfer from that scheme.

(2) Where a transfer value is accepted by Scottish Ministers it shall be invested by them, in accordance with the election made under regulation 4(2)(c), in one or more of the funds authorised by Scottish Ministers for the purposes of these Regulations managed by an insurance company selected by them.

(3) A person who has given written notice under paragraph (1) may at any time by giving written notice to Scottish Ministers require Scottish Ministers to realise any investment and to re-vest the proceeds under paragraph (2) in a different way.

**Outward transfers**

**11**.—(1) Except as provided in paragraph (2) the Scottish Ministers shall, on application by a person, pay a transfer value representing some or all of the value of investments made under regulation 9(1) or 10(2) to any other registered pension scheme or a qualifying recognised overseas pension scheme in which the person may be participating (provided that the other pension scheme is willing and able to accept such a transfer value).

(2) A transfer value shall not be paid pursuant to paragraph (1) in respect of investments which are subject to written notice under regulation 12(6).

(3) Scottish Ministers may pay a transfer value representing the value of a person's pension credit or of investments made under regulation 14 (2) in the circumstances of Chapter II of Part IVA of the Pension Schemes Act 1993 and regulations made under that Chapter.

**Retirement and dependants' pensions**

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

(a) in the case of a person who applies for benefits in pensionable service under the 2005 regulations, the date the person attains the age of 55;

(b) in the case of a person who applies for benefits in pensionable service under the 2014 Regulations, the date the person attains normal minimum pension age as defined in regulation 3 of the 2014 regulations;

unless the circumstance in regulation 12(10) occurs before that date.

(2) The benefits that may be provided at any time after the relevant date in accordance with paragraph (7) are-

(a) one or more retirement pensions;

(b) one or more dependants' pensions;

(c) one or more pension commencement lump sums;

(d) on and from 6$^{th}$ April 2015 onwards, one or more uncrystallised fund pension lump sums.

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

(4) A dependants' pension is a pension which would become payable to dependant on the death of the participator after payment of benefits has commenced as provided in paragraph (2) and is payable for life, except that, in the case of a dependant who is an eligible child as defined in regulation E26 of the 2005 Regulations or regulation 134 of the 2014 Regulations , it shall cease to be payable when that person ceased to be a child within the meaning of those Regulations.

(5) A pension policy purchased as described in paragraph (7) shall not provide for any retirement pension or dependants' pension capable in whole or in part of surrender, commutation or assignment (except as provide by paragraphs (8) and (9)).

(6) A contributor or participator may in respect of some or all of the investments made under regulation 9(1) or 10(2), 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 may specify-

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

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

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

(i) the proportion of the amount secured 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,

(ii) is to vary in accordance with the Index,

(iii) is to increase yearly by a specified percentage,

(iv) where the authorised provider offers pensions which vary in accordance with an index of prices other than the Index, is to vary in accordance with the index specified in the notice, or

(v) 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.

(g) whether an uncrystallised fund pension lump sum is to be paid and, if so, the amount of such payment.

(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 of a duration permitted by Schedule 28 to the 2004 Act 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 Scottish Ministers, where they are liable to make payments of the pension pursuant to regulation 16(2), determines.

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

(a)

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

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

(b) pay an uncrystallised fund pension lump sum;

(9) The remaining investments shall be realised and become payable as a lump sum if the participator dies-

(a) before the relevant date; or

(b) after the relevant date and before all the investments made under regulation 9(1) and 10(2) have been realised in accordance with one or more elections under paragraph 5 or applications under regulations 11(1).

(10) 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.

(11) 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 small pension lump sum as defined in regulations 11, 11A and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009.

### Lump sum death benefits

**13.** —(1) Where 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 secured by those contributions shall become payable.

(2) Where 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 secured 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 insurance company referred to in regulation 9.

(5) If at the time of the death of the contributor any person specified in a notice of election 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 applied for that purpose, but shall be added to the balance becoming payable under paragraph (2)(b).

**Pension sharing on divorce**

**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 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 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000, 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 to the pension credit member are-

(i) one or more pension policies purchased as described in regulation 12(7) as modified in relation for the purpose of providing a retirement pension or one or more dependant's pensions;

(ii) one or more pension commencement lump sums;

(iii) one or more uncrystallised fund pension lump sums.

(4) The benefits mentioned in paragraph 3 shall commence no earlier than the date the pension credit member attains normal minimum pension age as defined in regulation 3 of the 2014 Regulations and in the case of benefits under sub-paragraph (3)(i) are 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 their pension has commenced as provided in paragraph (4) and is payable for life, except that, in the case of a dependant who is a eligible child as defined in the 2005 Regulations or the 2014 Regulations, it shall cease to be payable when that person cases to be a child.

(6) Upon the death of a person after a pension sharing order has been made but before 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 (4) to (11) of regulation 12 apply in the circumstances of this regulation with the following modifications wherever the words to be modified appear-

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

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

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

(d) the reference to the insurance company referred to in regulation 9 shall be a reference to the insurance company referred to in regulation 14(2); and

(e) the reference in paragraph (10) 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(5), (6) or (8) 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) The Scottish Ministers shall make arrangements for a 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) where the person -

(a) before 1st October 2015, ceases to be in pensionable service and has applied for and received a return of contributions under regulation C11 of the 2005 Regulations or regulation 183 of the 2014 Regulations.

(b) on and from 1st October 2015 onwards, ceases to be in pensionable service and has a period of qualifying service which is less than 30 days.

(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 Scottish Ministers**

**16.—**(1) Where pursuant to an election under regulation 12(5) or 13(3) Scottish Ministers purchases an annuity policy from an authorised provider specified by the elector other than the insurance company referred to in regulation 9, the Scottish Ministers shall not, except in the circumstances described in paragraph (2)(b), be liable for payment of any pension under that annuity policy.

(2) Where -

(a) pursuant to an election under regulation 5(2), 12(5) or pursuant to regulation 13(4) Scottish Ministers purchases an annuity policy from the insurance company referred to in regulation 9; or

(b) pursuant to-

(i) an election under regulation 5(2) or 12(5) of the 1995 Regulations; or

(ii) an election under regulation 5(2) or 12(5) made by a person who was employed in pensionable service but ceased to be so employed before 14 February 1994

the Scottish Ministers shall be liable to make to the person entitled to it any payment of pension under the annuity policy which has not been made by the company from which the annuity policy was purchased.

(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 pension commencement lump sum as mentioned in regulation 12(2) or 14 (3)(i) 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 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 or 14 for a pension commencement lump sum benefits as of no effect, and may apply the amount of the lump sum to the purchase of a pension policy form the insurance company 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(9); or

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

shall (subject to the following provisions of this regulation) be paid by the Scottish Ministers to the person's executors of the person to whom the payment is due.

(8) 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–

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

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

(h) an election under regulation 6(4) 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 the person under these Regulations, and

(b) any sums payable under these Regulations to the person's executors,

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

(2) Where this regulation applies the Scottish Ministers may, without requiring the production of confirmation, pay the total sums referred to under paragraph (1)(a) and (b)–

(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,

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.** All questions arising under these Regulations are to be determined by Scottish Ministers and a determination by them is final.

**Revocation and transitional provisions**

**20.—**(1) The 1995 Regulations are hereby 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 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 2015]

**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") and The Teachers' Pension Scheme (Scotland) (No.2) Regulations 2014 (S.S.I 2014/292), 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 2015].

Regulation 2 makes amendments to the interpretation provisions of the 1995 Regulations and inserts a number of new definitions. In particular it provides a definition of "AVC policy age" to fix a person's normal pension age as at the date of an election under regulation 4 or notice under regulation 10 of the 1995 Regulations.

Regulation 3 contains general provisions as to making and acceptance of elections.

Regulation 4 provides for elections to pay lump sum and periodical contributions so as to secure additional retirement and dependants' pensions and further provides for elections to pay periodical contributions so as to secure a lump sum death benefits in the event of death while paying such contributions.

Regulation 5 permits teachers who have elected to provide a lump sum death benefits 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 provides where an election has effect a person is a contributor for the purpose of these Regulations, but where they cease to be a contributions they are no longer in pensionable employment.

Regulation 8 deals with the payment of contributions.

Regulation 9 (1) requires Scottish Ministers to invest contributions with the selected insurance company in one or more of the specified funds in accordance with any wishes expressed by the contributor. Regulation 9 92) refers to an election to provide a lump sum death benefit, requires contributions to be invested so as to secure payments of the amount specified.

Regulation 10 requires a transfer value accepted from another additional voluntary contributions scheme also to be invested as appropriate.

Regulation 11 sets out the provisions regarding payment of a transfer value (representing the value of the investments) to an insurance company or a superannuation scheme.

Regulation 12 permits from 6$^{th}$ April 2015 the purchase of one or more uncrystallised fund pension and lump sums from realised funds and the crystallisation of funds to purchase any of the benefits permitted by the regulation.

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

Regulation 14 provides for Pension sharing on divorce.

Regulation 15 provides for the realisable value of investments to be repaid where contributions under the 1995 regulations.

Regulation 16 provides that 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 lump sums.

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

Regulation 18 provides for any payments, up to a prescribed maximum (currently £5,000), 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 and makes transitional provisions. In addition to minor and drafting amendments these Regulations make the following changes of substance from the 1995 Regulations;-
(a) the definition of "contributor" has been altered (regulation 7);
(b) provisions for payment of a transfer value has been included (regulation 11);
(c) the authorised provider who is to provide retirement or dependants' pensions is selected by the participator (regulation 12(7); where the authorised provider is not the insurance company referred to in regulation 9 the Scottish Ministers are not responsible for payment.