

2004 No. 587

EDUCATION, ENGLAND AND WALES

The Teachers' Pensions (Amendment) Regulations 2004

<i>Made</i> - - - -	<i>3rd March 2004</i>
<i>Laid before Parliament</i>	<i>9th March 2004</i>
<i>Coming into force</i>	
<i>Regulation 30(4)</i>	<i>1st September 2004</i>
<i>Remainder</i>	<i>31st March 2004</i>

The Secretary of State for Education and Skills, in exercise of the powers conferred upon him by sections 9, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972(a), after consulting in accordance with section 9(5) of that Act with representatives of local education authorities, teachers and other persons likely to be affected, and with the consent of the Treasury(b), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Teachers' Pensions (Amendment) Regulations 2004 and shall come into force on 31st March 2004 except for regulation 30(4) which shall come into force on 1st September 2004.

Amendment of the Teachers' Pensions Regulations 1997

2. The Teachers' Pensions Regulations 1997(c) shall be amended in accordance with regulations 3 to 32.

3.—(1) Regulation A3 shall be amended as follows.

(2) In paragraph (2) after “under regulation G8(1), G7(1)(c) or G8(5), as the case may be, shall” insert “, subject to the provisions of section 37 of the 2002 Act,”.

4. After regulation B1 insert the following—

“Provision for certain organisers

B1A.—(1) Subject to paragraph (2), a person

(a) 1972 c.11; section 9 was amended by sections 4, 8 and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), section 190 of, and Schedule 8 to, the Pension Schemes Act 1993 (c.48) and S.I. 2001/3649; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7); and section 24 was amended by the Police Pensions Act 1976 (c.35). The Secretary of State's functions under sections 9, 12 and 24 of the Superannuation Act 1972 were transferred, in or as regards Scotland, to the Scottish Ministers by virtue of section 63 of the Scotland Act 1998 (c.46), read with article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

(b) See S.I. 1981/1670.

(c) S.I. 1997/3001, amended by S.I. 1998/2255, S.I. 1999/607, S.I. 2000/665, S.I. 2000/2431, S.I. 2000/3028, S.I. 2001/871 and S.I. 2002/3058.

- (a) who was employed as an organiser by a local education authority or an accepted function provider on or after 1st January 1977 in employment which was not pensionable employment,
- (b) in respect of whom there has been paid to the Secretary of State, in respect of a period or periods of such employment, an amount equivalent to the amount which should have been paid as contributions under Parts C and G (and under equivalent provisions in the 1976 and 1988 Regulations, if relevant) if that person had been in pensionable employment, and
- (c) who would, or would have, become entitled either before 31st July 2004 or, in the case of a person who ceased prior to 10th December 2003 to be so employed, on or after 31st July 2004 to payment of any benefit under these Regulations (or the 1976 or 1988 Regulations, if relevant) if that period or those periods had been pensionable employment

is deemed to be, or to have been, entitled to payment of an amount or amounts equivalent to the benefits to which he would be, or would have been, entitled under these Regulations (or the 1976 or 1988 Regulations, if relevant) as if that period or those periods had been pensionable employment.

(2) If a person to whom paragraph (1) would otherwise apply either expressly or by his conduct indicates that he does not wish it to apply to him, then it shall not so apply.

(3) A person

- (a) who was employed as an organiser by a local education authority or an accepted function provider on or after 1st January 1977 in employment which was not pensionable employment, and
- (b) in respect of whom the Secretary of State pays, or has paid, before 31st July 2004 an amount, in respect of a period or periods of such employment, equivalent to the amount which should be, or have been, paid as a transfer value or cash equivalent under Part F (or under the equivalent provisions of the 1976 or 1988 Regulations, if relevant) or otherwise if that person had been in pensionable employment and entitled to payment of a transfer value

is deemed to have been entitled to payment of that amount.

(4) This paragraph applies to a person

- (a) who is not a person to whom paragraph (1) or (3) applies,
- (b) who prior to 10th December 2003 was employed as an organiser by a local education authority or an accepted function provider in employment which was not, apart from this regulation, pensionable employment,
- (c) in respect of whom there has been paid to the Secretary of State, in respect of a period or periods of such employment, an amount equivalent to the amount which should have been paid as contributions under Parts C and G (and under equivalent provisions in the 1976 and 1988 Regulations, if relevant) if that person had been in pensionable employment, and
- (d) who makes an election by 31st July 2004 in a form to be specified by the Secretary of State for that period or those periods to be pensionable employment.

(5) In the case of a person to whom paragraph (4) applies, subject to regulations B1(5) and B4, the period or periods of employment referred to in paragraph (4)(d) shall be deemed to have been pensionable employment for the purpose of these Regulations.

(6) This paragraph applies to a person

- (a) to whom paragraph (4) applies, and
- (b) who remains employed as an organiser by a local education authority or accepted function provider to undertake the same, or substantially the same, functions as he was undertaking immediately prior to the date of the election referred to in paragraph (4)(d) under either the same contract of employment or a contract of

employment which has effect by virtue of regulation 5 of the Transfer of Undertakings (Protection of Employment) Regulations 1981(a).

(7) A person to whom paragraph (6) applies is

- (a) subject to regulations B1(5), B4 and B5, in pensionable employment, and
- (b) in relevant employment under category B (if employed by a local education authority) or C (if employed by an accepted function provider) for the purpose of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997(b).

(8) Upon paragraph (6) ceasing to apply to a person, he shall cease to be in pensionable employment and in relevant employment for the purpose of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 by virtue of this regulation.”.

5.—(1) Regulation B3 shall be amended as follows.

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

“(3) The establishments that may be accepted are—

- (a) an independent school registered under section 161 of the 2002 Act,
- (b) an establishment which provides further education constituted by an amalgamation of establishments which provided such education of which at least one was an accepted school, and
- (c) a school which is a member of COBISEC and is located in a member state of the European Union (other than the United Kingdom).”.

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

“(4A) An establishment may only be accepted where there is in force a guarantee, indemnity or bond in a form and amount and provided by a person approved by the Secretary of State which provides for payment to the Secretary of State of all liabilities of the establishment under these Regulations or under the Teachers’ Superannuation (Additional Voluntary Contributions) Regulations 1994(c) should the establishment fail to meet them.”.

(4) For paragraph (5) substitute the following—

“(5) No establishment need be accepted, but, if an establishment is accepted, its acceptance takes effect as from a date to be agreed between the Secretary of State and the governing body, which must be—

- (a) the first day of a month later than that in which the application was made, or
- (b) if the establishment was constituted by an amalgamation, either the first day of such a month or the date of the amalgamation.”.

(5) In paragraph (7)(a) omit “or provisionally registered” and for “section 465 of the 1996 Act” substitute “section 161 of the 2002 Act”.

(6) For paragraph (7)(b)(ii) substitute the following—

“(ii) it uses a person to carry out work to which section 142 of the 2002 Act applies in contravention of a direction given under section 142(1) of that Act.”.

(7) In paragraph 7(c)(iii) for “employment.” substitute “employment, or”.

(8) After paragraph 7(c) insert the following—

“(d) in the case of an establishment accepted under paragraph 3(c), if it ceases to be a member of COBISEC.”.

6. Regulation B3A shall have the heading “Function Providers”.

(a) S.I. 1981/1794; regulation 5 was amended by the Trade Union Reform and Employment Rights Act 1993 (c.19).

(b) S.I. 1997/311, amended by S.I. 1998/2256, S.I. 1999/608 and S.I. 2000/664.

(c) S.I. 1994/2924, amended by S.I. 1997/3001, S.I. 2000/666, S.I. 2000/3028 and S.I. 2001/3649.

7.—(1) Regulation B4 shall be amended as follows.

(2) In paragraph (1)(b) after “maternity” in each case insert “, paternity or adoption”.

8.—(1) Regulation C1 shall be amended as follows.

(2) In paragraph (1) for “a person to whom the 1991 Act applies” substitute “a person who is a school teacher for the purposes of section 122 of the 2002 Act”.

(3) In paragraph (1)(a) for “section 2 of the 1991 Act” substitute “section 122 of the 2002 Act”.

(4) In paragraph (1)(b) after “maternity,” insert “paternity or adoption,”.

(5) In paragraph (1)(c) after “maternity,” insert “paternity or adoption,”.

(6) In sub-paragraphs (a) and (b) of paragraph (5) omit “, other than a payment made in consequence of a School Achievement Award,”.

(7) In paragraph (7) for “section 2 of the 1991 Act” substitute “section 122 of the 2002 Act”.

9.—(1) Regulation C2 shall be amended as follows.

(2) In paragraph (1)(a) after “maternity” insert “, paternity or adoption”.

(3) In paragraph (9) after “maternity,” insert “, paternity or adoption”.

10.—(1) Regulation C9 shall be amended as follows.

(2) At the beginning of paragraph (7)(a) insert “subject to paragraph (7A),”.

(3) After paragraph (7) insert the following—

“(7A) Where the period begins on or after 31st March 2004, the notional salary shall be increased on 1st April following the beginning of the period and on each 1st April subsequently by

$$\frac{(\text{RI}-\text{RE})}{\text{RE}}$$

RE

where—

RI is the retail prices index (as defined in regulation C2(11)) for the March immediately preceding the April in which the increase occurs, and

RE is the retail prices index for the month in which the period began.”.

11.—(1) Regulation C10 shall be amended as follows.

(2) At the beginning of paragraph (4) insert “Subject to paragraph (4A),”.

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

“(4A) Where the period begins on or after 31st March 2004, the notional salary shall be increased on 1st April following the beginning of the period and on each 1st April subsequently by

$$\frac{(\text{RI}-\text{RE})}{\text{RE}}$$

RE

where—

RI is the retail prices index (as defined in regulation C2(11)) for the March immediately preceding the April in which the increase occurs, and

RE is the retail prices index for the month in which the period began.”.

12.—(1) Regulation D1 shall be amended as follows.

(2) In paragraph (1)(b) for “or F4(8) (acceptance of transfer value),” substitute “, F4(8) (acceptance of transfer value) or F4A(3) (acceptance of transfer values as part of a bulk transfer),”.

(3) In paragraph (3)(b) after “maternity” insert “, paternity or adoption”.

13.—(1) Regulation E4 shall be amended as follows.

(2) In paragraph (1) omit “Subject to regulation E33(2) (application for payment),”.

(3) In paragraph (4) for “regulation 5(1)(b)” to the end of that paragraph substitute “section 142 of the 2002 Act on the grounds mentioned in subsections (4)(a), (b) and (c) of that section to direct that he may not carry out work to which that section applies.”.

(4) In paragraph (8)(b) for “of direction under regulation 5(1)(b) or (c), or regulation 9(1)(a) of the Education (Restriction of Employment) Regulations 2000” substitute “under section 142 of the 2002 Act on the grounds mentioned in subsections (4)(a), (b) and (c) of that section to direct that he may not carry out work to which that section applies”.

14.—(1) Regulation E19 shall be amended as follows.

(2) In paragraph (1) for “E4(3)” substitute “E4(2), (3)”.

15. After regulation E19 insert the following—

“Commutation: trivial pensions

E19A.—(1) Where a person has become entitled to a retirement pension of a trivial amount, the Secretary of State may pay to that person a lump sum representing the capital value of that pension and of any benefits that might otherwise have become payable on that person’s death.

(2) A pension may not be treated as trivial if it includes a guaranteed minimum unless the person has reached state pensionable age or any pension in respect of the guaranteed minimum is otherwise payable.

(3) A pension may be treated as trivial only if the aggregate of all benefits does not exceed £260 per annum.

(4) Any lump sum payable under this regulation will be calculated by the Secretary of State, after taking advice from the Government Actuary.

(5) A deduction is to be made from any payment under this regulation for the amount of tax chargeable in respect of it under section 599 of the Taxes Act.

(6) A payment under this regulation shall discharge the Secretary of State’s liability in respect of that pension and of any benefits that might otherwise have become payable on that person’s death.”.

16.—(1) Regulation E20 shall be amended as follows.

(2) In paragraph (1) for “paragraph (6)” substitute “paragraphs (1A) and (6)”.

(3) In paragraph (1)(d) after “maternity,” insert “, paternity or adoption”.

(4) After paragraph (1) insert the following—

“(1A) No death grant may be paid under paragraph (1)(c) in respect of a person to whom retirement benefits or a short-service incapacity grant calculated (in either case) by reference to the total of his reckonable service have been paid.”.

17.—(1) Regulation E25 shall be amended as follows.

(2) In paragraph (1)(a) after “maternity” insert “, paternity or adoption”.

18.—(1) Regulation E26 shall be amended as follows.

(2) At the beginning of paragraph (1)(b) insert “subject to paragraph (1A),”.

(3) After paragraph (1) insert the following—

“(1A) Where a person has made an election under regulation B7, paragraph (1)(b) has effect with the substitution for “2 years” of “1 year”.”.

19.—(1) Regulation E28 shall be amended as follows.

(2) After paragraph (6)(b) insert the following—

“(c) any period beginning after that date for which additional contributions have been paid under regulation C9 or C10,”.

(3) In paragraph (9) for “paragraphs (3) to (7)” substitute in each case “paragraphs (3) to (5) and (7)”.

20.—(1) Regulation E31 shall be amended as follows.

(2) In paragraph (7)(a) after “maternity” insert “, paternity or adoption”.

(3) In paragraph (13)(b) for “to whom on the material date the 1991 Act applied” substitute “who was on the material date a school teacher for the purposes of section 122 of the 2002 Act”.

(4) In paragraph (13)(d)(i) for “to whom on the material date the 1991 Act applied,” substitute “who was on the material date a school teacher for the purposes of section 122 of the 2002 Act,” and for “section 2 of the 1991 Act” substitute “section 122 of the 2002 Act”.

(5) In paragraph (13)(d)(ii) for “to whom on the material date the 1991 Act does not apply” substitute “who was not on the material date a school teacher for the purposes of section 122 of the 2002 Act”.

21.—(1) Regulation E33 shall be amended as follows.

(2) In paragraph (4) after “paragraphs” insert “(4A) and”.

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

“(4A) (a) Where a written application is made to the Secretary of State, a benefit that does not consist of a single payment may be paid quarterly.

(b) The first payment under this paragraph is to be made two months after the day on which it would have been made if no such application had been made, and subsequent payments, if any, are to be made at quarterly intervals thereafter.

(c) In relation to payments made under this paragraph,

(i) paragraph (6) shall have effect as if for “paragraph (4)” there were substituted “paragraph (4A)”, and references to the “due date” in this regulation shall be construed accordingly, and

(ii) paragraph (9) shall have effect as if for “(A/12)” and “month” there were substituted “(A/4)” and “quarter” respectively.”.

22.—(1) Regulation E34 shall be amended as follows.

(2) For paragraph (4)(b) substitute the following—

“(b) the date referred to

(i) in regulation E33(4) in relation to each payment in the case of any other monthly payment, or

(ii) in regulation E33(4A) in relation to each payment in the case of any other quarterly payment.”.

23.—(1) Regulation F2 shall be amended as follows.

(2) In paragraph (2)(a) after “(acceptance of transfer value)” insert “or F4A(3) (acceptance of transfer values as part of a bulk transfer”.

(3) In paragraph (3) after “regulation F4” insert “or F4A”.

24.—(1) Regulation F4 shall be amended as follows.

(2) In paragraph (1) after “Subject to paragraphs (2) to (6)” insert “and to regulation F4A”.

25. After regulation F4 insert the following—

“Acceptance of transfer values as part of a bulk transfer

F4A.—(1) This regulation applies where, as the result of a transfer of undertakings to a new employer, a person or a group of persons has become employed in pensionable employment and is given the opportunity to transfer past service pension rights, referred to below as a “bulk transfer”.

purposes or for the purposes for which that body existed prior to its dissolution.”.

(9) After the definition of “Part-time” insert the following—

““Paternity leave” Paternity leave within the meaning of the Paternity and Adoption Leave Regulations 2002.”.

(10) Omit “School Achievement Award” and its definition.

30.—(1) Schedule 2 shall be amended as follows.

(2) In paragraph 2 after “special school” insert “not”.

(3) In paragraph 5 omit “, organiser or supervisor”.

(4) In paragraph 24 omit “the Edexcel Foundation”.

(5) In paragraph 24 omit “the Education 2000 Trust”, “the London Open College Federation”, “the National Education Resources Information Service” and “the Yorkshire and Humberside Association for Further and Higher Education”.

(6) In paragraph 24 for “the Macmillan Institute of Education” substitute “the Macmillan National Institute of Education”.

(7) For paragraph 26 substitute the following—

“Teacher or organiser employed by a body formerly within paragraph 19, 20 or 23 which is a non-profit-making body whose principal source of funding is fees paid by a local education authority.”.

31.—(1) Schedule 10 shall be amended as follows.

(2) At the beginning of paragraph 35 insert “Subject to paragraph 35A,”.

(3) After paragraph 35 insert the following—

“35A. Where a transfer value has been accepted in respect of a person to whom this Part applies as part of a bulk transfer under regulation F4A, he is entitled to count reckonable service in accordance with that regulation.”.

(4) In paragraph 37(a) omit the final “and”.

(5) At the end of paragraph 37(b) insert “and”.

(6) After paragraph 37(b) insert the following—

“(c) has not had a break in pensionable employment under these Regulations or the 1995 Regulations for any one period of 5 years or more ending after 6th March 1995,”.

(7) At the end of paragraph 37 after “the age of 55” insert “and as if regulations E4(2)(a) and E4(3)(a) had effect with the insertion after “the age of 60” of “and was in pensionable employment on attaining that age”.

32. Schedule 13 shall be deleted.

Election in respect of protected benefit

33.—(1) This regulation applies to a person—

(a) to whom a protected benefit is being paid or may become payable, and

(b) who is placed in a worse position than he would have been in if a provision made by these Regulations (“the relevant provision”) had not applied in relation to the protected benefit.

(2) A protected benefit is one which is being paid or may become payable under the Teachers' Pensions Regulations 1997 to, or in respect of, a person who was employed in qualifying employment but ceased to be employed, or died, before 31st March 2004.

(3) A person to whom this regulation applies may, by giving written notice to the Secretary of State before 31st July 2004, elect that the relevant provision shall not apply in relation to the protected benefit.

(4) If the election under paragraph (3) is made in relation to a benefit of a person who is in pensionable employment or who subsequently becomes re-employed in pensionable employment—

- (a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued by virtue—
 - (i) of periods of reckonable service before the cessation referred to in paragraph (2) (or, if there had been more than one cessation, the last of them before 31st March 2004), or
 - (ii) of contributions paid in respect of such periods of reckonable service, and
- (b) in determining entitlement to, or the amount of, the benefit to that extent he shall be treated as if he had never re-entered pensionable employment again at any time after the cessation referred to in paragraph (2) (but without prejudice to the application of this paragraph),

and the Teachers' Pensions Regulations 1997 shall apply accordingly.

(5) In paragraph (2) "qualifying employment" means pensionable employment or excluded employment within the meaning of the Teachers' Pensions Regulations 1997.

2nd March 2004

David Miliband
Minister of State
Department for Education and Skills

We consent,

3rd March 2004

Nick Ainger
Joan Ryan
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations.)

Regulations 3 to 32 of these Regulations further amend the Teachers' Pensions Regulations 1997 ("the Principal Regulations") which are the basis upon which the Teachers' Pension Scheme ("the Scheme") operates. In addition to minor and drafting amendments and those which correct errors and statutory references, the following changes of substance are made.

Regulation 4 inserts a new regulation in the Principal Regulations to regularise retrospectively the pension position of certain non-teaching staff who, although ineligible for membership, have been contributing to the Scheme.

Regulation 5 introduces a requirement for independent schools seeking to become Scheme employers to provide a guarantee, indemnity or bond acceptable to the Secretary of State; assimilates the requirements for members of the Council of British Independent Schools in the European Communities seeking to become Scheme employers with those for independent schools; and reflects changes made to the system of registering independent schools made by the Education Act 2002.

Regulations 7, 8(4) and (5), 9, 12(3), 16(3), 17, 20(2) and 28(3) enable periods of paternity and adoption leave to be treated in the same way as periods of maternity leave.

Regulations C9 and C10 of the Principal Regulations enable certain Scheme members to pay additional contributions in order to increase their pension entitlement. Regulations 10 and 11 provide for the notional salary upon which such contributions are based to be increased annually in line with the retail prices index.

Regulations 12(2), 23, 24, 25, 27 and 31(2) and (3) insert a new regulation in the Principal Regulations and make other amendments to enable the Scheme to accept transfers as part of a "bulk" transfer from other pension schemes in addition to on an individual basis.

Regulation 14 extends the option of commuting pensions on the grounds of exceptional circumstances of ill health to those who retire on attaining the age of 60.

Regulation 15 inserts a new regulation in the Principal Regulations to enable pensions which do not exceed £260 per annum to be commuted.

Regulation 16(2) and (4) clarifies the position with regard to eligibility for death grants paid under regulation E20 of the Principal Regulations.

Regulation 18 reduces the qualifying period for entitlement to certain benefits for pensioners who return to work and elect for that work to be pensionable.

Regulation 19 rectifies errors in regulation E28 of the Principal Regulations which appeared following consolidation of the Teachers' Superannuation (Consolidation) Regulations 1988 into the Principal Regulations in 1997 and which relate to the enhancement of benefits in certain circumstances.

Regulations 21 and 22 enable pensions to be paid quarterly.

Regulations 26 and 32 retrospectively recognise the Treasury's request that the Scheme's accounts move from cash-based to resource-based accounting.

Regulation 29 makes changes to Schedule 1 (Glossary of Expressions) to the Principal Regulations.

Regulation 30 makes changes to the list of categories in Part I (Employments Pensionable Without Election) and to the list of bodies in Part II (Employments Pensionable on Election) of Schedule 2 (Pensionable Employment) to the Principal Regulations.

Regulation 31 clarifies the position with regard to the entitlement of certain individuals who transferred into the Scheme from the National Health Service Pension Scheme to unreduced benefits at the age of 55.

Regulation 33 makes transitional provision for opting out where rights in relation to former Scheme members are adversely affected.

Section 12 of the Superannuation Act 1972 confers express power to make regulations retrospective in effect.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

STATUTORY INSTRUMENTS

2004 No. 587

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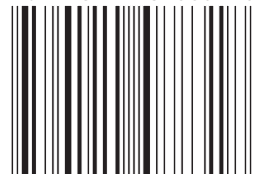
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