STATUTORY INSTRUMENTS

1978 No. 1422

EDUCATION, ENGLAND AND WALES

The Teachers' Superannuation (Amendment) (No. 2) Regulations 1978

Made - - - -	*2nd October* 1978
Laid before Parliament	*5th October* 1978
Coming into Operation	*6th October* 1978

The Secretary of State, in exercise of the powers conferred by sections 9 and 12 of the Superannuation Act 1972(**a**) and Schedule 3 thereto, after consulting with representatives of local education authorities, teachers and other persons likely to be affected in accordance with section 9(5) of the said Act and with the consent of the Minister for the Civil Service, hereby makes the following Regulations:—

1.—(1) These Regulations may be cited as the Teachers' Superannuation (Amendment) (No. 2) Regulations 1978.

(2) These Regulations shall come into operation on 6th October 1978 and shall have effect—

(*a*) for the purposes of Regulations 5, 19 and 26, as from that date;

(*b*) for all other purposes, as from 6th April 1978.

2. In these Regulations a reference to the principal Regulations is a reference to the Teachers' Superannuation Regulations 1976(**b**), as amended(**c**).

3. In Regulation 3(1) of the principal Regulations (definitions) after the definition of the expression "full salary" there shall be inserted the following definitions:—

" 'guaranteed minimum allowance' and 'guaranteed minimum pension' have the meanings assigned to them by regulation 10A;

'insured pensionable age' means, in the case of a man, the age of 65 and, in the case of a woman, the age of 60;".

4. After Regulation 10 of the principal Regulations (modification for national insurance) there shall be inserted the following Regulation:—

"*Guaranteed minimum allowance or pension*

10A.—(1) In relation to an annual allowance or a widow's pension the expressions 'guaranteed minimum allowance' and 'guaranteed minimum pension' have the meaning assigned to the expression 'guaranteed minimum pension' by section 26(2) of the Social Security Pensions Act 1975(**d**).

(**a**) 1972 c. 11. (**b**) S.I. 1976/1987. (**c**) S.I. 1978/422.
(**d**) 1975 c. 60.

(2) For the purposes of section 26(2) of the said Act of 1975 as applied by paragraph (1), the reference in section 35(6) of that Act to any period for which an earner's guaranteed minimum pension is postponed shall be construed as a reference to any period—

(*a*) for which a teacher continues to be employed in reckonable service after he attains insured pensionable age expiring within five years of his attaining that age, and

(*b*) in respect of which payments on account of his annual allowance are not made, or made at a weekly rate less than that of his guaranteed minimum allowance, by reason of regulation 55(1) or of the abatement of his allowance under regulation 75.

(3) For the purpose of determining whether or not an annual allowance or widow's pension shall be calculated by reference to the minimum guaranteed allowance or pension, a weekly amount shall be taken to be the annual amount divided by 52, the result being rounded to the nearest whole penny, taking $\frac{1}{2}$p as nearest to the whole penny above.".

5. At the end of Regulation 46 of the principal Regulations (repayment on cessation of employment) there shall be added the following provisions:—

"(4) No payment shall be made in pursuance of this regulation to a teacher who has not attained the age of 60 except on written application to the Secretary of State supported by such particulars as he may require.

(5) For the purposes of paragraph (1), a woman who ceases to be employed in reckonable service wholly or partly because of pregnancy or confinement shall be treated, so long as she enjoys the right to return to work conferred by sections 45 and 47 of the Employment Protection (Consolidation) Act 1978(**a**), as if she remained so employed and, if she exercises that right, as not having ceased to be so employed.

In relation to a time before 1st November 1978 this paragraph shall have effect as if the reference to the said sections 45 and 47 were a reference to sections 48 and 49 of the Employment Protection Act 1975(**b**).".

6. In Regulation 49 of the principal Regulations (calculation of repayment under Regulations 46 to 48) after the words "regulations 46 to 48" there shall be inserted the words "(which shall have effect subject to the provisions of section 47 of the Social Security Pensions Act 1975)".

7.—(1) For the heading to Regulation 52 of the principal Regulations (repayment to pensioners after further service) there shall be substituted the heading "*Limited repayments to pensioners*".

(2) At the end of the said Regulation 52 there shall be added the following provision:—

"(2) Where—

(*a*) a teacher entitled to, or qualified for, allowances by virtue only of regulation 53(1)(*a*)(iii) would otherwise be entitled to a repayment under regulation 46 or 47, and

(*b*) his reckonable service includes periods of service (other than such subsequent service as is mentioned in paragraph (1)(*c*)) disregarded for the purposes of calculating the said allowances,

(**a**) 1978 c. 44. (**b**) 1975 c. 71.

he shall be entitled to a repayment under the regulation in question but in calculating the amount thereof account shall only be taken of contributions paid in respect of such periods of service as aforesaid; and regulation 50(1)(*a*) and (*b*) shall be construed accordingly.".

8.—(1) At the end of paragraph (1)(*a*) of Regulation 53 of the principal Regulations (entitlement to allowances) there shall be added the following provision:—

"(iii) not being such a person as aforesaid, has been employed in reckonable service during a period in respect of which he has an earner's guaranteed minimum (within the meaning of section 35 of the Social Security Pensions Act 1975) being a period in respect of which, in pursuance of section 42 of that Act, a contributions equivalent premium cannot be, or is not, paid by the Secretary of State; or".

(2) At the end of the said Regulation 53 there shall be added the following provision:—

"(5) Where a teacher's entitlement to benefit by virtue of paragraph (1)(*a*)(iii) is extinguished by the payment of a contributions equivalent premium, he shall be treated for the purposes of these regulations as never having been so entitled.".

9. In Regulation 53A(2)(*b*) of the principal Regulations (application of Regulation 53 in certain cases of premature retirement) for the words "sub-paragraph (*c*)" there shall be substituted the words "sub-paragraphs (*a*)(iii) and (*c*)".

10.—(1) After paragraph (2) of Regulation 54 of the principal Regulations (amount of annual allowance) there shall be inserted the following provision:—

"(2A) In calculating an annual allowance payable to a teacher by virtue only of regulation 53(1)(*a*)(iii) no account shall be taken of any reckonable service before 6th April 1978 which is not continuous with reckonable service on or after that date.".

(2) At the end of the said Regulation 54 there shall be added the following provision:—

"(7) Where, in the case of a teacher employed in reckonable service after 5th April 1978, the weekly rate of his allowance, calculated as aforesaid, would be less than the weekly rate of the aggregate of—

(*a*) his guaranteed minimum allowance, and

(*b*) where his reckonable service includes a period of such service after 2nd April 1961 which was non-participating employment (within the meaning of the National Insurance Act 1965(**a**)), the benefit required in respect of that period to constitute equivalent pension benefits for the purposes of that Act,

then the preceding provisions of this regulation shall not apply but the annual allowance payable to him shall be payable at the last-mentioned weekly rate.".

11. At the end of Regulation 55(1) of the principal Regulations (duration of annual allowance) there shall be added the following proviso:—

"Provided that, where the allowance does not begin to accrue as aforesaid before the teacher attains the age of 70, in the case of a man, or of 65, in

(**a**) 1965 c. 51.

the case of a woman, so much thereof as constitutes his guaranteed minimum allowance shall begin to accrue on the day that he attains that age.".

12. After Regulation 56(3) of the principal Regulations (amount of additional allowance) there shall be inserted the following provision:—

"(3A) In calculating an additional allowance payable to a teacher by virtue only of regulation 53(1)(*a*)(iii) no account shall be taken of any reckonable service before 6th April 1978 which is not continuous with reckonable service on or after that date.".

13.—(1) For paragraph (1)(*a*) of Regulation 57 of the principal Regulations (short service gratuities) there shall be substituted the following provision:—

"(*a*) is not entitled to any allowances by virtue of Regulation 53 other than allowances the aggregate value of which is less than the amount first mentioned in paragraph (2); and".

(2) For paragraph (2) of the said Regulation 57 there shall be substituted the following provisions:—

"(2) A short service gratuity shall be of an amount calculated by multiplying one-twelfth of the teacher's salary by the number of years of his reckonable service except that there shall be deducted therefrom the amount which is the aggregate value of any allowances to which he is entitled by virtue of regulation 53.

(2A) For the purposes of this regulation the aggregate value of an annual allowance and an additional allowance shall be the aggregate of the actuarial value of the annual allowance and the amount of the additional allowance.".

14. For Regulation 62(*c*) of the principal Regulations (interpretation of section B of Part III) there shall be substituted the following provision:—

"(*c*) in the case of a teacher who has not been employed in reckonable service after 5th April 1978, the references to his widow do not include references to a woman whom he married after the day on which he was last employed in reckonable service.".

15.—(1) In paragraph (1) of Regulation 64 of the principal Regulations (entitlement to long term family pensions) for the words "any teacher who was employed in reckonable service on or after 1st April 1972 and whose service to which this regulation applies amounts to at least five years" there shall be substituted the words "any such teacher as is mentioned in paragraph (2)".

(2) For paragraph (2) of the said Regulation 64 there shall be substituted the following provisions:—

"(2) The teacher referred to in paragraph (1) is a teacher who was employed in reckonable service on or after 1st April 1972 where—

(*a*) his reckonable service on or after that date, when aggregated with any such service before that date in respect of which he elected to pay contributions under any previous provision relating to family benefits, amounted to at least five years, or

(*b*) his reckonable service includes service on or after 6th April 1978 in respect of which a contributions equivalent premium is not paid by the Secretary of State in pursuance of section 42 of the Social Security Pensions Act 1975.

(3) Where a person's entitlement to benefit under this regulation by virtue of paragraph (2)(*b*) is extinguished by the payment of a contributions equivalent premium, he shall be treated for the purposes of these regulations as never having been so entitled.".

16.—(1) At the beginning of paragraph (2) of Regulation 66 of the principal Regulations (amount of pension for widow or adult beneficiary) there shall be inserted the words "Save as provided in paragraph (4A),".

(2) After paragraph (4) of the said Regulation 66 there shall be inserted the following provision:—

"(4A) In the case of the widow of a teacher (employed in reckonable service after 5th April 1978) where they married after the day on which he was last employed in reckonable service, the reckonable service of the teacher counting for benefit for the purposes of this regulation is his reckonable service after 5th April 1978.".

(3) At the end of the said Regulation 66 there shall be added the following provision:—

"(6) Where, in the case of a teacher employed in reckonable service after 5th April 1978, the weekly rate of his widow's pension, calculated as aforesaid, would be less than the weekly rate of her guaranteed minimum pension, then the preceding provisions of this regulation shall not apply but the pension payable to his widow shall be payable at the last-mentioned weekly rate.".

17.—(1) At the beginning of paragraph (1) of Regulation 67 of the principal Regulations (amount of child's pension) there shall be inserted the words "Subject to paragraph (6),".

(2) At the end of the said Regulation 67 there shall be added the following provisions:—

"(6) Where the teacher is survived by a widow whom he married after the day on which he was last employed in reckonable service but his surviving children include a child of an earlier marriage contracted on or before that day ("the previous marriage") then, so long as there is a child of the previous marriage, paragraph (7) shall apply to the exclusion of paragraph (1) for the purposes of calculating the pension in respect of his children.

For the purposes of this paragraph and paragraph (7), a child who was the teacher's child at the inception of the previous marriage, or became such, by adoption or otherwise, during the subsistence of that marriage, shall be treated as if he were a child of that marriage.

(7) Where and so long as the child's pension falls to be calculated in accordance with this paragraph it shall be calculated—

(*a*) for so long as there are two or more children of the previous marriage, by multiplying 1/160th of the teacher's average salary by the number of years of his service which would count for benefit for the purposes of regulation 66 if paragraph (4A) were omitted therefrom;

(*b*) for so long as there is only one child of the previous marriage, by multiplying 1/320th of the teacher's average salary by the said number and, where there are one or more other children, adding

to that product 1/320th of the teacher's average salary multiplied by the number of years of his service which actually counts for benefit for the purposes of regulation 66.".

18. For Regulation 70(4) of the principal Regulations (duration of pension) there shall be substituted the following provisions:—

"(4) Where a person to whom such a pension as is mentioned in paragraph (1) is payable marries then, unless the Secretary of State otherwise directs and subject to paragraph (4B)—

(*a*) in the case of a pension payable to a widow who has attained pensionable age, being the widow of a teacher who was employed in reckonable service after 5th April 1978, so much of the pension as exceeds her guaranteed minimum pension shall cease to be payable;

(*b*) in the case of any other pension, the whole pension shall cease to be payable.

(4A) Where a person to whom such a pension as is mentioned in paragraph (1) is payable commences to cohabit with a person to whom he or she is not married then, unless the Secretary of State otherwise directs and subject to paragraph (4B)—

(*a*) in the case of a pension payable to the widow of a teacher who was employed in reckonable service after 5th April 1978, so much of the pension as exceeds her guaranteed minimum pension shall cease to be payable and, in respect of any period before she has attained insured pensionable age for which she is so cohabiting, the balance of the pension shall also not be payable;

(*b*) in the case of any other pension, the whole pension shall cease to be payable.

(4B) Any pension which has ceased to be payable under paragraph (4) or (4A), in whole or in part, shall, if the Secretary of State so directs, again become payable, or wholly payable, upon the pensioner's marriage terminating (by death or divorce) or, as the case may be, upon his ceasing to cohabit.".

19. For sub-paragraph (*c*)(ii) of Regulation 72(1) of the principal Regulations (counting reckonable service for benefit) there shall be substituted the following provision:—

"(ii) contributions paid by the teacher have been repaid, or are required to be repaid (where regulation 46(4) applies, the teacher having applied therefor), in pursuance of Section D of Part II or of previous provisions to the like effect, save that for the purposes hereof contributions returned to the Secretary of State in pursuance of regulation 19 or a previous provision to the like effect shall be treated as if they had not been repaid; or".

20. At the beginning of Regulation 76 of the principal Regulations (abatement of annual allowance on account of sick pay) there shall be inserted the words "Subject to regulation 79A,".

21. In Regulation 77(2) of the principal Regulations (avoidance of duplicate pensions) after the words "subject to paragraph (4)" there shall be inserted the words "and to Regulation 79A".

22. In Regulation 79 of the principal Regulations (deferment etc. of benefits)—

(*a*) there shall be inserted at the beginning the words "Subject to regulation 79A,", and

(*b*) for the words "in respect of" there shall be substituted the word "to".

23. After the said Regulation 79 there shall be inserted the following Regulations:—

"*Limitation on regulations 76, 77 and 79*

79A.—(1) This regulation shall apply to an annual allowance payable to a teacher employed in reckonable service after 5th April 1978.

(2) Notwithstanding anything in regulations 76, 77 or 79 but subject to paragraph (3) for any period beginning on or after the teacher attains insured pensionable age the allowance shall be payable at a rate not less than that of his guaranteed minimum allowance.

(3) Paragraph (2) shall not apply where the allowance is deferred, suspended or reduced under regulation 79 by reason of the teacher having been convicted of an offence of treason or under the Official Secrets Acts 1911 to 1939.

Teacher with guaranteed minimum under section 33 of the Social Security Pensions Act 1975

79B.—(1) For the purposes of satisfying regulation 2 of the Occupational Pension Schemes (Contracting-out) Regulations 1975(**a**), it is hereby declared, without prejudice to the express provisions of these regulations serving that purpose (in particular, those of regulations 54(7) and 66(6)), that if a teacher has a guaranteed minimum under section 33 of the Social Security Pensions Act 1975(**b**)—

(*a*) the weekly rate of his annual allowance at insured pensionable age shall be not less than that guaranteed minimum, and

(*b*) the weekly rate of pension payable to his widow shall be not less than half that guaranteed minimum;

and for the purposes hereof a weekly amount of an allowance or pension shall be taken to be the annual amount thereof divided by 52, the result being rounded to the nearest whole penny, taking $\frac{1}{2}$p as nearest to the whole penny above.

(2) The provisions of this regulation shall be construed as overriding all such provisions of these regulations, if any, as are not in accordance with the provisions of the Social Security Pensions Act 1975.".

24. For Regulation 81(1) of the principal Regulations (payment of transfer values) there shall be substituted the following provisions:—

"**81.**—(1) Where a former teacher, having ceased to be employed in reckonable service, becomes subject to an approved superannuation scheme, being (subject to paragraph (1A)) a contracted-out scheme (within the meaning of the Social Security Pensions Act 1975), then, on an application being made with his consent—

(*a*) within the period specified in paragraph (2),

(*b*) by the person responsible for the management of the approved superannuation scheme,

(a) S.I. 1975/2101. (b) 1975 c. 60.

the Secretary of State may pay to that person a transfer value (calculated in accordance with Part I of Schedule 7) in respect of the teacher.

(1A) The approved superannuation scheme need not be a contracted-out scheme if the teacher—

(*a*) has less than five years reckonable service; or

(*b*) ceased to be employed in such service before 6th April 1978; or

(*c*) is a married woman or widow who, by virtue of an election made or treated as made for the purposes of regulations under section 3 of the Social Security Pensions Act 1975, is either liable to pay primary Class 1 contributions or Class 2 contributions (within the meaning of the Social Security Act 1975) at a reduced rate prescribed by such regulations or is exempt from liability to pay Class 2 contributions.".

25. At the end of Regulation 93 of the principal Regulations (payment of benefits) there shall be added the following provision:—

"(6) Where, by virtue of sub-paragraph (*a*)(iii) of regulation 53(1) or of regulation 64(2)(*b*), a person's entitlement to benefit is conditional on a contributions equivalent premium not being paid by the Secretary of State, then, notwithstanding the preceding provisions of this regulation, for such period as is requisite for the purpose of determining whether or not the entitlement will be extinguished by the payment of such a premium, payments on account of the benefit shall be withheld; but if the entitlement is not so extinguished the payments previously withheld shall be made as soon as is reasonably practicable.".

26.—(1) In paragraph 1 of Part I of Schedule 7 to the principal Regulations (transfer values) after the words "any teacher shall" there shall be inserted the words "subject to sub-paragraph (2)".

(2) At the end of the said paragraph 1 there shall be added the following provision:—

"(2) Where a contributions equivalent premium (within the meaning of section 42 of the Social Security Pensions Act 1975) is paid in respect of the teacher, the transfer value, calculated as aforesaid, shall be reduced by the amount of that premium.".

Given under the Official Seal of the Secretary of State for Education and Science on 27th September 1978.

(L.S.)

Shirley Williams,

Secretary of State for
Education and Science.

Consent of the Minister for the Civil Service given under his Official Seal on 2nd October 1978.

(L.S.)

T. A. A. Hart,

Authorised by the Minister for the Civil Service.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make amendments to the Teachers' Superannuation Regulations 1976 which take account of the requirements to be satisfied by an occupational pension scheme if it is to be a "contracted-out scheme" for the purposes of the Social Security Pensions Act 1975. The present Regulations (save for Regulations 5, 19 and 26, which could affect a person adversely) have effect as from 6th April 1978, the date on which relevant provisions of the Act of 1975 came into force (*Regulation* 1(2)); retrospection is authorised by section 12 of the Superannuation Act 1972.

Sections 35 and 36 of the Act of 1975 contain requirements as respects the guaranteed minimum in relation to a pension payable to a person subject to a contracted-out scheme or his widow. In respect of a teacher's annual allowance and his widow's pension related provision is made by Regulations 3, 4, 7, 8(1), 9 to 13, 16(3), 18 and 20 to 23. Under Regulation 72(1)(*c*) of the Regulations of 1976 (amended by Regulation 19 of the present Regulations) the repayment of contributions to a teacher affects his pension entitlement; the restrictions contained in Regulation 5 of the present Regulations on the repayment of a teacher's contributions in certain circumstances indirectly protect his pension entitlement in those circumstances.

Regulation 6 of the present Regulations takes account of section 47 of the Act of 1975 (deduction from a repayment of contributions of a state scheme premium).

The requirements of the Act of 1975 relating to widows (unlike the widow's pension provisions of the Regulations of 1976) are not confined to widows by marriages contracted before retirement. Provision for pensions for widows and children by post-retirement marriages are made by Regulations 14, 16(1) and (2) and 17 of the present Regulations.

Section 42 of the Act of 1975 relates to the payment of a "contributions equivalent premium" in certain circumstances on a person's contracted-out employment terminating and provides that such payment may extinguish the person's accrued rights to guaranteed minimum pensions under his occupational pension scheme. Regulations 8(2), 15, 25 and 26 of the present Regulations make related provision.

Section 38 of the Act of 1975 makes provision as respects the transfer of accrued rights where a person changes employment but in both employments is subject to a contracted-out occupational pension scheme. Regulation 24 makes related provision.

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