

Ombudsman's Determination

Applicant	Mrs D
Scheme	Scottish Teachers' Superannuation Scheme (the Scheme)
Respondent	Scottish Public Pensions Agency (SPPA)

Outcome

1. I do not uphold Mrs D's complaint and no further action is required by SPPA.

Complaint summary

2. Mrs D has complained about SPPA's administration of her pension benefits. She believes it provided her with incorrect information regarding the suspension of her pension during a telephone call towards the end of 2015, and that it had delayed informing her about the overpayments. She has said that, had SPPA provided her with correct information in 2015, the overpayments would not have occurred.

Background information, including submissions from the parties

3. Mrs D was an active member of the Scheme from 27 January 1986 to 4 January 2011. She retired from teaching and claimed her pension early, from 5 January 2011. On that date, Mrs D received confirmation of her benefits, which contained the following information:

“Should you become re-employed as a teacher, (whether in or opted out of the [Scheme]) you must inform [SPPA] immediately giving details of your new employment. It is in your own interest to do so as your pension may be abated or suspended because of your new earnings. Any resulting overpayment of pension will be recovered by [SPPA].”
4. In January 2012, Mrs D became re-employed as a teacher and re-joined the Scheme as an active member.
5. On 3 Feb 2012, Mrs D emailed SPPA to inform it of work she had carried out and to let it know that she was expecting to work a few days that month.

6. On 28 February 2012, SPPA sent two letters to Mrs D and confirmed that she could earn £5,075.35 between 1 January 2012 and 31 March 2012, and £20,583.75 between 1 April 2012 and 31 March 2013, without affecting her teacher's pension. These letters also contained the following statement:

“SPPA will try to ensure that during re-employment you receive no less than the pension to which you are entitled. Occasionally however this may result in overpayments being made and in these cases any overpayment of pension will be recovered from future payments.

To ensure that any such overpayments are kept to a minimum you must notify SPPA if you are likely to exceed your annual earnings limit. In these circumstances, your pension will be abated or suspended and any final calculation of your pension will be made after the full details of your annual earnings have been received from your employer(s).”

7. On 29 November 2013, SPPA notified Mrs D that her earnings limit for the period of 1 April 2013 to 31 March 2014 (**the 2013/14 period**) was £26,557.89. South Lanarkshire Council (**the Council**) confirmed to SPPA in August 2014, that Mrs D had earned £28,683.69 for the 2013/14 period. SPPA then wrote to Mrs D on 28 January 2015, confirming that she had exceeded her earnings limit and so her gross pension had been overpaid by £2,125.80.
8. On 5 February 2015, Mrs D contacted SPPA as she believed that an error had occurred in the SPPA calculations. She also said that she had originally requested confirmation of her earnings limit in May 2013, and that it had taken SPPA approximately seven months to send this.
9. On 16 February 2015, SPPA contacted Mrs D to request repayment of the net overpayment of £1,908.80.
10. On 25 February 2015, Mrs D responded, as she had not received a response to her calculation query. Following this, Mrs D raised a complaint and, after a number of further exchanges, Mrs D issued a cheque for £1,908.80 to SPPA.
11. On 30 April 2015, SPPA wrote to Mrs D to say that her earnings limit for the period of 1 April 2015 to 31 March 2016 (**the 2015/16 period**) was £27,601.62. Following this, Mrs D contacted SPPA at some point in late 2015 for advice as she thought she was reaching her earnings limit. Mrs D has said that during this telephone call she was led to believe that if she suspended her pension, it meant that she could earn more money.
12. On 15 December 2015, Mrs D emailed SPPA to request that her pension be suspended until the next financial year. Mrs D followed this up on 18 January 2016 as she had not received a reply.
13. On 21 January 2016, SPPA contacted Mrs D, apologising that she had not received a response. It confirmed that her pension had been suspended and that payments

would cease. It advised that Mrs D would need to contact SPPA once her re-employment changed or stopped so that her pension could be reinstated.

14. On 22 April 2016, SPPA contacted Mrs D to say that her pension had been reinstated and that it would check her actual earnings for the last year to confirm if there were any under/overpayments. Shortly after this, the Council confirmed that Mrs D's earnings for the 2015/16 period were £36,329.65.
15. On 1 June 2016, SPPA wrote to Mrs D to say that her re-employed earnings limit for the period 1 April 2016 to 31 March 2017 (**the 2016/17 period**) was £27,601.62.
16. Following receipt of Mrs D's earnings from the Council in August 2016, an overpayment was identified by SPPA for the 2015/16 period. SPPA first contacted Mrs D about this nine months later.
17. In February 2017, Mrs D's pension was suspended again, at her request. Following receipt of her earnings from her employer, a further overpayment was identified for the 2016/17 period.
18. On 3 May 2017, SPPA wrote to Mrs D with reference to her re-employment with the Council for the 2015/16 period and the 2016/17 period. It said:-
 - The pension she received from SPPA had been overpaid for the above periods because her earnings for both periods of employment exceeded the earnings limit despite recalculating the limits.
 - The employer's details showed that she had exceeded her earnings limit by £6,012.54 during the 2015/16 period and £2,943.12 in the 2016/17 period.
 - Under the Scheme Rules, SPPA was obliged to recover any amount earned over the limit so it asked Mrs D to repay the overpaid amount.
 - Based on the figures provided by the employer this year, SPPA had calculated an abatement date for her benefits that year, so it would suspend her pension on 18 February 2018, which should decrease the possibility of further overpayment. It would then resume on 1 April 2018.
19. On 17 May 2017, SPPA wrote to Mrs D to request repayment of the overpayment that amounted to £8,323.26. It said that the overpayment was as a result of her exceeding her earnings allowance for both the 2015/16 and 2016/17 periods. It enclosed a breakdown of this as well as information detailing how to make the repayment.
20. On 5 June 2017, SPPA wrote to Mrs D, after she had enquired about her earnings limit. It explained that to calculate this, it took her 'Salary of Reference', which was the highest salary rate that she received in the period used to calculate her pensionable salary, and deducted her pension(s) from the Scheme along with any Compensatory Pension she received from her employer. It said that the earnings limit was revalued annually, in line with Pensions Increases. As there was no Pensions Increase for the 2015/16 period, the only figure that changed in the calculation of her earnings limit

between the 2015/16 and 2016/17 periods was the pension paid, due to the suspension of payment each year.

21. On 16 June 2017, SPPA sent a further repayment request to Mrs D.
22. On 29 June 2017, Mrs D emailed SPPA with a number of queries in relation to her earnings limit and the overpayments.
23. On 13 July 2017, SPPA sent another repayment request to Mrs D.
24. On 19 July 2017, SPPA responded to Mrs D's enquiries from 29 June 2017. It reiterated how it had calculated her earnings limit and said, in summary:-
 - It received her email on 15 December 2015, requesting the suspension of her pension as she believed she would breach her earnings limit during the 2015/16 period. Her pension was suspended with the last payment made on 31 December 2015.
 - It did not send her a re-calculated earnings limit when she suspended her pension as this was not normal practice. However, it was something it has raised so that it can incorporate it moving forward.
 - The normal practice was to suspend the pension, then, on receiving the member's earnings from the employer for the year, calculate any under or overpayment of pension and process this appropriately. This was normally done in May of each year.
 - When Mrs D's pension was suspended, her earnings limit would have changed as the pension she received from SPPA was reducing, meaning her earnings limit for the overall year would have increased.
 - In 2017, it received her email requesting the suspension of her pension on 12 February 2017. Her pension was then suspended with the last payment made on 31 January 2017. It did not contact her at this time to confirm it had suspended her pension.
 - Its payroll team had requested her earnings for the 2015/16 period on 19 May 2016. It then notified SPPA of the potential overpayment on 7 August 2016. SPPA started working on Mrs D's case during its re-employment exercise in January 2017.
 - It requested confirmation of her earnings for the 2016/17 period from her employer on 4 April 2017, which it received on 11 April 2017.
 - It confirmed that her employer made single batch payments to SPPA each month, which covered the member and employer contributions for all of their employees; to which, Mrs D is included.

25. On 29 July 2017, Mrs D complained to SPPA under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She said that the demand for repayment had caused her extreme stress. She said the following:-

- In late November or early December 2015, she telephoned SPPA as she thought she was nearing her maximum earnings. She was told that she should stop work. She enquired about the possibility of suspending her pension and was told that this was an alternative, but SPPA did not mention a recalculation.
- She emailed SPPA on 15 December 2015, to ask for her pension to be suspended with immediate effect. This was not done, and as she received no reply, she emailed again in January 2016. SPPA responded to this to say that her pension had been suspended. She then received no further communication from SPPA until her pension restarted in April 2016.
- In May 2017, she received a letter saying she had overpayments for the 2015/16 and 2016/17 periods. The overpayment figure of £8,323.26 was a considerable amount of money and she could not repay it.
- She had to contact SPPA on a number of occasions to find out how her earnings limit was calculated. When she received this, it was the first time she was told about the recalculations.
- The timeline in receiving the information from the Council and SPPA acting on it was totally unacceptable.
- She had not received the requested statement of payments made to SPPA for the 2015/16 and 2016/17 periods.
- She had been previously told that SPPA would receive her employee contributions and employer contributions on a monthly basis. So, SPPA should have known how much she had earned from this information.
- She had received a further letter from SPPA asking for the overpayment to be repaid. In response, when she telephoned SPPA, it was unaware of the fact that she had been asking for further information.

26. On 29 September 2017, SPPA issued its stage one response under the Scheme's IDRP. It said:-

- It first became aware of a potential overpayment for Mrs D's pension for the 2015/16 period in August 2016, but due to an administrative oversight, SPPA did not start working on this until January 2017. It apologised for this and any distress and inconvenience that this had caused Mrs D.
- It sent a letter on 19 May 2015 to inform Mrs D of her earnings limit of £27,601.61 for the 2015/16 period. Her employer confirmed that she had earned £36,329.65 during the 2015/16 period. There was no increase to Mrs D's earnings limit in 2016, and her employers confirmed that her earnings for the 2016/17 period were

£32,356.87. As a result of the overpayments, it wrote to Mrs D on 3 May 2017, with a request for the overpayments to be repaid.

- It received employee and employer contributions from employers on a monthly basis, but these are received as a bulk payment for all employees and are not broken down into individual payments. It does not receive details of individual's earnings on a monthly basis. Rather, these are provided annually by employers at the end of each financial year.
- It must ensure that the correct pension is paid in accordance with The Teachers' Superannuation (Scotland) Regulations 2005, Regulation E18 (see Appendix). Further, when an overpayment has occurred, it must seek recovery under the Public Finance and Accountability (Scotland) Act 2000.
- It upheld the original decision to seek recovery of the overpayment and said that Mrs D should contact its Finance team to make arrangements for the repayment. If she was unable to pay this as a lump sum, it may be possible to agree a suitable repayment plan.

27. On 9 February 2017, SPPA received Mrs D's request to escalate her complaint to stage two of the IDRP. It then issued its response on 6 April 2018, where it said:-

- Where, on re-employment following retirement and receipt of a scheme pension, a teacher's pension and earnings exceed the salary of reference then an abatement must be applied.
- Where the earnings exceed the salary of reference, SPPA have no option but to recover any resulting overpayment. SPPA has a duty to the public purse to recover monies to which a member does not have entitlement. So, it was necessary to pursue recovery of any overpayment that had arisen for any reason.
- It appreciated that there were delays in SPPA's communications. As a result, it was content to offer Mrs D £500.
- It recognised that the net overpayment of £8,323.26 was a considerable sum to repay and explained that it was possible to come to a reasonable arrangement with her where the overpayment was repaid in instalments. It was also possible for the £500 award to be offset against the overpayment if she wished.
- The abatement of pension on re-employment was a common provision across the public service schemes. The principal reasons for applying abatement are (i) to safeguard public expenditure by restricting the total remuneration made from public funds for those who have not genuinely retired from a public service career, (ii) on propriety ground to avoid accusations that public servants are allowed to receive both pay and pensions from public funds particularly if they remain in the same job and (iii) to ensure value for money ensuring long term retirement expenditure and tax relief are targeted on retirement rather than being used during part of an employee's working life.

- As part of the recent reform of public service pensions, new schemes were introduced across the public service with effect from 1 April 2015. In the Scottish Teachers' Pensions Scheme 2015, abatement will not apply to a pension only accrued under this scheme. This change was included in the overall design of the 2015 pension scheme, the cost of which will be met by the scheme contributions going forward from April 2015.

Mrs D's position

28. She believes that the information regarding suspending her pension and how this would allow her to earn more money was incorrect. Further, because SPPA did not give her precise information during the telephone call and did not follow this up, she was unaware of the correct position.
29. Had she been told the correct information during the telephone call in late 2015, she believes none of this would have happened. She has also noted that SPPA has not explained why she was given the wrong information in the first place.
30. She would like SPPA to admit that it provided her with incorrect information, and to take into consideration that this was its error.
31. In addition, SPPA delayed contacting her about the overpayment for the 2015/16 period, which resulted in her overworking the following year.
32. As a result, she had used this money to: purchase a gift for a relative; go on holiday; and make home improvements.

SPPA's position

33. Mrs D's earnings limit required adjustment because she had selected to suspend the payment of her pension. So, the revised earnings limits were £30,321.55 for the 2015/16 period and £29,413.75 for the 2016/17 period. The resulting increase in both earnings limits reduced the overpayment due from Mrs D. However, despite suspending the pension, Mrs D had still earned in excess of the revised earnings limit.
34. It accepts that there was a delay in implementing her request to suspend her pension by email of 15 December 2015, as it did not suspend her pension until 21 January 2016. Nevertheless, she had already exceeded the earnings limit by £6,012.54 for the 2015/16 period.
35. It recognises that Mrs D had taken steps to try and prevent exceeding the earnings limits given. However, the onus is on the member to ensure that they keep within the limits. SPPA is unable to monitor this as it does not receive details of a member's earnings until after the end of the financial year.
36. Although there was a delay in notifying Mrs D about the overpayment, it did not cause the overpayment nor could it have prevented it from occurring.

37. It recognises and apologises for the level of service Mrs D has received, as it was not at the level that she has a right to expect. So, it offered £500. Mrs D was notified on 28 November 2018 that the £500 had been offset against the overpayment of £8,323.26. However, this can be reversed if Mrs D would prefer to have the award paid directly to herself.
38. The recovery of the overpayment had been suspended, and SPPA is awaiting the outcome of The Pension Ombudsman's Office's (**TPO's Office**) decision.
39. During the course of TPO's Office's investigation, SPPA provided re-employment factsheets from 2013 and 2015 that were available on its website and confirmed that it did not have a copy of the telephone call that took place at some point in late 2015.
40. Both of the factsheets contained information about how a member's earnings limit was calculated and how members should monitor their earnings. In particular, the 2013 factsheet contained the following information:

"If, during re-employment, your pay approaches or exceeds your earnings limit in any tax year, you should inform us immediately as your pension may be reduced or suspended. It is in your own interest to do so at the first opportunity because your employer will supply us with details of your earnings at the tax year end and we will recover all overpayments. The easiest way to check your earnings in any tax year is to look at 'your earnings to date' on your payslip."

Adjudicator's Opinion

41. Mrs D's complaint was considered by one of our Adjudicators who concluded that no further action was required by SPPA. The Adjudicator's findings are summarised below:-
 - TPO's Office received SPPA's response to Mrs D's complaint on 26 April 2019. As the first overpayment being complained about was made in the 2015/16 period, which was approximately three to four years before 26 April 2019, SPPA had made its claim for repayment within the applicable limitation period. As a result, SPPA was able to recover the whole overpayment from Mrs D, subject to any other defences.
 - After reviewing the change of position defence it was the Adjudicator's view that Mrs D would have been aware that she would have to contact SPPA when she was nearing her earnings limit for every year. This was supported by the letters dated 28 February 2012 indicating that SPPA would not know when Mrs D was reaching her earnings limit, which is why it asked to be notified.
 - In the Adjudicator's opinion, Mrs D knew she needed to monitor her earnings, as she contacted SPPA in December 2015 and February 2017. Based on her actions, it followed that she would have known that, if she continued to receive her pension

and salary from her re-employment, an overpayment would occur and that this would need to be recovered by SPPA.

- Mrs D believed she received incorrect information from SPPA, which, combined with the delay in informing her about the overpayment led her to believe she had not been overpaid. However, the Adjudicator could not see that SPPA had provided incorrect information. Mrs D said she was told that if she suspended her pension, she could earn more. The Adjudicator's opinion was that this was correct information, as, by reducing the total pension Mrs D received for the year, her earnings limit would increase.
- Mrs D's original earnings limits was £27,601.62 for the 2015/16 period, but as she suspended her pension, this increased to £30,321.55. As a result, she earned more than what she initially could have done without affecting her pension.
- It was reasonable to expect Mrs D to have made enquiries during or after the telephone call that took place in late 2015, to establish her new earnings limit. Following this, she could have then checked this against her earnings to see whether she had been overpaid. Consequently, it was the Adjudicator's opinion that Mrs D had not satisfied the good faith element of the change of position defence and so could not successfully invoke it.
- The Adjudicator's view was that a defence of estoppel could not be raised as SPPA had issued a number of communications to Mrs D which highlighted that her pension could be affected if she became re-employed and that she would need to monitor her earnings. Further, as there was nothing that demonstrated that SPPA informed Mrs D how much her revised earnings limit would be, there was nothing demonstrating that SPPA had made a clear and unambiguous statement to Mrs D. In addition, the Adjudicator could not identify the necessary elements for a contract to exist, so she could not see that any of the applicable defences could be successfully invoked. As a result, SPPA could recover the overpayment in full.
- Although there was a delay in SPPA contacting Mrs D concerning the overpayment, it did not mean that Mrs D should be able to keep the benefits that she is not entitled to. By recovering the benefits, SPPA was attempting to ensure that Mrs D received the correct level of benefits, which it was entitled to do so, regardless of fault.
- SPPA should not have caused the slight delay in suspending Mrs D's pension for the 2015/16 period, nor taken as long as it did to notify her of the overpayment for that year. It also appeared as if SPPA had not addressed Mrs D's complaint about being misinformed. So, it was the Adjudicator's opinion that Mrs D had suffered significant distress and inconvenience. As SPPA had offered £500 in recognition of this, it did not need to do anything further.

42. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs D provided further comments, which are summarised below:-

- She did not believe the impact this had on her mental health had been taken into account.
- She believed that her recollection of the telephone call that took place in late 2015 had been disregarded.
- Had she been provided correct information; she would not have been overpaid.

43. I note the additional points raised by Mrs D, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

44. There is no dispute that an overpayment has occurred. However, Mrs D believes that if SPPA had provided her with correct information during the telephone call in late 2015, the overpayment would not have occurred, I disagree.
45. Mrs D's recollection is of SPPA informing her that, if she suspended her pension for the 2015/16 period, she could earn more money through her re-employment. Although, Mrs D believes this was incorrect, SPPA provided her with accurate information. This is demonstrated by the change to Mrs D's earnings limit for the 2015/16 period. Namely, Mrs D's initial earnings limit for the 2015/16 period was £27,601.62, which increased to £30,321.55 after she had suspended her pension.
46. Nevertheless, an overpayment occurred because Mrs D earned £36,329.65 for the 2015/16 period. Given that the onus was on Mrs D to monitor her earnings for the purpose of the earnings limit, it is reasonable to have expected Mrs D to enquire about her new earnings limit. Alternatively, if she had internet access, she could have used the information on SPPA's website to calculate her new earnings limit. As a result, I do not agree that there has been misinformation, nor do I find that SPPA acted in error in this regard.
47. In relation to the applicable defences to the recovery of the overpayment, SPPA's repayment claim was made in time for the purposes of the Limitation Act. Further, as it was Mrs D's responsibility to monitor her earnings against her earnings limit, I cannot see that Mrs D satisfied the good faith element of the change of position defence. By monitoring her earnings and checking her earnings limit, Mrs D would have been aware that she had been overpaid. Similarly, a defence of estoppel does not apply, particularly when SPPA did not make a clear or unambiguous statement to Mrs D about her earnings limit, nor are there the necessary elements for a contract. So, SPPA can recover the overpayment in full.
48. Although SPPA did not cause the overpayment, a number of its acts and/or omissions amount to maladministration, which have certainly caused unnecessary distress and inconvenience to Mrs D. Namely, SPPA ought to have informed Mrs D about the overpayment sooner than it did, it should not have delayed the suspension of Mrs D's pension and it ought to have addressed Mrs D's complaint concerning

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being misinformed. Nevertheless, SPPA has offered £500 in recognition of the significant distress and inconvenience Mrs D suffered, which I find is adequate.

49. I do not uphold Mrs D's complaint.

Anthony Arter

Pensions Ombudsman
26 July 2021

Appendix

The Teachers' Superannuation (Scotland) Regulations 2005 – SSI 2005/393

“E18 Interpretation: abatement of pension

In this regulation and regulations E18A to E18D—

“abatable pension” means the sum of a teacher's retirement pension—

(a) disregarding the effect of any reduction under regulation E18D; and

(b) excluding—

(i) phased retirement pension;

(ii) additional pension;

(iii) a pension (or part of a pension) which is payable to the teacher by reason of retirement with actuarial adjustment applying to the teacher's reckonable service; and

(iv) retirement benefits defined in and payable under the Teachers' Pension Scheme (Scotland) (No 2) Regulations 2014;

“adjusted salary of reference” for a teacher is—

(a) if the teacher's previous employment was full-time, the higher of—

(i) the highest salary taken into account in determining the teacher's pensionable salary under regulation E34 or E34A, multiplied by the adjustment factor; or

(ii) (if applicable) the highest salary taken into account in determining the teacher's pensionable salary under regulation E34 or E34A relating to the teacher's further employment, multiplied by the adjustment factor;

(b) if the teacher's previous employment was part-time, the higher of the full-time equivalent of—

(i) the highest salary taken into account in determining the teacher's pensionable salary under regulation E34 or E34A, multiplied by the adjustment factor; or

(ii) (if applicable) the highest salary taken into account in determining the teacher's pensionable salary under regulation E34 or E34A relating to the teacher's further employment, multiplied by the adjustment factor;

(c) if the teacher becomes entitled to a further retirement pension during a tax year, and the salary of reference for

the teacher's employment immediately prior to the further retirement ("the new higher salary of reference") is higher than that for the previous employment ("the existing salary of reference"), the sum of—

(i) the existing salary of reference divided by 365 multiplied by the number of days from the beginning of the tax year to the day before the further retirement; and

(ii) the new higher salary of reference divided by 365 multiplied by the number of days from the date of entitlement to further retirement benefits to the end of the tax year;

"adjustment factor" for a salary is the amount (if any) by which, immediately before the first day of the employment, that salary would have increased if it had been the annual rate of an official pension as defined in section 5(1) of the 1971 Act, beginning and first qualifying for increases under that Act, on the same date as—

(a) the last day of employment at that salary, in a case where the pensionable salary was determined under regulation E34;

(b) the retirement pension, in a case where the pensionable salary was determined under regulation E34A;

"initial adjusted salary of reference" is a teacher's adjusted salary of reference divided by 365 and multiplied by the number of days in the initial period;

"initial period" is that part of a tax year running from a teacher's entitlement day in respect of retirement benefits and ending at the end of the tax year;

"pension receipts" means the sum of a teacher's retirement pension—

(a) including—

(i) phased retirement pension;

(ii) a pension (or part of a pension) which is payable to the teacher by reason of—

((aa)) retirement on or after reaching normal pension age;

((bb)) premature retirement; or

((cc)) early retirement with actuarial adjustment applying to the teacher's reckonable service and to mandatory and discretionary compensation for premature retirement under the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996;

(iii) an ill-health pension which began to be paid before 1st April 1997, including where the annual rate of the pension has been reduced to zero because the teacher entered full-time employment or ceased to

be incapacitated (as referred to in regulation E14(1) of the Teachers' Superannuation (Scotland) Regulations 1992);

(iv) retirement benefits defined in and payable under the Teachers' Pension Scheme (Scotland) (No 2) Regulations 2014; and

(b) excluding additional pension; and

“salary” means—

- (a) contributable salary;
- (b) pensionable earnings as defined in Chapter 4 of Part 3 of the Teachers' Pension Scheme (Scotland) (No 2) Regulations 2014.

E18A Scope of abatement of retirement pension following further employment

Regulation E18B applies to a teacher to whom retirement benefits have become payable and who is employed—

- (a) in pensionable employment, comparable United Kingdom service or employment which would have been pensionable but for—
 - (i) the teacher having made an election under regulation B7 (election for employment not to be pensionable); or
 - (ii) the teacher having reached the age of 75; or
- (b) in part-time or full-time employment which is not pensionable employment which falls within regulation B6.

E18B Abatement of a retirement pension following further employment

- (1) Where this regulation applies to a teacher and the teacher is in an initial period—
 - (a) if the teacher's salary in the employment during the initial period equals or exceeds the teacher's initial adjusted salary of reference, no abatable pension is to be paid in that tax year;
 - (b) in any other case, the abatable pension to which the teacher is entitled in the initial period is to be paid only in respect of X number of days, where—

$$X = A/B$$

and where—

A is the amount by which the teacher's salary in the employment during the initial period falls short of the teacher's initial adjusted salary of reference; and

B is the total of the teacher's pension receipts for the initial period divided by the number of days in the initial period.

- (2) Where this regulation applies to the teacher and the teacher is not in an initial period—
- (a) if the teacher's salary in the tax year equals or exceeds the teacher's adjusted salary of reference, no abatable pension is to be paid in that tax year;
 - (b) in any other case, the abatable pension to which the teacher is entitled in that tax year is to be paid only in respect of X number of days, where—

$$X = A/B$$

and where—

A is the amount by which the teacher's salary in the employment during the tax year falls short of the teacher's adjusted salary of reference; and

B is the total of the teacher's pension receipts for the tax year divided by 365.

E18C Method of abatement

- (1) Where the abatable pension of a teacher falls to be reduced—
 - (a) under regulation E18B(1), paragraph (2) applies; or
 - (b) under regulation E18B(2), paragraph (3) applies.
- (2) Where this paragraph applies, the Scottish Ministers are to pay the teacher's abatable pension in accordance with regulation E36 (monthly and quarterly payments), without taking account of regulation E18B(1)(b), on the assumption that the teacher will remain in employment at the same salary for the remainder of the initial period.
- (3) Where this paragraph applies, the Scottish Ministers are to pay the teacher's abatable pension in accordance with regulation E36 (monthly and quarterly payments) without taking account of the reduction, until the abatable pension has been paid in respect of the number of days calculated in regulation E18B(2)(b), on the assumption that the teacher will remain in employment at the same salary for the remainder of the tax year.

- (4) When the teacher's abatable pension has been paid in respect of the number of days calculated in regulation E18B(1)(b) or (2)(b), paragraph (5) applies unless the teacher ceases to be in the employment, or is in employment at a lower salary, in which case paragraph (6) applies.
- (5) If this paragraph applies, the Scottish Ministers are to pay no further payable abatable pension to the teacher in respect of—
 - (a) the remainder of the initial period, if regulation E18B(1)(b) applies; or
 - (b) the remainder of the tax year, if regulation E18B(2)(b) applies.
- (6) If this paragraph applies the Scottish Ministers are to pay the teacher's abatable pension during the remainder of the initial period or tax year, of such amount and at such times as is necessary in order to achieve the outcome described in—
 - (a) regulation E18B(1)(b) in respect of an initial period; or
 - (b) regulation E18B(2)(b) in respect of a tax year.”