
STATUTORY INSTRUMENTS

1992 No. 280

The Teachers' Superannuation (Scotland) Regulations 1993

PART B

PENSIONABLE EMPLOYMENT

Full-time service

B1. Subject to regulations B5 to B7, a teacher is in pensionable employment where he is in full-time service in an employment specified in Schedule 2.

Part-time service

B2.—(1) Subject to paragraph (2) and regulations B5 to B7, a part-time teacher in an employment specified in Schedule 2 is in pensionable employment if he makes an election for the purposes of this regulation.

(2) A person is not in pensionable employment by virtue of paragraph (1) if he is, or is deemed to be, a pensionable employee within the meaning of the Local Government Superannuation (Scotland) Regulations 1987(**(1)**).

(3) Subject to paragraphs (4) and (5), an election for the purposes of this regulation may be made at any time by giving written notice to the Secretary of State and shall have effect—

- (a) if made before, or during, the first pay period after commencing employment in part-time service, from the date of commencement of that employment; and
- (b) in any other case, unless the Secretary of State specifies an earlier date, from the first day of the month following that in which he notifies the teacher of its receipt.

(4) An election under paragraph (3) shall apply to contracts for part-time service with the same employer entered into after the date of that election.

(5) Paragraph (3) shall not apply to a teacher who, at any time, has made an election under regulation B6.

Continuing employment

B3. Subject to regulations B5 to B7, a teacher who immediately before the date on which these Regulations come into force was in employment (“the first employment”) which was reckonable service by virtue of regulation 4(2)(c) or (d) of the 1977 Regulations(**2**) shall be treated as being in pensionable employment—

- (a) while in the first employment; and
- (b) while in employment which is in continuation of the first employment.

(1) S.I. 1987/1850, amended by S.I. 1988/625, 1989/422, 1989/802, 1989/967, 1990/422, 1990/1284 and 1991/78.
(2) Regulation 4(2)(d) was inserted by S.I. 1988/1618.

Accepted school

B4.—(1) In pursuance of paragraph 2 of Schedule 2 (pensionable employment), subject to paragraph (6) and regulations B5 to B7, a teacher is in pensionable employment while employed in a school which is an accepted school for the purposes of this regulation.

(2) For the purposes of this regulation—

- (a) “accepted school ” means an independent school which—
 - (i) immediately before the date on which these Regulations come into force was accepted under Schedule 2 to the 1977 Regulations; or
 - (ii) being registered, and being the subject of a relevant application by its governing body or proprietor, is accepted by the Secretary of State as able to meet the requirements placed upon an employer by regulations G5 and G6 (payment of employers' contributions);
- (b) “registered ” means registered in the register of independent schools in accordance with Part V of the Education (Scotland) Act 1980⁽³⁾;
- (c) “proprietor ” has the meaning assigned to it by section 135 of the Education (Scotland) Act 1980 and includes a person who, by reason of holding any office or having any interest in a company by which the school is conducted, is substantially in the position of a proprietor.

(3) Notwithstanding the provisions of paragraph (2) the Secretary of State shall have power in such case as he thinks appropriate to accept under the provisions of this regulation an independent school which is for the time being only provisionally registered.

(4) The date on which an independent school becomes an accepted school under paragraph 2(a)(ii) shall, unless an alternative date is agreed by the Secretary of State and the governing body or proprietor thereof, be the 1st September preceding acceptance of the application.

(5) An accepted school shall cease to be an accepted school on such a day as is specified in a notice in writing sent by the Secretary of State to the governing body or proprietor of the school on or after any of the following events—

- (a) the receipt by the Secretary of State of an application by the governing body or proprietor that the school shall cease to be an accepted school;
 - (b) the school ceasing to be registered;
 - (c) any default by the governing body or proprietor in the payment of contributions;
 - (d) failure by the governing body or proprietor to comply within 1 month with any requirement of the Secretary of State to make any report or return, give any information or produce any document, under regulation H3;
 - (e) failure by the governing body or proprietor to comply with any other provision of the Regulations relating to the employment of teachers in reckonable service;
 - (f) the closure of the school.
- (6) The service of a teacher in an accepted school shall not be pensionable employment if—
- (a) the teacher is a proprietor thereof; or
 - (b) paragraph (2)(a)(i) applies to the school and the teacher’s employment therein immediately before the date on which these Regulations come into force was not reckonable service.

Exclusion from pensionable employment

B5.—(1) A teacher is not in pensionable employment unless aged at least 16 and under 70 and—

(3) 1980 c. 44.

- (a) entitled to be paid his salary in full;
- (b) on sick leave and entitled to be paid not less than half his salary; or
- (c) on maternity leave and entitled to receive statutory maternity pay (whether as a constituent part of her income or as her sole income).

(2) A person is not in pensionable employment while he is in an employment which immediately before the date on which these Regulations come into force was, by virtue of regulation 6(1)(a) of the 1977 Regulations (employments treated as not being reckonable service by previous provisions), not pensionable employment.

(3) Subject to paragraph (4), a person who—

- (a) immediately before the date on which these Regulations come into force was in; or
- (b) not more than 12 months before that date had ceased to hold,

an employment which by virtue of regulation 6(2) of the 1977 Regulations (employments superannuable under section 7 or 8 of the Superannuation Act 1972) was not pensionable employment and who has made no election under regulation 6(2)(c) of the 1977 Regulations, is not in pensionable employment.

(4) Within 3 months after the start of an employment to which paragraph (2) applies the teacher may, by giving written notice to the Secretary of State and to the appropriate administering authority within the meaning of the Local Government Superannuation (Scotland) Regulations 1987, elect that paragraph (3) is to cease to apply.

Membership

B6.—(1) A teacher who—

- (a) is employed in pensionable employment; or
- (b) is not so employed but expects to enter an employment in which he would be so employed, may at any time, by giving written notice to the Secretary of State, make an election under this regulation.

(2) As from the date from which the election has effect, the employment referred to in paragraph (1) and any subsequent periods of employment which would otherwise be pensionable employment shall, subject to regulation B7 below, cease to be pensionable employment, and employment where this paragraph applies is in these Regulations referred to as “excluded employment”.

(3) Where paragraph (1)(a) applies, an election under this regulation has effect—

- (a) if the notice is received by the Secretary of State during the first pay period after commencing pensionable employment, from the date on which the teacher became so employed; and
- (b) in any other case, from the first day of the pay period following that in which the notice was received by the Secretary of State.

(4) Where paragraph (1)(b) applies, an election under this regulation, if the notice is received by the Secretary of State before or during the first pay period after commencing pensionable employment, has effect from the date on which the teacher became so employed.

(5) An election made under regulation 4A(4) of, or paragraph 6(c) of Schedule 2 to, the 1977 Regulations is to be treated as having been made under this regulation.

(4) Regulation 4A was inserted by [S.I. 1989/666](#).

Resumption of membership

B7.—(1) Subject to paragraphs (5) and (6), a teacher who has made an election under regulation B6, who has since been in excluded employment and who—

- (a) is in excluded employment; or
- (b) is not in, but expects to enter, employment which is excluded employment by virtue of an election previously made under regulation B6,

may, at any time, by giving written notice to the Secretary of State, make an election under this regulation.

(2) As from the date on which the election has effect, subject to regulation B6, any excluded employment on or after that date is pensionable employment.

(3) Where paragraph (1)(a) applies, an election under this regulation has effect from the first day of the pay period following that in which the notice was received by the Secretary of State.

(4) Where paragraph (1)(b) applies, an election under this regulation has effect—

- (a) if the notice is received by the Secretary of State before or during the first pay period after commencing employment, from the date on which the teacher became so employed; and
- (b) in any other case, from the first day of the pay period following that in which the notice was received by the Secretary of State.

(5) If after making an election under this regulation a teacher makes a further election under regulation B6 above, he may make a further election under this regulation only if, since the further election was made under regulation B6, there has been a period of not less than 5 years during which the teacher was not in any excluded employment.

(6) For the purposes of this regulation the Secretary of State may in a particular case—

- (a) accept an election where the period specified in paragraph (5) is less than 5 years; or
- (b) refuse to accept an election where the teacher is on sick leave.

(7) An election made under regulation 4B of the 1977 Regulations⁽⁵⁾ is to be treated as having been made under this regulation.

(5) Regulation 4B was inserted by S.I. 1989/666.