
STATUTORY INSTRUMENTS

1997 No. 3001

The Teachers' Pensions Regulations 1997

PART B

PENSIONABLE EMPLOYMENT

Employment—general

B1.—(1) Subject to paragraphs (2) to (5), regulation B3 (where applicable) and regulations B4 to B6 a person is in pensionable employment while he is in employment—

- (a) in a capacity described in Schedule 2 and satisfies every condition and is not within any exception specified in that Schedule in relation to employment in that capacity, or
- (b) as a teacher in an accepted school.

(2) Employment in a capacity described in Part II of Schedule 2 is not pensionable unless the person has elected that it is to be so.

(3) Except in the case of employment in a capacity described in paragraph 16, 21, 22 or 24 of Schedule 2, an election for the purposes of paragraph (2) may not be made without the consent of the employer.

(4) A person who is in part-time employment is not in pensionable employment unless he has at some time made an election for the purposes of this paragraph.

(5) A person who is in part-time employment is not in pensionable employment while he is a member of the occupational pension scheme constituted by the Local Government Pension Scheme Regulations 1995⁽¹⁾ (“the 1995 Regulations”) or, when they are in force, the Local Government Pension Scheme Regulations 1997⁽²⁾, the Local Government Pension Scheme (Transitional Provisions) Regulations 1997⁽³⁾ and the 1995 Regulations (so far as they continue to operate).

(6) An election for the purposes of this regulation—

- (a) may be made at any time by giving written notice to the Secretary of State, and
- (b) has effect from the first day of the month after that in which the notice was given, unless the Secretary of State specifies that it should have effect from an earlier date.

Continuing employment

B2. Subject to regulations B4 to B6, a person who immediately before 3rd February 1998 was in employment (“the first employment”) which was pensionable employment by virtue of regulation B3 of the 1988 Regulations (continuing employment) is in pensionable employment—

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

(1) S.I. 1995/1019.
(2) S.I. 1997/1612.
(3) S.I. 1997/1613.

Employment in accepted school

B3.—(1) A person employed in an accepted school is not in pensionable employment if he has any financial interest in the establishment other than a right to a salary.

(2) Subject to paragraph (6), an establishment is an accepted school if—

- (a) immediately before 3rd February 1998 it was an accepted school for the purposes of regulation B4 of the 1988 Regulations, or
- (b) the Secretary of State has accepted it for the purposes of this regulation.

(3) The establishments that may be accepted are—

- (a) an independent school finally registered under section 465 of the 1996 Act,
- (b) an independent school provisionally registered under that section which had been a school of a kind mentioned in paragraph 1, 2, 3 or 4 of Schedule 2,
- (c) an independent school provisionally registered under that section which was constituted by an amalgamation of schools of which at least one was an accepted school, and
- (d) 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.

(4) An establishment may only be accepted if its governing body have made a written application to the Secretary of State.

(5) No establishment need be accepted, but if an establishment is accepted its acceptance takes effect—

- (a) where paragraph (3)(b) applies, as from the date of provisional registration, and
- (b) in any other case, as from a date to be agreed between the Secretary of State and the governing body, which must be—
 - (i) the first day of a month later than that in which the application was made, or
 - (ii) if the establishment was constituted by an amalgamation, either the first day of such a month or the date of the amalgamation.

(6) An establishment which has become an accepted school ceases to be one from the date specified in a written notice given to its governing body by the Secretary of State.

(7) Notice for the purposes of paragraph (6) may be given—

- (a) in the case of an independent school, if it ceases to be a registered or provisionally registered school within the meaning of section 465 of the 1996 Act, or
- (b) in the case of an establishment of further education, if—
 - (i) it ceases to be one, or
 - (ii) it employs as a teacher a person whom it would have been precluded from employing if regulations for the time being in force under section 218(6) of the Education Reform Act 1988(4) had applied, or
- (c) in any case, if the governing body—
 - (i) have made a written application to the Secretary of State for the establishment to cease to be an accepted school, or
 - (ii) have failed to pay or remit contributions (whether under these Regulations or under the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994)(5) to the Secretary of State, or

(4) 1988 c. 40; section 218(6) was amended by section 290(3) of the Education Act 1993 (c. 35).

(5) S.I. 1994/2924.

(iii) have failed to comply with regulation H3 (records and information) or any other provision of these Regulations relating to pensionable employment.

(8) Paragraphs (4) to (7) apply to an establishment which had previously ceased to be an accepted school as they apply to an establishment which has not previously been an accepted school.

(9) In this regulation “governing body” includes any person by whom teachers are employed.

Employment not pensionable

B4.—(1) A person is not in pensionable employment unless he is—

- (a) 18 years old or older and under 70, and
- (b) entitled to be paid his salary in full, or on sick leave and entitled to be paid not less than half his salary, or on maternity leave and entitled to be paid any contractual remuneration or statutory maternity pay.

(2) A person who is entitled to be paid a teacher’s pension including cases where the annual rate of pension has been reduced to zero in accordance with regulation E14 (abatement of retirement pension during further employment) is not in pensionable employment if he is in employment which—

- (a) commenced on or after 1st April 1997, or
- (b) is part-time employment.

(3) A person is not in pensionable employment while he is in an employment which immediately before 3rd February 1998 by virtue of regulation B5(2) of the 1988 regulations (exclusion from pensionable employment) was not pensionable employment.

(4) This paragraph applies to a person who—

- (a) immediately before 3rd February 1998 was in, or
- (b) not more than 12 months before that date had ceased to hold,

an employment which by virtue of regulation B5(4) of the 1988 Regulations was not pensionable employment.

(5) Subject to paragraph (6), a person to whom paragraph (4) applies is not in pensionable employment while he is in an employment which would not have been pensionable employment if—

- (a) regulation B5(4) of the 1988 Regulations had continued in force, and
- (b) he had made no election under regulation B5(5) of those Regulations.

(6) Within 3 months after the start of an employment to which paragraph (4) applies the person may, by giving written notice to the Secretary of State and to the appropriate administering authority within the meaning of the Local Government Pension Scheme Regulations 1995 or, when they are in force, the Local Government Pension Scheme Regulations 1997, elect that paragraph (5) is to cease to apply.

Election for employment not to be pensionable

B5.—(1) A person who—

- (a) is in pensionable employment, or
- (b) is not in pensionable employment but expects to enter an employment which would otherwise be pensionable employment,

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—

- (a) where paragraph (1)(a) applies, the person ceases to be in pensionable employment for all purposes of these Regulations, and
 - (b) in any case, subject to regulation B6, no subsequent employment of his is pensionable employment.
- (3) Where paragraph (1)(a) applies, an election under this regulation—
- (a) if the notice is given within 3 months after the start of the person's pensionable employment, has effect as from the first day of his pensionable employment, and
 - (b) in any other case, has effect from the first day of the month after that in which the notice was given.
- (4) Where paragraph (1)(b) applies, the election has effect as from the day before that on which the person first enters any such employment as is there mentioned.

Resumption of pensionable status

B6.—(1) A person who has made an election under regulation B5, who has since been in employment which would otherwise have been pensionable employment and who—

- (a) is in such employment, or
- (b) is not in, but expects to enter, such employment,

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 regulations B1(2) and (4) and B5, any employment on and after that date is pensionable employment if it is such employment by virtue of regulations B1 to B4.

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

- (a) if the notice was given within 3 months after the start of any period of employment which would otherwise have been pensionable, has effect as from the first day of that employment, and
- (b) in any other case, has effect from the first day of the month after that in which the notice was given.

(4) Where paragraph (1)(b) applies, the election has effect as from the day before that on which the person first enters any employment which would otherwise be pensionable.