
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 393

The Teachers' Superannuation (Scotland) Regulations 2005

PART E

BENEFITS

Pensionable salary

E34.—(1) Subject to paragraph (11), a teacher's pensionable salary—

- (a) where the material part of that teacher's terminal service is one year or more, is his or her full salary for the best consecutive 365 days of that part; and
- (b) in any other case, is the average annual rate of his or her full salary for that part.

(2) In determining, for the purposes of paragraph (1), what are the best consecutive 365 days of the material part of the teacher's terminal service, days on which the person is not in pensionable employment are disregarded.

(3) Terminal service comprises—

- (a) any period spent by the teacher in pensionable employment;
- (b) any period counting as reckonable service by virtue of regulation D4;
- (c) any period of comparable British service which began before 1st April 1974 and has not been followed by a period of pensionable employment and for which a transfer value has been accepted;
- (d) subject to paragraph (4), any period of a kind described in Schedule 8; and
- (e) any period counting as reckonable service by virtue of regulation C8.

(4) The material part of a teacher's terminal service is—

- (a) where he or she has less than 3 years of such service, the whole of it; or
- (b) in any other case, the last 3 years of it.

(5) In determining the material part of a teacher's terminal service, periods when the teacher was not in pensionable employment shall be disregarded and accordingly the period of 3 years referred to in paragraph (4) may be discontinuous.

(6) For the purposes of paragraphs (2), (3)(a) and (5) a teacher who is employed under a contract whereby that teacher is available for work but only undertakes (and accordingly is only paid for) work when, and for periods, requested by the employer is not treated as being in pensionable employment during periods when he or she is not undertaking work (whether or not such a teacher would be so treated apart from this paragraph).

(7) Subject to paragraphs (8) and (9), a teacher's full salary—

- (a) for a period falling within paragraph (3)(a), is his or her contributable salary for the period of pensionable employment, disregarding any reduction during sick leave or maternity, paternity or adoption leave;

- (b) for a period falling within paragraph (3)(b), is the notional salary by reference to which the additional contributions paid under regulation C8 or C9 were calculated; and
- (c) for a period falling within paragraph (3)(c), is what would have been his or her salary for the purpose of calculating benefits under the pension scheme to which he or she was subject in the relevant employment;
- (d) for a period falling within paragraph (3)(d), is what would have been his or her salary for the purpose of calculating benefits under the pension scheme to which he or she was subject in the relevant employment; and
- (e) for the period falling within paragraph (3)(e), is the notional salary by reference to which the additional contributions paid under regulation C9 were calculated.

(8) For—

- (a) a period of pensionable employment; or
- (b) a period counting as reckonable service by virtue of regulation D4,

beginning after 31st July 1975 and ending before 1st August 1978, a teacher's full salary includes any sums that would have been payable to him or her if payment of them had not been withheld, whether by virtue of an enactment or otherwise, in order to comply with limits referred to in section 1 of the Remuneration, Charges and Grants Act 1975(1).

(9) For—

- (a) a period of pensionable employment; or
- (b) a period counting as reckonable service by virtue of regulation D4,

beginning after 31st March 1979 and ending before 1st September 1980, a teacher's full salary is the notional salary resulting from the application to him or her of the Teachers' Superannuation (Notional Salaries) (Scotland) Regulations 1982(2).

(10) Where a teacher has during the material part of his or her terminal service spent any period employed in part-time service, the full salary for that period shall be the amount which it would have been if the employment had been in full-time service during that period.

(11) Subject to paragraph (12), where at any time during the material part of a teacher's terminal service a teacher has received an increase in his or her contributable salary such that—

$$\left(\frac{B}{A} - 1\right) \times 100 - C - 10$$

is greater than zero where—

A is the teacher's salary before the increase (or, in the case where the teacher has previously received an increase in salary such as is mentioned in this paragraph but no election under regulation H6(5) is made, the salary which the teacher before the increase is treated as receiving in accordance with the provision of this paragraph),

B is the teacher's salary after the increase, and

C is the standard increase of salary (expressed as a percentage),

the teacher shall be treated as having received an increase in his or her contributable salary such that his or her salary after the increase is—

(1) 1975 c. 57; section 1 was amended, and the period for which it had effect extended to end on 31st July 1978, by the Price Commission Act 1977 (c. 33), section 17; references to limits set out in documents laid before Parliament in 1976 and 1977 were added by S.I. 1976/1097, 1977/1294. Section 1 was repealed by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part II.

(2) S.I. 1982/1302.

$$A\left(1 + \frac{C + 10}{100}\right)$$

unless an election is made under regulation H6(5) to pay the additional contribution referred to in that regulation.

(12) Paragraph (11) does not apply—

- (a) in relation to a teacher who becomes entitled to the payment of retirement benefits by virtue of regulation E6(1)(c);
- (b) for the purpose of calculating—
 - (i) a death grant under regulation E24, or
 - (ii) a pension payable under regulation E31 or E32 in relation to a teacher who died while in pensionable employment;
- (c) to any increase in contributable salary which was received while the teacher was employed by an employer other than the body which was the teacher's employer immediately before he or she became entitled to the payment of retirement benefits, or
- (d) where the Scottish Ministers are satisfied that the increase in contributable salary was agreed on or before 5th October 1998.

(13) For the purposes of paragraph (11), paragraph (12) and this paragraph—

- (a) where a teacher receives more than one increase in salary in a financial year the increases taken together shall be treated as one increase and accordingly, in paragraph (11), A is the teacher's salary before the first increase and B is the teacher's salary after the last increase;
- (b) the material date is the date on which the increase of salary took effect;
- (c) the standard increase of salary is the average percentage of the increases, if any, that would have been received on the material date by persons ("the comparable employees") who were employed at the school or establishment where the teacher in question was employed and whose circumstances corresponded most closely to those of that teacher or, if there were no comparable employees, by persons who were employed as teachers at that school or establishment or, if the comparable employees or the persons so employed as teachers (as the case may be) would have received no increases on that date, the next increases they would have received; and
- (d) where a body becomes a teacher's employer by virtue of any enactment regarding the transfer of staff or the transfer of rights and liabilities under a contract of employment that body and the teacher's previous employer shall be taken to be the same employer.

(14) Where an election under regulation H6(5) is made after the teacher becomes entitled to payment of retirement benefits the teacher shall, until the date on which the election is received by the Scottish Ministers, be entitled to retirement benefits calculated on the basis only of the contributable salary he or she is treated as receiving in the absence of such an election and accordingly as from the date on which the election is received by the Scottish Ministers the person shall become entitled to—

- (a) a lump sum payment equal to the difference between the retirement lump sum to which the teacher is entitled taking into account the election and the retirement lump sum previously paid to the teacher; and
- (b) a retirement pension taking into account the election.

(15) Where a teacher has spent the material part of his or her terminal service employed in part-time service under regulation J2, that teacher's pensionable salary shall be calculated by reference to

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his or her salary for the last consecutive 365 days prior to commencement of his or her winding down employment under regulation J2 taking into account prospective increases under the 1971 Act(3).