
STATUTORY INSTRUMENTS

1998 No. 2255

EDUCATION, ENGLAND AND WALES

The Teachers' Pensions (Amendment) Regulations 1998

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| | <i>23rd September</i> |
| <i>Made</i> - - - - | <i>1998</i> |
| <i>Laid before Parliament</i> | <i>2nd October 1998</i> |
| <i>Coming into force</i> - - | <i>1st November 1998</i> |

The Secretary of State, in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(1) and of all other powers enabling him in that behalf, after consulting with representatives of the local education authorities, teachers and other persons likely to be affected in accordance with section 9(5) of that Act, and with the consent of the Treasury(2), hereby makes the following regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Teachers' Pensions (Amendment) Regulations 1998 and shall come into force on 1st November 1998, but—

- (a) regulations 3, 7 to 9, 12(b) and (c), 13, regulation 2 insofar as it relates to those regulations and regulation 16 shall have effect from 1st September 1998; and
- (b) regulation 14 and regulation 2 insofar as it relates to that regulation shall have effect from 3rd February 1998.

(2) In these regulations “the Principal Regulations” means the Teachers' Pensions Regulations 1997(3).

Amendment of Principal Regulations

- 2. The Principal Regulations shall be amended in accordance with regulations 3 to 14.
- 3. After regulation A2 there shall be inserted the following regulation—

(1) 1972 c. 11; section 9 was amended by sections 4(1), 8(3) and (4) and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) and section 12 was amended by section 10 of that Act.
(2) See S.I.1981/1670.
(3) S.I. 1997/3001.

“Meaning of “employer” in certain cases

A3.—(1) Except as provided in paragraph (2), for the purposes of these regulations a local education authority is deemed to be the employer of every person employed in, or in connection with, a school maintained by it other than a person who—

- (a) is employed by an Education Action Forum (except where the person is so employed by virtue of the Forum discharging any function of the governing body of the school under section 12(2)(b) of the School Standards and Framework Act 1998(4)); or
- (b) is in the employment of an employment business.

(2) However for the purposes of regulations C4(3), G6 and G8(2) to (4) the local education authority and the governing body of the school are the employer of a person who falls within paragraph (1) and where either such body has made an election under regulation C4(3), G6 or G8(2) to (4) the obligation to pay contributions pursuant to that election under regulation G8(1), G7(1)(c) or G8(5), as the case may be, shall fall on the body which made the election.

(3) In this regulation “employment business” has the same meaning as in section 13(3) of the Employment Agencies Act 1973(5).”.

4. In regulation B1 for paragraph (6) there shall be substituted the following paragraphs—

“(6) An election for the purpose of this regulation may be made at any time by giving written notice to the Secretary of State and, unless paragraph (7) applies, has effect from the first day of the month after that in which the notice was given.

(7) If however the Secretary of State so specifies, the election shall have effect from a date earlier than that referred to in paragraph (6) provided that the contributions payable under regulations C3A and G8(7) are paid to the Secretary of State by the date 6 weeks after the date of the demand under regulation C18(4A) or regulation G8(8) as the case may be.

(8) In these Regulations “the back period” means the period between the date specified by the Secretary of State under paragraph (7) as the date from which the election should have effect and the first day of the month after that in which the notice was given.”

5. After regulation C3 there shall be inserted the following regulation—

“Contributions where an election under regulation B1(6) has been made

C3A.—(1) This regulation applies where—

- (a) a person has elected under regulation B1(6) that his part-time employment should be pensionable; and
- (b) the Secretary of State has specified under regulation 1(7) that the election should have effect from a date earlier than the first day of the month after that in which the notice was given.

(2) Where this regulation applies the person shall—

- (a) pay the contributions calculated in accordance with regulation C3 referable to the back period; and
- (b) pay interest on such contributions which have accrued on each reference date at 7% per annum, compounded with yearly rests from the reference date in question to the date of payment of the contributions, unless the Secretary of State determines that no such interest should be paid.

(4) 1998 c. 31.
(5) 1973 c. 35.

- (3) For the purposes of this regulation—
- (a) the first reference date is the date a year after the end of the month in which the beginning of the back period falls;
 - (b) the next reference date is the date a year after the first reference date and each subsequent reference date is the date a year after the previous reference date; and
 - (c) the contributions which have accrued on a reference date are the contributions which would be outstanding on that date if the person had been in pensionable employment during the back period and if contributions had not been paid in accordance with regulation C18.”.
6. In regulation C18—
- (a) after paragraph (4) there shall be inserted the following paragraph—
“(4A) Any sum which is due under regulation C3A(2)(a) is to be paid to the Secretary of State on receipt of a written demand (without prejudice to the obligation to pay the interest referred to in regulation C3A(2)(b)).”; and
 - (b) in paragraph (6) after “due under regulation” there shall be inserted “C3A”.
7. In regulation E1(2) for “E14” there shall be substituted “E14(1) to (5)”.
8. In regulation E14 for paragraphs (3) and (4) there shall be substituted the following paragraphs—

- “(3) Where this regulation applies—
- (a) if the amount of the person’s salary in the employment during the tax year equals or exceeds (B+C–D) in any tax year, no pension shall be paid in that tax year; and
 - (b) in any other case, the pension to which the person is entitled in any tax year shall be reduced if necessary so as to secure that the pension paid during that tax year does not exceed

$$A \times \frac{P}{Q}$$

where—

A is the amount by which the person’s salary in the employment during the tax year falls short of B+C–D,

B is, or where his previous employment was part-time, is the full-time equivalent of, the highest annual rate of contributable salary that was payable to him during the 3 years ending immediately before he became entitled to payment of the pension, or, if applicable, the highest annual rate of contributable salary that was payable to him during the 3 years ending immediately before he ceased to be employed in any pensionable employment entered into by him after he became entitled to payment of the pension, whichever is the greater,

C is the amount (if any) by which, immediately before the first day of the employment, B would have increased if it had been the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971(6) beginning, and first qualifying for increases under that Act, on the same date as the pension,

D is any part of the pension allocated under regulation E11,

P is the full annual rate of the person's pension during the tax year in question as increased under the Pensions (Increase) Act 1971 but disregarding the effect of paragraphs (6) or (7); and

Q is the total of—

- (a) the full annual rate of the person's pension,
- (b) the full annual rate of compensation payable under regulation 7 (mandatory compensation for premature retirement) of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997(7), and
- (c) the full annual rate of all compensation payable under regulation 12 (discretionary compensation for premature retirement) of those Regulations,

for the tax year in question, as increased under the Pensions (Increase) Act 1971.

(4) Where a pension falls to be reduced under paragraph (3)(b) in any tax year, the Secretary of State shall pay the pension in accordance with regulation E33(4) at the rate which is appropriate without taking account of the reduction until the amount to which the pension is to be reduced (on the assumption that the person will remain in employment at the same salary for the remainder of the tax year) has been paid.

(5) Once the appropriate amount of pension has been paid as mentioned in paragraph (4), no further payment shall be made during that tax year unless the person ceases to be in the employment or is in employment at a lower salary in which case the Secretary of State shall pay pension during the remainder of the tax year to the person of such amount and at such times as is necessary in order to secure the result described in paragraph (3).

(6) Where the actual pension paid in any tax year has exceeded the amount which should have been paid by virtue of paragraph (3) ("the excess payment") the retirement pension payable in the subsequent tax year shall be reduced by the excess payment.

(7) Where by virtue of regulation E1(3) the retirement pension is not reduced in any tax year in accordance with paragraph (6), the retirement pension shall be reduced in the following tax year by the balance of the excess payment and this reduction shall be repeated in each tax year until the total amount of the reduction of the retirement pension is equal to the amount of the excess payment."

9. Regulation G5(5)(a) and (6) shall cease to have effect.

10. In regulation G8 after paragraph (6) there shall be inserted the following paragraphs—

“(7) Where regulation C3A applies, the employer of the person in pensionable employment shall—

- (a) pay contributions calculated in accordance with regulation G5 referable to the back period; and
- (b) pay interest on such contributions which have accrued on each reference date at 7% per annum, compounded with yearly rests from the reference date in question to the date of payment of the contributions, unless the Secretary of State determines that no such interest should be paid.

and in this paragraph “reference dates” shall be construed in accordance with regulation C3A.

(8) Any sum which is due under paragraph (7)(a) shall be paid to the Secretary of State on receipt of a written demand (without prejudice to the obligation to pay the interest referred to in paragraph (7)(b)).”.

11. In regulation H3—

(a) in paragraph (2) for “information about persons who are or have been in pensionable employment” there shall be substituted “information about persons to whom this paragraph applies”.

(b) after paragraph (2) there shall be inserted the following paragraphs—

“(3) Paragraph (2) applies to—

(a) persons who are, or have been, in pensionable employment or excluded employment; and

(b) persons to whom regulation E14(1) applies or has applied.

(4) Without prejudice to paragraph (2) a person who has become entitled to payment of a teacher’s pension and who takes up employment such as is described in regulation E14(1) shall—

(a) within 14 days of taking up such employment notify the Secretary of State giving details of the salary in the employment; and

(b) within 14 days of any change in salary notify the Secretary of State.”.

12. In Schedule 1—

(a) after the definition of “Average salary” there shall be inserted—

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| ““Back period” | Construe in accordance with regulation B1(8).”; |
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(b) after the definition of “Credited service” there shall be inserted—

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| ““Education Action Forum” | A body corporate such as is referred to in section 11 of the School Standards and Framework Act 1998.”; and |
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(c) after the definition of “Effective reckonable service” there shall be inserted—

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| ““Employer” (in the context of a person employed in or in connection with a school maintained by a local education authority) | Construe in accordance with regulation A3.”. |
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13. In Schedule 2 after paragraph 1 there shall be inserted the following paragraph—

“**1A** Teacher not falling within paragraph 1 who is employed by an Education Action Forum.”.

14. In Schedule 10, after paragraph 28 there shall be inserted the following paragraph—

“**28A.**—(1) Where regulation E5(3) applies to a person who is also entitled to an annual pension in respect of admitted service the rate of that pension is the rate calculated in accordance with paragraph 28(1) multiplied by the factor set out in Table 1 in Schedule 9 corresponding to the age of that person in complete years and months when he became entitled to payment of that pension.

(2) Where regulation E6(3) applies to a person who is also entitled to a lump sum in respect of admitted service then the amount of the lump sum is the amount calculated in accordance with

paragraph 28(2) multiplied by the factor set out in Table II in Schedule 9 corresponding to the age of that person in complete years and months when he became entitled to payment of that lump sum.”.

Transitional provisions

15.—(1) The amendments to regulations B1, C18 and G8 of the Principal Regulations made by regulations 4, 6, and 10 above and the insertion of regulation C3A into the Principal Regulations made by regulation 5 above shall not have effect where a relevant request was received by the Secretary of State before 1st November 1998.

(2) For the purposes of paragraph (1) a relevant request is a request that the Secretary of State specifies, pursuant to regulation B1(6) of the Principal Regulations (as in force immediately before 1st November 1998), that an election under regulation B1 of the Principal Regulations should have effect from a date earlier than the first day of the month after that in which the notice of the election was given (whether such request was made in the notice of the election or subsequent to it).

16.—(1) In relation to the period starting on 1st September 1998 and ending on 5th April 1999 regulation E14 of the Principal Regulations as amended by regulation 8 shall have effect with the following modifications:

- (a) in paragraph (3)(a) for “the tax year” there shall be substituted “the period from 1st September 1998 to 5th April 1999 (the initial period)” and for “that tax year” there shall be substituted “the initial period”;
- (b) in paragraph (3)(b)—
 - (i) for “in any tax year” there shall be substituted “in the initial period”, and for “during that tax year” there shall be substituted “during the initial period”, and
 - (ii) B, P and Q shall be 7/12 of the value of B, P and Q as given in paragraph (3)(b);
- (c) in paragraph (4) for “in any tax year” there shall be substituted “in the initial period” and for “the tax year” there shall be substituted “the initial period”;
- (d) in paragraph (5) for “that tax year” there shall be substituted “the initial period” and for “the tax year” there shall be substituted “the initial period”;
- (e) in paragraphs (6) and (7) for “in any tax year” there shall be substituted “during the initial period”.

Election in respect of protected benefits

17.—(1) This regulation applies to a person—

- (a) to whom a protected benefit is being paid or may become payable, and
- (b) who is placed in a worse position than he would have been in if a provision made by these regulations (“the relevant provision”) had not applied in relation to the protected benefit.

(2) A protected benefit is one which is being paid or may become payable, under the Principal Regulations, to or in respect of a person who was employed in qualifying employment but ceased to be employed, or died, before 1st November 1998.

(3) A person to whom this regulation applies may, by giving written notice to the Secretary of State before 1st February 1999, elect that the relevant provision shall not apply in relation to the protected benefit.

(4) If the election under paragraph (3) is made in relation to a benefit of a person who is in pensionable employment or who subsequently becomes re-employed in pensionable employment—

- (a) the election shall have effect in relation to the benefit only to the extent that it accrues or has accrued by virtue—
 - (i) of periods of reckonable service before the cessation referred to in paragraph (2) (or, if there had been more than one cessation, the last of them before 1st November 1998); or
 - (ii) of contributions paid in respect of such periods of reckonable service; and
- (b) in determining entitlement to, or to the amount of, the benefit to that extent he shall be treated as if he had never re-entered pensionable employment again at any time after the cessation referred to in paragraph (2) (but without prejudice to the application of this paragraph),

and the Principal Regulations shall apply accordingly.

(5) In paragraph (2) “qualifying employment” means pensionable employment or excluded employment (within the meaning of the Principal Regulations).

21st September 1998

Charles Clarke
Parliamentary Under Secretary of State,
Department for Education and Employment

We consent

23rd September 1998

Jim Dowd
Bob Ainsworth
Two of the Lords Commissioners of Her
Majesty’s Treasury.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Teachers Pensions Regulations 1997 (“the principal regulations”).

Regulations 3, 9 and 13 (which amongst other things insert a new regulation A3 into, and amend Schedule 2 to the principal regulations) provide for teachers who are employed by an Education Action Forum to be in pensionable employment. Regulation 3 also clarifies the position of which body is the employer of a teacher employed in, or in connection with, a school maintained by a local education authority. These provisions have effect from 1st September 1998.

Regulations 4, 5, 6 and 10 make provision whereby if a person elects that part-time employment is to be pensionable and if the election has effect from a date earlier than the first day of the month after that in which it was given, interest may be payable on back contributions. The amendment made by regulation 4 also provides that if the back contributions and interest are not paid within 6 weeks of a demand the election will not have effect from the earlier date.

Regulations 7, 8 and 11 amend the provisions for reduction of pension where a person who is entitled to a retirement pension is in certain types of employment, and make consequential changes to the requirement to provide information. These provisions have effect from 1st September 1998 and regulation 16 makes special provisions for the period from 1st September 1998 to 5th April 1999.

Regulation 12 makes consequential amendments to Schedule 1 (definitions).

Regulation 14 amends Schedule 10 to the Principal Regulations to provide for actuarial reduction of retirement benefits payable in respect of admitted service if a teacher retires early. These provisions reproduce those which were contained in paragraph 29A of Schedule 10 to the Teachers' Superannuation (Consolidation) Regulations 1988 as amended and have effect from 3rd February 1998.