
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 393

The Teachers' Superannuation (Scotland) Regulations 2005

PART B

PENSIONABLE EMPLOYMENT

Full-time service

B1. Subject to regulations B6 to B9, a teacher is in pensionable employment where he or she is in full-time service in an employment specified in Schedule 2.

Part-time service

B2.—(1) Subject to paragraphs (2) and (3) and regulations B6 to B9, a part time teacher is in pensionable employment where he or she is in part time service in an employment specified in Schedule 2.

(2) A teacher is not in pensionable employment by virtue of paragraph (1) if, in respect of that employment, he or she is eligible to be an active member in accordance with the Local Government Pension Scheme (Scotland) Regulations 1998⁽¹⁾.

(3) A part time teacher who, immediately before 1st April 1999 was in part time service in an employment specified in Schedule 2 and had not made an election for the purposes of regulation B2 of the 1992 Regulations⁽²⁾ (as in force before that date) in relation to that employment shall not be in pensionable employment unless he or she makes an election for the purposes of this regulation or enters a new employment specified in Schedule 2.

(4) An election for the purpose of this regulation may be made at any time by giving written notice to the Scottish Ministers and, unless paragraph (5) applies, shall have effect from the first day of the month after that in which the notice was given.

(5) If the Scottish Ministers so specify, the election shall have effect from an earlier date provided that the contributions payable under regulations C4(2) and H5(1) are paid to the Scottish Ministers by the date 6 weeks after the date of the demand under regulation C15(5) or H5(2), as the case may be.

(6) In these Regulations, “the back period” means the period between the date specified by the Scottish Ministers as the date from which the election shall have effect and the first day of the month after that in which the notice was given.

Concurrent full-time and part-time service

B3.—(1) Notwithstanding anything in regulation B2, a teacher is not in pensionable employment in respect of any part time service on or after 20th November 2000 which is additional to concurrent full time service unless—

⁽¹⁾ [S.I. 1998/366](#) to which there are amendments not relevant to these Regulations.

⁽²⁾ [S.I. 1992/280](#) (“the 1992 Regulations”). Regulation B2 was amended by [S.I. 1999/446](#) and [S.S.I. 2003/423](#). The 1992 Regulations are revoked in their entirety by these Regulations (see Schedule 1 to these Regulations).

- (a) he or she was in part time service additional to concurrent full time service immediately prior to 20th November 2000; and
 - (b) he or she has continued in such part time service additional to concurrent full time service.
- (2) A teacher to whom paragraph (1) applies may elect that such part time service shall cease to be treated as pensionable employment, and an election for this purpose may be made at any time by giving written notice to the Scottish Ministers and shall have effect from the first day of the month after that in which it was given.

Continuing employment

B4. Subject to regulations B6 to B9, 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 B3 of the 1992 Regulations 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.

Accepted school

B5.—(1) In pursuance of paragraph 2 of Schedule 2, subject to paragraph (6) and regulations B6 to B9, 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 purpose 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 regulation B4 of the 1992 Regulations⁽³⁾; or
 - (ii) being registered, and being the subject of a relevant application by its governing body or proprietor, is accepted by the Scottish Ministers as able to meet the requirements placed upon an employer under Part H to pay employers' contributions;
- (b) “registered” means registered in the register of independent schools in accordance with Part V of the Education (Scotland) Act 1980; and
- (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 Scottish Ministers may, in such case as they think appropriate, 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 Scottish Ministers 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 Scottish Ministers to the governing body or proprietor of the school on or after any of the following events—

- (a) the receipt by the Scottish Ministers 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;

(3) Regulation B4 was amended by [S.I. 1997/676](#) and [1999/446](#).

- (c) any default by the governing body or proprietor in the payment of contributions, whether under these Regulations or under the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995(4);
 - (d) failure by the governing body or proprietor to comply within one month with any requirement of the Scottish Ministers to make any report or return, give any information or produce any document, under regulation J4;
 - (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.

Employment not pensionable

B6.—(1) A teacher is not in pensionable employment unless aged at least 16 and under 70 and—

- (a) entitled to be paid his or her salary in full;
- (b) on sick leave and entitled to be paid not less than half his or her salary; or
- (c) on maternity, paternity or adoption leave and entitled to be paid any contractual remuneration or receive statutory maternity, paternity or adoption pay (whether as a constituent part of or as the teacher's sole income).

(2) A teacher is not in pensionable employment while he or she is in an employment which immediately before the date on which these Regulations come into force was, by virtue of regulation B5(2) of the 1992 Regulations, not pensionable employment.

(3) Subject to paragraph (4), a teacher 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 B5(3) of the 1992 Regulations was not pensionable employment and who has made no election under regulation B5(4) of the 1992 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 Scottish Ministers and to the appropriate administering authority within the meaning of the Local Government Pension Scheme (Scotland) Regulations 1998(5), elect that paragraph (3) is to cease to apply.

(5) Subject to regulation B9, a teacher is not in pensionable employment in respect of any employment which commenced on or after 1st April 1997 while he or she is entitled to be paid a teacher's pension, including cases where the annual rate of the pension has been reduced to zero in accordance with regulation E18.

Election for employment not to be pensionable

B7.—(1) A teacher who—

- (a) is employed in pensionable employment; or

(4) [S.I. 1995/2814](#), to which there are amendments not relevant to these Regulations.

(5) [S.I. 1998/366](#), to which there are amendments not relevant to these Regulations.

- (b) is not so employed but expects to enter an employment in which he or she would be so employed,

may at any time, by giving written notice to the Scottish Ministers, 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 B8 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 Scottish Ministers 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 Scottish Ministers.

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

Resumption of pensionable status

B8.—(1) Subject to paragraph (5), a teacher who has made an election under regulation B7, 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 B7,

may, at any time, by giving written notice to the Scottish Ministers, make an election under this regulation.

(2) As from the date on which the election has effect, subject to regulation B7, 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 Scottish Ministers.

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

- (a) if the notice is received by the Scottish Ministers 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 Scottish Ministers.

(5) For the purposes of this regulation the Scottish Ministers may in a particular case refuse to accept an election where the teacher is on sick leave.

Further employment

B9.—(1) Subject to paragraph (2) and regulations B6 to B8, a teacher who is already in receipt of a teacher’s pension, including cases where the annual rate of pension has been reduced to zero in accordance with regulation E18, is in pensionable employment where on or after 1st October 2001 he or she enters into full time or part time service in an employment specified in Schedule 2.

(2) A teacher who is excluded from pensionable employment by virtue of regulation B6(5) of the 1992 Regulations shall not be in pensionable employment unless he or she makes an election under regulation B8.