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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 217**

**The Teachers' Pension Scheme (Scotland) Regulations 2014**

**PART 3**

**Scheme membership**

**CHAPTER 4**

**Pensionable earnings**

**Interpretation**

**32.** In this Chapter—

“notional pensionable earnings” means the amount by which a member’s pensionable earnings are reduced during—

- (a) a period of sick leave (other than a period of non-pensionable sick leave); or
- (b) a period of adoption leave, maternity leave, parental leave, paternity leave or additional paternity leave (other than a period of non-pensionable family leave);

“notional salary”, in relation to a period of permanent service in respect of which an election under regulation 24 has effect or is taken to have effect, means P’s pensionable earnings for the pay period immediately before the period of permanent service began, increased by—

- (a) the amount (if any) of any standard increase applied in relation to P’s eligible employment during P’s period of permanent service; and
- (b) the amount (if any) by which those pensionable earnings together with any standard increase would have been increased if they had been an official pension within the meaning of section 5(1) of PIA 1971 beginning, and first qualifying for increases under that Act, on the day after the day on which the period of permanent service began;

“residential accommodation” means residential accommodation provided to a person (P) in connection with P’s employment;

“residential benefits in kind” means—

- (a) any residential accommodation provided to a person (P);
- (b) any heat, lighting or water provided free in respect of residential accommodation; and
- (c) any council tax paid on P’s behalf in respect of residential accommodation;

“salary sacrifice arrangement” means an arrangement specified by the scheme manager under which P gives up the right to receive part of P’s salary in return for P’s employer agreeing to provide P with benefits in kind as specified by the scheme manager; and

“standard increase” means an increase in pensionable earnings that—

- (a) is applied generally to employees in P’s position or by P’s employer; and
- (b) is unrelated to any change in P’s duties or hours of work or otherwise to the particular circumstances of P’s case.

### **Pensionable earnings**

**33.**—(1) This regulation applies to an active member (P).

(2) P's pensionable earnings for any pay period are the sum of the following amounts paid in that pay period to P by P's employer in respect of P's pensionable service—

- (a) all salary and allowances paid for the performance of P's contractual duties;
- (b) the amount of any payment in respect of overtime;
- (c) any salary or statutory pay paid while P is on sick leave, maternity leave, paternity leave, additional paternity leave, parental leave or adoption leave;
- (d) an amount equal to any part of P's salary which P has given up the right to receive under a salary sacrifice arrangement;
- (e) the amount of any payment made to P by way of bonus under a pay settlement that applies to all employees (or all employees of a particular class or description) at the institution where P is employed.

(3) P's pensionable earnings do not include any amounts mentioned in regulation 34.

### **Amounts not forming part of pensionable earnings**

**34.**—(1) This regulation applies to any active member (P).

(2) P's pensionable earnings do not include any of the following amounts paid to P by P's employer—

- (a) any benefit in kind, or the money value of such a benefit, excluding—
  - (i) any residential benefits in kind; or
  - (ii) a benefit in kind under a salary sacrifice arrangement;
- (b) any bonus other than a payment under regulation 33(2)(e);
- (c) any allowance paid for travelling or other expenses;
- (d) any amount paid for the performance of duties that are not carried out in the course of P's pensionable service;
- (e) any payment in consideration for the loss of, or the agreement to give up the right to, paid leave under P's contract of employment;
- (f) any payment in lieu of notice to terminate P's contract of employment.

### **Application for residential benefits in kind to form part of pensionable earnings**

**35.**—(1) This regulation applies to a person (P) who receives residential benefits in kind.

(2) P's employer (E) may apply in writing to the scheme manager asking for the money value of those residential benefits in kind to form part of P's pensionable earnings.

(3) The application must be made within 3 months after the later of—

- (a) the first day of P's employment; or
- (b) the first day on which residential accommodation is provided to P.

(4) The application must be accompanied by a statement certifying that E will—

- (a) review the value of the residential benefits in kind at the times mentioned in paragraph (5); and
- (b) inform the scheme manager in writing of the results of each review.

(5) E must review the money value of the residential benefits in kind as follows—

- (a) the first review must be carried out within 2 years after the later of—
  - (i) the first day of P’s employment; or
  - (ii) the first day on which residential accommodation is provided to P; and
- (b) each subsequent review must be carried out within 2 years after the previous review.

### **Money value of residential benefits in kind to form part of pensionable earnings**

**36.**—(1) The scheme manager, if satisfied that it is reasonable for residential accommodation to be provided to a person (P) by P’s employer (E) in connection with P’s employment, may decide that the money value of residential benefits in kind forms part of P’s pensionable earnings from—

- (a) the first day of P’s employment; or
- (b) if later, the first day on which residential accommodation is provided to P.

(2) If the money value of the residential accommodation exceeds 1/6th of the aggregate of the amounts mentioned in regulation 33(2)(a) to (d), the excess does not form part of P’s pensionable earnings.

(3) The scheme manager may revoke a decision that the money value of residential benefits in kind forms part of P’s pensionable earnings if E does not—

- (a) carry out the reviews in accordance with regulation 35; or
- (b) inform the scheme manager of the results of those reviews within a reasonable time.

(4) If paragraph (3) applies, the scheme manager must—

- (a) calculate the amount attributable to the overpayment of contributions (“the amount”); and
- (b) repay that amount to E together with interest applied in accordance with paragraph (6).

(5) The amount is the difference between—

- (a) the sum of the amount of members’ contributions, any faster accrual contributions and any buy-out contributions E deducted from P’s pensionable earnings<sup>(1)</sup> during the period in which the residential benefits in kind formed part of P’s pensionable earnings; and
- (b) the sum of the amount of members’ contributions, any faster accrual contributions and any buy-out contributions which E would have deducted from P’s pensionable earnings during that period had the residential benefits in kind not formed part of P’s pensionable earnings.

(6) Interest is applied at the rate of 3% each year, compounded with yearly rests—

- (a) from the first day of the financial year following the year in which the contributions were first deducted;
- (b) until the day on which the amount attributable to the overpayment of contributions is repaid.

### **Pensionable earnings for the purpose of accruing benefits**

**37.** For the purpose of calculating a member’s (P’s) amount of earned pension for a pay period—

- (a) if P’s pensionable earnings are reduced during sick leave, adoption leave, maternity leave, parental leave, paternity leave or additional paternity leave, P’s pensionable earnings for that period include P’s notional pensionable earnings; and
- (b) if an election under regulation 25 has effect or is taken to have effect for that period, P’s pensionable earnings for that period are an amount equal to P’s notional salary.

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(1) Contributions are deducted under Part 9.

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

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