
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 292

**The Teachers' Pension Scheme
(Scotland) (No. 2) Regulations 2014**

PART 3

Scheme membership

CHAPTER 1

Interpretation

Meaning of “an eligible employment”

- 13.** An eligible employment is an employment mentioned in Part 2 of Schedule 1.

Meaning of “P’s automatic enrolment date” and “P’s automatic re-enrolment date”

- 14.** For the purpose of this Part—

- (a) “P’s automatic enrolment date” is the date on which section 3 of PA 2008 applies to a person (P) in relation to P’s eligible employment; and
- (b) “P’s automatic re-enrolment date” is a date determined under regulation 12 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010⁽¹⁾ in relation to P’s eligible employment.

Meaning of “full-time” and “part-time” employment

- 15.** For the purpose of these Regulations—

- (a) an employment is “full-time” if the contract of employment describes it as full-time (whether in those terms or otherwise); and
- (b) an employment is “part-time” if the contract of employment describes it as part-time (whether in those terms or otherwise).

Meaning of “irregular employment”

- 16.—(1)** For the purpose of these Regulations, an employment is an irregular employment if the contract of employment requires the employee—

- (a) to be available for work for the period specified in the contract of employment; and
- (b) to undertake and be remunerated for work during that period only when so required by the employer.

- (2)** A person in pensionable service in relation to an irregular employment is in pensionable service for the period specified in the contract of employment.

⁽¹⁾ [S.I. 2010/772](#).

Meaning of “opt-out notice” and “opt-in notice”

17. For the purpose of these Regulations—

- (a) “opt-out notice”, in relation to service in an eligible employment, means a notice under regulation 27 or 30; and
- (b) “opt-in notice”, in relation to service in an eligible employment, means a notice under regulation 28 or 31.

CHAPTER 2

Membership

Eligibility for active membership

18.—(1) A person (P) is eligible to be an active member of this scheme if—

- (a) P is in an eligible employment; and
- (b) P has reached the age of 16 and has not reached the age of 75.

(2) P is not eligible to be an active member of this scheme if—

- (a) P is employed in an accepted school in which P has a financial interest;
- (b) P is a full protection member of the existing scheme;
- (c) P is a tapered protection member of the existing scheme; or
- (d) but for an election made under regulation B7 of the 2005 Regulations, P would fall within sub-paragraph (b) or (c).

(3) In this regulation—

“financial interest” does not include the right to receive a salary; and

“accepted school” has the meaning given in paragraph 2 of Schedule 1.

More than one employment

19. A person may be an active member of this scheme in relation to more than one employment.

Dual capacity membership

20. A person is a dual capacity member of this scheme if the person is a member in 2 or more of the following capacities—

- (a) an active member;
- (b) a deferred member;
- (c) a pensioner member.

(2) In determining whether a person who is an active member is also a pensioner member, the fact that the person is an active member and the person’s rights in that capacity are to be disregarded.

(3) In determining whether a person who is an active member or a pensioner member is also a deferred member, the fact that the person is an active member or a pensioner member and the person’s rights in that capacity are to be disregarded.

Payment of retirement benefits to dual capacity members

21. Retirement benefits under this scheme are payable to a dual capacity member as if the member were 2 or more members and the amounts payable are determined accordingly⁽²⁾.

CHAPTER 3

Pensionable service

SECTION 1

General provisions

Service not pensionable unless member is entitled to pay

22.—(1) A person (P) in an eligible employment is not in pensionable service in relation to that employment unless P is entitled to be paid—

- (a) P's salary in respect of that employment;
- (b) if P is on adoption leave, maternity leave, parental leave, paternity leave or additional paternity leave—
 - (i) at least half P's salary in respect of that employment; or
 - (ii) statutory pay; or
- (c) if P is on sick leave, at least half P's salary in respect of that employment.

(2) P is not in pensionable service in relation to an employment during a period of non-pensionable family leave, non-pensionable sick leave or unpaid leave from that employment.

Service not pensionable unless members' contributions are paid

23.—(1) The scheme manager may decide that a period of service in respect of which a member's contributions are not paid is not a period of pensionable service if—

- (a) the scheme manager has sent the member a demand under regulation 188 ("the demand") in respect of those contributions; and
 - (b) within 3 years after the date of the demand, the member has not paid the whole of the amount and interest stated in the demand.
- (2) The period of service is not a period of pensionable service if the scheme manager—
- (a) gives the member written notice to that effect; and
 - (b) repays the member any amount paid in part satisfaction of the demand.

SECTION 2

Service in Her Majesty's armed forces

Pensionable service – armed forces service

24. For the purpose of these Regulations, a person is in pensionable service during any period of permanent service in the armed forces in respect of which an election under regulation 25 has effect or is taken to have effect.

(2) The result is that 2 or more pensions or lump sums may be payable in respect of the one member.

Election for armed forces service to be pensionable

25.—(1) This regulation applies in relation to an active member (P) who is called out, or recalled, for permanent service in Her Majesty's armed forces under a call-out notice served, or a call-out or recall order made, under the Reserve Forces Act 1996(3).

(2) P may by written notice to the scheme manager elect to treat the period of permanent service as pensionable service.

(3) For the purpose of these Regulations, P leaves all pensionable service from the beginning of the period of permanent service if P does not make an election within 6 months after the period of permanent service ends.

(4) If P makes an election, the scheme manager must give P a written notice setting out the contributions payable in respect of the period of permanent service.

(5) The election has effect from the beginning of the period of permanent service if—

- (a) P pays the contributions by lump sum within 3 months after receiving the notice; or
- (b) P pays contributions by monthly payments in accordance with regulation 181 in respect of the whole period.

(6) If P only pays contributions in respect of part of the period of permanent service, the election has effect only in respect of that part of the period.

(7) In this regulation, a period of permanent service begins when P is called out or recalled and ends on whichever is the earlier of—

- (a) the day on which P's permanent service ends; or
- (b) the day on which P begins to accrue benefits under the Armed Forces Pension Scheme or any other occupational pension scheme in respect of P's permanent service.

(8) If P dies while in permanent service and P has not made an election—

- (a) P is taken to have made an election;
- (b) any contributions payable are to be deducted from any benefits payable under these Regulations; and
- (c) the election is taken to have effect from the beginning of the period of permanent service.

SECTION 3

Pensionable service on or after automatic enrolment date

Pensionable service on or after automatic enrolment date

26.—(1) This Section applies in relation to a person (P) who—

- (a) is eligible to be an active member of this scheme; and
- (b) is in an eligible employment on or after P's automatic enrolment date for that employment.

(2) P is in pensionable service in relation to that employment if the employment is mentioned in Part 2 of Schedule 1 and an opt-out notice under this Section does not have effect in relation to service in that employment.

Opting out of this scheme after automatic enrolment date

27.—(1) A person (P) opts out of this scheme in relation to service in an eligible employment if P opts not to be an active member of this scheme in relation to that service.

(3) 1996 c.14.

(2) P may only exercise this option by written notice to the scheme manager in a form required by the scheme manager (“opt-out notice”).

(3) An opt-out notice has effect as follows—

- (a) if the scheme manager receives the opt-out notice within 3 months after P enters the employment, from the first day of the employment;
- (b) if sub-paragraph (a) does not apply and the scheme manager receives the opt-out notice within 3 months after P’s automatic enrolment date for the employment, from P’s automatic enrolment date;
- (c) if neither sub-paragraph (a) nor (b) applies and the scheme manager receives the opt-out notice within 3 months after P’s automatic re-enrolment date, from P’s automatic re-enrolment date;
- (d) otherwise, from the first day of the month after the month in which the scheme manager receives the opt-out notice.

(4) An opt-out notice ceases to have effect from the earlier of—

- (a) the date on which a subsequent opt-in notice has effect in relation to service in that employment; and
- (b) P’s automatic enrolment date for that employment.

Opting into this scheme after automatic enrolment date

28.—(1) A person (P) opts into this scheme in relation to service in an eligible employment if P opts to become an active member of this scheme in relation to service in that employment.

(2) P may only exercise the option by written notice to the scheme manager in a form required by the scheme manager (“opt-in notice”).

(3) P may opt into this scheme in relation to service in an employment if the employment is mentioned in Part 2 of Schedule 1, and P has previously opted out of this scheme in relation to service in that employment.

(4) For an employment mentioned in Part 2 of Schedule 1, an opt-in notice has effect—

- (a) if the scheme manager receives the opt-in notice not later than 3 months after P enters the employment, from the first day of the employment; or
- (b) if sub-paragraph (a) does not apply, from the first day of the month after the month in which the scheme manager receives the opt-in notice.

(5) An opt-in notice ceases to have effect from the date on which a subsequent opt-out notice has effect.

SECTION 4

Pensionable service before automatic enrolment date

Pensionable service before automatic enrolment date

29.—(1) This Section applies in relation to a person (P) who—

- (a) is eligible to be an active member of this scheme; and
- (b) is in an eligible employment before P’s automatic enrolment date for that employment.

(2) P is in pensionable service in relation to that employment if the employment is mentioned in Part 2 of Schedule 1 and an opt-out notice under this Section does not have effect in relation to service in that employment.

Opting out of this scheme before automatic enrolment date

30.—(1) A person (P) opts out of this scheme in relation to service in an eligible employment if P opts not to be an active member of this scheme in relation to that service.

(2) P may only exercise the option by written notice to the scheme manager in a form required by the scheme manager (“opt-out notice”).

(3) An opt-out notice has effect—

- (a) if the scheme manager receives the opt-out notice no later than 3 months after P enters the employment, from the first day of the employment; or
- (b) otherwise, from the first day of the month after the month in which the scheme manager receives the opt-out notice.

(4) An opt-out notice ceases to have effect from the earlier of—

- (a) the date on which a subsequent opt-in notice has effect; and
- (b) P’s automatic enrolment date for that employment.

Opting into this scheme before automatic enrolment date

31.—(1) A person (P) opts into this scheme in relation to service in an eligible employment if P opts to become an active member of this scheme in relation to service in that employment.

(2) P may only exercise the option by written notice to the scheme manager in a form required by the scheme manager (“opt-in notice”).

(3) P may opt into this scheme in relation to service in an employment if the employment is mentioned in Part 2 of Schedule 1 and an opt-out notice has effect.

(4) For an employment mentioned in Part 2 of Schedule 1, an opt-in notice has effect—

- (a) if the scheme manager receives the opt-in notice not later than 3 months after P enters the employment, from the first day of the employment; or
- (b) if sub-paragraph (a) does not apply, from the first day of the month after the month in which the scheme manager receives the opt-in notice.

(5) An opt-in notice ceases to have effect from the date on which a subsequent opt-out notice has effect.

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⁽⁴⁾ 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.

CHAPTER 5

Annual rate of pensionable earnings for multiple employments

Multiple regular full-time or part-time employments

- 38.**—(1) This regulation applies if—
- (a) a person (P) is in pensionable service in relation to more than one employment; and
 - (b) each employment is a regular full-time or part-time employment.
- (2) P's annual rate of pensionable earnings is found by—
- (a) calculating the D value for each employment; and
 - (b) adding all the D values.
- (3) The D value for an employment is $FT \times C$.
- (4) FT means the annual rate of pensionable earnings for that employment.
- (5) C means—

$$\frac{\text{The A value}}{B}$$

where—

- (a) for a full-time employment, the A value is 1;
- (b) for a part-time employment, the A value is—

$$\frac{PT}{FT};$$

(4) Contributions are deducted under Part 9.

- (c) PT means the amount payable for a full year of a part-time employment, not its full-time equivalent; and
- (d) B is the sum of all the A values.

Multiple employments including at least one irregular employment

- 39.**—(1) This regulation applies if—
- (a) a person (P) is in pensionable service in relation to more than one employment; and
 - (b) at least one employment is an irregular employment.
- (2) P's full-time equivalent annual rate of pensionable earnings is the higher of—
- (a) Figure 1; and
 - (b) either—
 - (i) Figure 2, if P is in more than one regular employment; or
 - (ii) Figure 3, if P is only in one regular employment.
- (3) In paragraph (2)—
- (a) Figure 1 is obtained by dividing the sum of the annual rate of each of P's employments by the total number of P's employments;
 - (b) Figure 2 is the result of the calculation set out in regulation 38 for P's regular employments, disregarding P's irregular employment or employments;
 - (c) Figure 3 is the full-time equivalent rate of pensionable earnings for P's sole regular employment; and
 - (d) if Figure 1 and either Figure 2 or Figure 3 are the same amount, P's annual rate of pensionable earnings is that amount.