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STATUTORY INSTRUMENTS

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**1988 No. 1652**

**The Teachers' Superannuation (Consolidation) Regulations 1988**

**PART B**

**PENSIONABLE EMPLOYMENT**

**Full-time employment**

**B1.**—(1) Subject to paragraphs (2) and (3) and regulations B5 to B7, a person is in pensionable employment while he is in full-time employment in a capacity described in Schedule 2 and satisfies every condition, and is not within any exception, specified in Schedule 2 in relation to employment in that capacity.

(2) Full-time employment in a capacity described in Part II of Schedule 2 is not pensionable unless the person has elected that it is to be so.

(3) An election for the purposes of paragraph (2)—

- (a) must be made by giving written notice to the Secretary of State within 3 months after the start of the employment, and
- (b) except in the case of employment in a capacity described in paragraph 14, 21, 22 or 24 of Schedule 2, may not be made without the consent of the employer.

**Part-time employment**

**B2.**—(1) Subject to paragraph (2) and regulations B5 to B7, a person who has at any time made an election for the purposes of this regulation is in pensionable employment while he is a part-time employee who—

- (a) is employed in a capacity described in paragraphs 1 to 7, 14 or 16 of Schedule 2 and satisfies every condition, and is not within any exception, specified in Schedule 2 in relation to employment in that capacity, or
  - (b) is employed by a local education authority to provide either primary or secondary education otherwise than at school, in pursuance of section 56 of the Education Act 1944<sup>(1)</sup> or section 3 of the Education Act 1981<sup>(2)</sup>, or
  - (c) is employed by a local education authority to provide further education at a prison, remand centre, detention centre, Borstal institution or attendance centre within the meaning of the Prison Act 1952<sup>(3)</sup>, or
  - (d) is employed as a teacher or organiser by the Christian Education Movement, or
  - (e) would be in pensionable employment by virtue of regulation B4 (accepted schools) if his employment were full-time.
- (2) A person is not in pensionable employment by virtue of paragraph (1) while—

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(1) 1944 c. 31; section 56 was amended by the Education (Miscellaneous Provisions) Act 1948 (c. 40), Schedule 1, Part I.  
(2) 1981 c. 60.  
(3) 1952 c. 52.

- (a) he is or is deemed to be a pensionable employee within the meaning of the Local Government Superannuation Regulations 1986(4), or
- (b) he is entitled to be paid a teacher's pension.
- (3) An election for the purposes of this regulation—
  - (a) may be made at any time by giving written notice to the Secretary of State, and
  - (b) unless the Secretary of State specifies an earlier date, has effect from the first day of the month following that in which he notifies the person making it of its acceptance.

### **Continuing employment**

**B3.** Subject to regulations B5 to B7, a person who immediately before 1st November 1988 was in employment (“the first employment”) which was pensionable employment by virtue of regulation 4(2)(c) or (cc) of the 1976 Regulations (employment in continuation or further continuation of employment treated as reckonable service for the purposes of the 1967 Regulations) is in pensionable employment—

- (a) while he is in the first employment, and
- (b) while he is in employment which is in continuation of the first employment.

### **Employment in accepted school**

**B4.**—(1) Subject to paragraph (2) and regulations B5 to B7, a person is in pensionable employment while he is in full-time employment as a teacher in an accepted school.

- (2) A person employed in an accepted school is not in pensionable employment if—
  - (a) he has any financial interest in the establishment other than a right to a salary unrelated to its profits or its other performance as an economic enterprise, or
  - (b) the establishment is an accepted school by virtue of paragraph (3)(a) and immediately before 1st November 1988 his employment in it was not pensionable employment.
- (3) Subject to paragraph (7), an establishment is an accepted school if—
  - (a) immediately before 1st November 1988 it was an accepted school for the purposes of regulation 6 of the 1976 Regulations, or
  - (b) the Secretary of State has accepted it for the purposes of this regulation.
- (4) The establishments that may be accepted are—
  - (a) an independent school finally registered under section 70 of the Education Act 1944(5),
  - (b) an independent school provisionally registered under that section which had been a school of a kind mentioned in paragraph 1, 2 or 3 of Schedule 2,
  - (c) an independent school provisionally registered under that section which was constituted by an amalgamation of schools of which at least one was an accepted school, and
  - (d) an establishment of further education constituted by an amalgamation of such establishments of which at least one was an accepted school.
- (5) An establishment may only be accepted if its governing body have made a written application to the Secretary of State.
- (6) No establishment need be accepted, but if an establishment is accepted its acceptance takes effect—
  - (a) where paragraph (4)(b) applies, as from the date of provisional registration, and

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(4) S.I. 1986/24; relevant amendments were made by S.I. 1986/380, 1987/293.

(5) 1944 c. 31; section 70 was amended by the Education Act 1980 (c. 20), section 34.

- (b) in any other case, as from a date to be agreed between the Secretary of State and the governing body, which must be—
  - (i) the first day of a month later than that in which the application was made, or
  - (ii) if the establishment was constituted by an amalgamation, either the first day of such a month or the date of the amalgamation.
- (7) An establishment which has become an accepted school ceases to be one from the date specified in a written notice given to its governing body by the Secretary of State.
- (8) Notice for the purposes of paragraph (7) may be given—
  - (a) in the case of an independent school, if it ceases to be a registered or provisionally registered school within the meaning of section 70 of the Education Act 1944, or
  - (b) in the case of an establishment of further education or a nursery school, if—
    - (i) it ceases to be one, or
    - (ii) it employs as a teacher a person whom it would have been precluded from employing if regulations for the time being in force under section 27 of the Education Act 1980(6) had applied, or
  - (c) in any case, if the governing body—
    - (i) have made a written application to the Secretary of State for the establishment to cease to be an accepted school, or
    - (ii) have failed to pay or remit contributions to the Secretary of State, or
    - (iii) have failed to comply with regulation H3 (records and information) or any other provision of these Regulations relating to pensionable employment.
- (9) Paragraphs (5) to (8) apply to an establishment which had previously ceased to be an accepted school as they apply to an establishment which has not previously been an accepted school.
- (10) In this regulation “governing body” includes any person by whom teachers are employed.

#### **Exclusion from pensionable employment**

- B5.**—(1) A person is not in pensionable employment unless he is—
- (a) 18 years old or older and under 70, and
  - (b) entitled to be paid his salary in full, or on sick leave or maternity leave and entitled to be paid not less than half his salary.
- (2) A person is not in pensionable employment while he is in an employment which immediately before 1st November 1988 by virtue of regulation 8(1)(a) of the 1976 Regulations (employments treated as not being reckonable service by previous provisions) was not pensionable employment.
- (3) This paragraph applies to a person who—
- (a) immediately before 1st November 1988 was in, or
  - (b) not more than 12 months before that date had ceased to hold,
- an employment which by virtue of regulation 8(3) of the 1976 Regulations (employments superannuable under section 7 or 8 of the Superannuation Act 1972(7) was not pensionable employment.
- (4) Subject to paragraph (5), a person to whom paragraph (3) applies is not in pensionable employment while he is in an employment which would not have been pensionable employment if—
- (a) regulation 8(3) of the 1976 Regulations had continued in force, and

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(6) 1980 c. 20.

(7) 1972 c. 11.

(b) he had made no election under regulation 8(3)(c).

(5) Within 3 months after the start of an employment to which paragraph (3) applies the person may, by giving written notice to the Secretary of State and to the appropriate administering authority within the meaning of the Local Government Superannuation Regulations 1986<sup>(8)</sup>, elect that paragraph (4) is to cease to apply.

### **Election not to be pensionable**

**B6.**—(1) A person who—

- (a) is in pensionable employment, or
- (b) is not in pensionable employment but expects to enter an employment which would otherwise be pensionable employment,

may at any time, by giving written notice to the Secretary of State, make an election under this regulation.

(2) As from the date from which the election has effect—

- (a) where paragraph (1)(a) applies, the person ceases to be in pensionable employment for all purposes of these Regulations, and
- (b) in any case, subject to regulation B7, no subsequent employment of his is pensionable employment.

(3) Where paragraph (1)(a) applies, an election under this regulation—

- (a) if the notice is given within 3 months after the start of the person's pensionable employment, has effect as from the first day of his pensionable employment, and
- (b) in any other case, has effect from the first day of the month after that in which the notice was given.

(4) Where paragraph (1)(b) applies, the election has effect as from the day before that on which the person first enters any such employment as is there mentioned.

(5) An election made under proviso (b)(ii) to regulation 6(7) of the 1976 Regulations (accepted schools) or regulation 10 of the Teachers' Superannuation (Miscellaneous Provisions) (No. 2) Regulations 1988<sup>(9)</sup> is to be treated as having been made under this regulation.

### **Resumption of pensionable status**

**B7.**—(1) Subject to paragraphs (5) and (6), a person who has made an election under regulation B6, who has since been in employment which would otherwise have been pensionable employment ("excluded employment"), and who—

- (a) is in excluded employment, or
- (b) is not in, but expects to enter, excluded employment,

may at any time, by giving written notice to the Secretary of State, make an election under this regulation.

(2) As from the date on which the election has effect, subject to regulation B6 any employment on and after that date which would otherwise have been excluded employment is pensionable employment.

(3) Where paragraph (1)(a) applies, an election under this regulation—

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<sup>(8)</sup> S.I. 1986/24; relevant amendments were made by S.I. 1986/380, 1987/293.

<sup>(9)</sup> S.I. 1988/816.

- (a) if the notice is given within 3 months after the start of any period of excluded employment, has effect as from the first day of that employment, and
  - (b) in any other case, has effect from the first day of the month after that in which the notice was given.
- (4) Where paragraph (1)(b) applies, the election has effect as from the day before that on which the person first enters any excluded employment.
- (5) If a person who has made an election under this regulation makes a further election under regulation B6, he may make a further election under this regulation only if, since he made the further election under regulation B6, there has been a qualifying period during which he was not in any excluded employment.
- (6) Unless the Secretary of State approves a shorter period in the particular case, a qualifying period is one of not less than 5 years.
- (7) An election made under regulation 11 of the Teachers' Superannuation (Miscellaneous Provisions) (No. 2) Regulations 1988 is to be treated as having been made under this regulation.