STATUTORY RULES OF NORTHERN IRELAND

1998 No. 333

EDUCATION

Teachers' Superannuation Regulations (Northern Ireland) 1998

Made - - - -	*22nd September 1998*
Coming into operation	*2nd November 1998*

The Department of Education(**1**) in exercise of the powers conferred upon it by Articles 11(1)(**2**), (2), (2A)(**3**), (3), (3A)(**4**), (4) and (6)(**5**), 14(2)(**6**) and (3) and (3A) of and paragraphs 1, 3, 4, 6, 8, 9 and 11 to 13 of Schedule 3 to the Superannuation (Northern Ireland) Order 1972(**7**) and of all other powers enabling it in that behalf, and after consultation with representatives of education and library boards, and of teachers and with such representatives of other persons likely to be affected as required by Article 11(5) of that Order, and with the consent of the Department of Finance and Personnel(**8**), hereby makes the following Regulations:

Part A

Preliminary

Citation and commencement

A1. These Regulations may be cited as the Teachers' Superannuation Regulations (Northern Ireland) 1998 and shall come into operation on 2nd November 1998.

Interpretation

A2.—(1) In these Regulations, any expression in the first column of Schedule 1 has the meaning specified opposite thereto in the second column of that Schedule.

(2) In these Regulations—

(**1**) Formerly Ministry: *see*1973 c. 36 Sch. 5 para. 8(1)
(**2**) As amended by S.I. 1990/1509 (N.I. 13) Article 13(1)
(**3**) As inserted by S.I. 1990/1509 (N.I. 13) Article 10(3)
(**4**) As inserted by S.I. 1990/1509 (N.I. 13) Article 6(1)
(**5**) As amended by S.I. 1990/1509 (N.I. 13) Articles 10(4) and 13(2)
(**6**) Article 14 was amended by S.I. 1990/1509 (N.I. 13) Article 12(1) and (2) and Article 14(3A) was inserted by S.I.1990/1509 (N.I. 13) Article 12(3)
(**7**) S.I. 1972/1073 (N.I. 10)
(**8**) Formerly a function of the Department of Finance: *see*S.I. 1982/378 (N.I. 6) Article 3

(a) any reference to, or to things done or falling to be done under or for the purposes of, any provision of these Regulations shall, if and so far as the nature of the reference permits, be construed as including, in relation to circumstances or purposes in relation to which the corresponding provision in any Regulations revoked by these Regulations, or in previous provisions, has or had effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision;

(b) any reference to the purchase of added years shall, in relation to previous provisions, be construed as including a reference to the payment of contributions by a person in respect of a period during which he was not in pensionable employment;

(c) any reference to contributions and benefits payable in respect of a person shall be construed as including a reference to contributions paid by him and benefits paid to him; and

(d) any reference to a transfer value paid or received shall be construed as including a reference to a transfer value which would have been paid or received but for arrangements made for the avoidance of payments between Departments.

(3) For the purposes of these Regulations—

(a) a person is qualified, or qualified by service, for a benefit if, on the day following his ceasing to be employed in reckonable service, he is entitled to payment thereof or would be so entitled but for his age;

(b) a person shall be taken to have ceased to be employed in reckonable service on the last day he is so employed or, as the case may be, the last day on which the employment was pensionable.

Part B

Pensionable Employment

Employment — general

B1.—(1) Subject to paragraphs (2), (4) and (5) and regulations B3 to B5, a person is in pensionable employment while he is in employment in a capacity specified in Schedule 2.

(2) 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) shall not be made without the consent of the employer.

(4) A person who is in part-time employment is not in pensionable employment unless he has at some time made an election for the purposes of this regulation.

(5) A person who is employed as a temporary teacher or is in part-time employment is not in pensionable employment while he is entitled to be paid a teacher's pension.

(6) An election for the purposes of this regulation—

(a) may be made at any time by giving written notice to the Department; and

(b) has effect from the first day of the month following that in which the Department notifies the person making it of its acceptance unless the Department specifies an earlier date.

Continuing employment

B2. Subject to regulations B3 to B5, a person who immediately before 2nd November 1998 was in employment ("the first employment") which was pensionable employment by virtue of

regulation 3(2)(*b*) of the 1977 Regulations(**9**) (employment in continuation of employment treated as reckonable service for the purposes of the 1972 superannuation 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.

Exclusion from pensionable employment

B3.—(1) A person is not in pensionable employment unless he is—

(a) 18 years old or older and under the age of compulsory retirement; and

(b) entitled to be paid his salary in full, or on sick leave and entitled to be paid not less than half his salary, or on maternity leave and entitled to be paid any contractual remuneration or statutory maternity pay or in part-time employment and has made an election in accordance with regulation B1(4).

(2) A person is not in pensionable employment while he is in an employment which immediately before 2nd November 1998 by virtue of regulation 5(1) of the 1977 Regulations (employments treated as not being reckonable service by previous provisions) was not pensionable employment.

(3) A person is not in pensionable employment in respect of any employment which commenced on or after 2nd November 1998 while he 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 E14 (abatement of retirement pension during further employment).

Election not to be pensionable

B4.—(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 but for this regulation be pensionable employment,

may at any time, by giving written notice to the Department, 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 B5, 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.

(**9**) S.R. 1977 No. 260 as amended by S.R. 1978 No. 147, S.R. 1978 No. 351, S.R. 1979 No. 380, S.R. 1980 No. 435, S.R. 1981 No. 151, S.R. 1982 No. 12, S.R. 1982 No. 162, S.R. 1982 No. 346, S.R. 1987 No. 76, S.R. 1987 No. 86, S.R. 1987 No. 315, S.R. 1988 No. 64, S.R. 1988 No. 167, S.R. 1988 No. 363, S.R. 1989 No. 25, and S.R. 1989 No. 181

Election to rejoin pensionable service

B5.—(1) A person who has made an election under regulation B4, 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 Department, make an election under this regulation.

(2) As from the date on which the election has effect, subject to regulation B4 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—

(a) if the notice 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.

Part C

Teachers' Contributions

Salary on which contributions are payable

C1.—(1) Subject to paragraphs (2) to (12), a person's contributable salary is the total of—

(a) the amounts payable by his employer, in respect of his pensionable employment—

(i) by way of salary; and

(ii) in satisfaction of any statutory liability arising out of sickness or maternity; and

(b) if the employer has satisfied the Department that it is expedient for residential accommodation to be provided free in connection with the employment, the money value as an allowance in kind of—

(i) the accommodation provided; and

(ii) any heating or lighting provided free in connection with such accommodation.

(2) Where a person's contributable salary is reduced due to maternity leave or adoption leave the employee's contributions shall be based on the actual rate of salary paid and the employer's contributions shall be based on the notional rate as defined in paragraph (6).

(3) If the money value of any accommodation provided, as mentioned in paragraph (1)(*b*)(i), exceeds one sixth of the amounts mentioned in paragraph (1)(*a*), the excess is not part of the person's contributable salary.

(4) A person's contributable salary does not include—

(a) any allowance in kind not falling within paragraph (1)(*b*);

(b) any payment in respect of overtime;

(c) any payment by way of travelling or expense allowance; or

(d) any payment by way of bonus.

(5) For the purposes of paragraph (4)—

(a) a payment by way of bonus shall not include any payment calculated by reference to the performance of the person in question or the performance of the institution where he is employed;

(b) a payment by way of bonus shall not include any payment made to the person in question where such a payment is made as part of a pay settlement which applies to all persons, or to all persons of a particular class or description, employed at the institution;

(c) if at any time a payment is made to a person which is not part of his contributable salary then any subsequent payment of the same nature is a payment by way of bonus (whether or not it is described as such); and

(d) if at any time a payment is made to a person which is part of his contributable salary then any subsequent payment of the same nature is not a payment by way of bonus (whether or not it is described as such).

(6) A person who continues in full-time pensionable employment but whose contributable salary is reduced, otherwise than by reason of sick leave, adoption leave or maternity leave, may elect that it is to be treated as having continued at the rate applicable immediately before the reduction ("the notional rate").

(7) An election for the purposes of paragraph (6)—

(a) shall be made by giving written notice to the Department within 3 months after the reduction;

(b) has effect from the day after the last day on which the person's salary was payable at the rate applicable before the reduction; and

(c) subject to paragraph (9), continues to have effect until a relevant event occurs in relation to the person who made it.

(8) For the purposes of paragraph (7)(*c*) the relevant events in relation to any person are—

(a) the actual rate at which the salary is paid exceeds the notional rate;

(b) that person enters employment as a temporary teacher or part-time pensionable employment; and

(c) unless he elects to pay additional contributions under regulation C6 or C7, that person ceases to be in pensionable employment.

(9) An election made for the purposes of paragraph (6) may be cancelled by giving written notice to the Department at any time.

(10) Notice of cancellation under paragraph (9)—

(a) has effect from the first day of the month following that in which it was received; and

(b) is irrevocable.

(11) If, while an election made for the purposes of paragraph (6) has effect there is any further reduction during a period of sick leave, adoption leave or maternity leave, the notional rate shall, during that period, be treated as having been reduced in the same proportion as the actual rate.

(12) Subject to paragraphs (13) and (14), in the case of a person entering pensionable employment after 31st May 1989 with no right to count any period before 1st June 1989 as reckonable service, in any tax year in which the contributable salary calculated in accordance with paragraphs (1) to (11) exceeds the permitted maximum in terms of section 590C of the Income and Corporation Taxes Act 1988 (earnings cap)(**10**), the excess does not form part of his contributable salary.

(13) Paragraph (12) shall not apply to a person—

(**10**) 1988 c. 1; section 590C was inserted by the Finance Act 1989 (c. 26) Schedule 6, paragraph 4