
STATUTORY INSTRUMENTS

2008 No. 541

**The Teachers' Pensions (Miscellaneous
Amendments) Regulations 2008**

PART 3

Amendment of the Teachers' Pensions Regulations 1997

Amendment of the Teachers' Pensions Regulations 1997

7. The 1997 Regulations are amended in accordance with the following provisions of this Part.

Discounted periods of pensionable employment where teachers' contributions are not made

8.—(1) In paragraph (1) of regulation B1 (which makes general provision about pensionable employment) for “regulations B4 to B6” substitute “regulations B4 to B6A”.

(2) After regulation B6 insert—

“Discounted periods of pensionable employment where teachers' contributions are not made

B6A.—(1) This regulation applies where—

- (a) the Secretary of State makes a demand under paragraph (2) of regulation C18 in respect of contributions of any of the kinds referred to in paragraph (1)(a) of that regulation (“the demand”);
- (b) the whole of the sum so demanded has not been paid at the end of the period of 3 years beginning on the date on which the demand is made;
- (c) the Secretary of State decides that this regulation should apply and gives written notice to that effect to the person to whom the demand was given; and
- (d) where any amount has been paid to the Secretary of State in part satisfaction of the demand, the Secretary of State repays that amount to the person on giving the notice referred to in sub-paragraph (c).

(2) Any period of employment to which the contributions referred to in paragraph (1)(a) relate is not to be treated as a period of pensionable employment for the purposes of these Regulations.”.

Removal of the cap on contributable salary

9.—(1) In regulation C1 (which makes provision about the salary on which contributions are payable)—

(a) in paragraph (8)—

- (i) for “paragraphs (9) and (10)” substitute “regulation C1A”, and

- (ii) omit “in terms of section 590C of the Taxes Act”;
 - (b) omit paragraphs (9), (10) and (11); and
 - (c) in paragraph (12), after the definition of “pay order” insert—
 - ““permitted maximum” has the meaning given to it by regulation 1(2) of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(1);”.
- (2) After regulation C1 insert—

“Removal of the cap on contributable salary

- C1A.**—(1) Regulation C1(8) only applies to a person—
- (a) who is a relevant person, and
 - (b) in respect of whom that regulation has not ceased to apply by virtue of paragraph (2).
- (2) Regulation C1(8) will cease to apply (in accordance with paragraphs (9) to (11)) to a relevant person—
- (a) who on or after 1st April 2008 elects in accordance with paragraph (4) for that provision not to apply for the purposes of determining the amount of the person’s contributable salary; or
 - (b) who does not make such an election but the circumstances specified in paragraph (5) or (8) apply to that person.
- (3) In this regulation a “relevant person” is a person—
- (a) who is in pensionable employment immediately before 1st April 2008; and
 - (b) who immediately before that date is a person to whom regulation C1(8) applies.
- (4) The election referred to in paragraph (2)(a) must—
- (a) be made by giving written notice to the Secretary of State;
 - (b) include a written notice from the person’s employer confirming that the employer consents to regulation C1(8) not applying for the purposes of determining the amount of the person’s contributable salary; and
 - (c) be received by the Secretary of State on or before 31st December 2008.
- (5) Subject to paragraph (7), the circumstances are that at any time on or after 1st April 2008 the relevant person referred to in paragraph (2)(b) begins a new employment.
- (6) For the purposes of paragraph (5), a person is to be treated as beginning a new employment if the person—
- (a) begins pensionable employment with an employer who is different from the employer in relation to the pensionable employment referred to in paragraph (3)(a), or
 - (b) continues in pensionable employment with the same employer but in a new post under a different contract of employment.
- (7) Paragraph (5) does not apply where the person begins pensionable employment with a different employer by reason of a transfer of undertakings.
- (8) The circumstances are that at any time on or after 1st April 2008—

- (a) the contract of employment of the relevant person is varied so that he is required to undertake functions which are materially different from those the person was required to undertake before the variation was made; and
- (b) the employer gives written notice to the Secretary of State of the variation of the person's contract of employment.

(9) In the case of a person to whom paragraph (2)(a) applies, regulation C1(8) ceases to apply on the last day of the month in which notice of the election is received by the Secretary of State in accordance with paragraph (4).

(10) In the case of a person to whom paragraphs (2)(b) and (5) apply, regulation C1(8) ceases to apply immediately before the date on which the person begins the new employment referred to in paragraph (5).

(11) In the case of a person to whom paragraphs (2)(b) and (8) apply, regulation C1(8) ceases to apply immediately before the date on which the variation in the contract of employment takes effect.”.

(3) In regulation D1(1) for “regulation D2” substitute “regulations D2 and D5”.

(4) After regulation D4 insert—

“Calculation of reckonable service where cap on contributable salary is removed

D5.—(1) This regulation applies for the purposes of determining the length of reckonable service of a person—

- (a) who is a relevant person within the meaning of paragraph (3) of regulation C1A (removal of the cap on contributable salary); and
- (b) who has made the election referred to in paragraph (2)(a) of that regulation, or is a person to whom paragraph (2)(b) and either paragraph (5) or (8) of that regulation apply.

(2) The reckonable service of such a person is (rounded up to the nearest day)—

$$A + (B \times \frac{C}{D}),$$

where—

A is the aggregate of periods of uncapped reckonable service;

B is the aggregate of periods of capped reckonable service;

C is the permitted maximum which has effect on the relevant date; and

D is—

- (a) the amount of the person's contributable salary in the period of 12 months ending on—
 - (i) in a case to which paragraph (2)(a) of regulation C1A applies, the last day of the month in which notice of the election is received by the Secretary of State in accordance with paragraph (4) of that regulation;
 - (ii) in a case to which paragraphs (2)(b) and (5) of regulation C1A apply, the last day of the person's pensionable employment referred to in paragraph (3)(a) of that regulation; or
 - (iii) in a case to which paragraphs (2)(b) and (8) of regulation C1A apply, the day immediately before the date on which the variation of the contract of employment takes effect; or

- (b) where the amount referred to in sub-paragraph (a) is less than the permitted maximum, the permitted maximum.
- (3) In this regulation—
 - (a) the reference to periods of capped reckonable service are to periods of employment or service which apart from this regulation the person would be entitled to count as reckonable service in accordance with the provisions of this Part, and in respect of which—
 - (i) regulation C1(8) applies; or
 - (ii) in the case of transferred-in service, the benefits payable in respect of the employment or service under the relevant pension scheme were subject to the limits imposed under section 590C of the Taxes Act⁽²⁾ or regulation 4 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006;
 - (b) references to periods of uncapped reckonable service are to any periods which apart from this regulation the person would be entitled to count as reckonable service in accordance with the provisions of this Part and which are not periods of capped reckonable service;
 - (c) “permitted maximum” has the meaning given in regulation C1(12);
 - (d) in paragraph (3)(a)—
 - (i) the reference to transferred-in service is to service which the person is entitled to count as reckonable service by virtue of regulation F4(8) (acceptance of transfer values) or regulation F4A(3) (acceptance of transfer values as part of a bulk transfer); and
 - (ii) the reference to the relevant pension scheme, in relation to transferred-in service, is to the previous scheme (within the meaning of regulation F4(1)) or, as the case may be, the pension scheme under which the past service pension rights referred to in regulation F4A(1) had accrued;
 - (e) the reference to the amount of contributable salary received by the person is to the amount of contributable salary calculated in accordance with regulations C1 and C2, but disregarding paragraph (8) of regulation C1; and
 - (f) the relevant date is—
 - (i) in the case of a person to whom paragraph (2)(a) of regulation C1A applies, the first day of the first month after the date on which notice of the election is received by the Secretary of State in accordance with paragraph (4) of that regulation;
 - (ii) in the case of a person to whom paragraphs (2)(b) and (5) of regulation C1A apply, the date on which the person begins the new employment referred to in paragraph (5) of that regulation; or
 - (iii) in the case of a person to whom paragraphs (2)(b) and (8) of regulation C1A apply, the date on which the variation of the contract of employment takes effect.”
- (5) In regulation E28 (which makes provision about the amount of a surviving spouse’s, surviving civil partner’s, surviving nominated partner’s or nominated beneficiary’s long term pension)—
 - (a) in paragraph (4), after “paragraphs (3), (5)” insert “, (7C)”;

(2) Section 590C was inserted by the Finance Act 1989 (c. 26), Schedule 6, paragraph 4(a). Section 590C has subsequently been repealed by the Finance Act 2004, Schedule 42, Part 3.

- (b) in paragraph (6), for “paragraph (3)” substitute “paragraphs (3) and (7C)”;
- (c) in paragraphs (7) to (7B), in each case after “paragraphs (3)” insert “, (7C)”;
- (d) after paragraph (7B) of regulation E28 insert—
 - “(7C) Regulation D5 has effect for the purpose of calculating the length of the family benefit service of a deceased person, who was a person to whom paragraph (1) of that regulation applied, as that regulation would have had effect for the purpose of calculating the person’s reckonable service.
 - (7D) For the purposes of paragraph (7C)—
 - (a) references in regulation D5 to reckonable service shall be taken as references to family benefit service; and
 - (b) references in paragraph (3)(a) and (b) of that regulation to the provisions of Part D shall be taken as references to paragraphs (3) to (7B) of this regulation.”.
- (6) In the second column of Schedule 1—
 - (a) in the definition of “Permitted maximum”, for “Construe” substitute “Except as provided in regulations C1(12) and D5(2), construe”;
 - (b) for the definition of “Transfer of undertakings” substitute—
 - “Means—
 - (a) where the transfer takes place on or after 6th April 2006, a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006(3); and
 - (b) where the transfer takes place before that date, a transfer of undertakings within the meaning given by the Transfer of Undertakings (Protection of Employment) Regulations 1981(4).”.

Insertion of references to parental leave

- 10.** In each of the following provisions after “paternity” insert “, parental”—
- (a) regulation C2(1)(a);
 - (b) regulation C2(9);
 - (c) regulation D1(3)(b);
 - (d) regulation E4(4)(c)(i)(bb);
 - (e) regulation E8A(1)(b)(5);
 - (f) regulation E25(1)(a);
 - (g) regulation E31(7)(a);
 - (h) regulation H3(1)(g).

Purchase of additional benefits on and after reaching the age of 60

11.—(1) In regulation C3C(6)(election in respect of additional benefits) for paragraph (1) substitute—

“(1) Any person in pensionable employment—

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- (3) [S.I. 2006/246](#); amendments are made to that instrument which are not relevant to these Regulations.
 - (4) [S.I. 1981/1794](#), revoked by [S.I. 2006/246](#) except in relation to transfers of undertakings which took place before 6th April 2006.
 - (5) Regulation E8A was inserted by paragraph 31(3) of Schedule 3 to [S.I. 2006/3122](#).
 - (6) Regulation C3C was inserted by paragraph 11 of Schedule 3 to [S.I. 2006/3122](#).

- (a) who has not attained the normal pension age, or
- (b) who is a pre-2007 entrant who has attained the age of 60 years but has not attained the age of 65 years,

may at any time elect to pay additional contributions in accordance with Schedule 2A in order to be credited with additional benefits.”.

(2) In Schedule 2A(7)(election in respect of additional benefits)—

(a) in paragraph 4—

(i) in sub-paragraph (a) after “the normal pension age” insert “unless the person falls within sub-paragraph (aa)” and omit “and” at the end of that sub-paragraph;

(ii) after sub-paragraph (a) insert the following—

“(aa) where the election is made by a person who is a pre-2007 entrant who has attained the age of 60 years, the period ends before the person attains the age of 65 years, and”; and

(b) in paragraph 27(b), after “the normal pension age” insert “or, where the election is made in respect of a person who is a pre-2007 entrant who has attained the age of 60 years, the age of 65 years”.

Treatment on transfer from certain other public service pension schemes

12.—(1) In paragraph (2) of regulation EA1(8)(which defines various terms) after “in paragraph (3)” insert “or the condition in paragraph (3A)”.

(2) After paragraph (3) of that regulation insert—

“(3A) The condition is that—

- (a) the person enters pensionable employment on or after 1st January 2007;
- (b) the person enters pensionable employment by virtue of a transfer of undertakings or by virtue of arrangements equivalent to a transfer of undertakings; and
- (c) immediately before entering pensionable employment the person was—
 - (i) in employment pensionable under a public service pension scheme, and
 - (ii) entitled under the rules of that scheme to receive benefits on retirement from such employment before or on attaining the age of 60 years.

(3B) In paragraph (3A)—

- (a) “public service pension scheme” has the same meaning as in section 1 of the 1993 Act(9) except that it does not include an occupational pension scheme established under section 7 of the Superannuation Act 1972; and
- (b) the reference to arrangements equivalent to a transfer of undertakings is to arrangements—
 - (i) which do not constitute a transfer of undertakings, but
 - (ii) under which the parties to the arrangements have agreed that the rights of the persons whose employments are being transferred should as far as practicable be treated in the same way as they would have been under a transfer of undertakings.

(3C) For the purposes of paragraph (3A)(c)(ii) a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits before or on attaining the

(7) Schedule 2A was inserted by paragraph 72 of Schedule 3 to [S.I. 2006/3122](#).

(8) Regulation EA1 was inserted by paragraph 24 of Schedule 3 to [S.I. 2006/3122](#).

(9) [1993 c. 48](#).

age of 60 years, where such entitlement arises by virtue of any scheme rule making special provision—

- (a) as to early retirement on grounds of ill health, redundancy or otherwise, or
- (b) for benefits to be reduced for early payment.”.

Applications for incapacity benefit

13.—(1) In paragraph (2A) of regulation E33 (payment of benefits)—

- (a) omit “and” at the end of sub-paragraph (a), and
- (b) after sub-paragraph (b) insert—

“(c) where the person falls within regulation E4(4)(c)(i)(aa) or (cc), be made within 6 months after the end of the pensionable employment or within 6 months after the last payment of additional contributions under old regulation C9 or regulation C10 as the case may be, and

(d) where the person falls within regulation E4(4)(c)(i)(bb), be made—

- (i) where the person was on unpaid sick leave, before the period of sick leave ends, and
- (ii) in any other case, before the date on which, under the arrangements made with the person’s employer, the leave or career break is due to end.”.

Conversion of excess amount of lump sum into pension

14.—(1) In paragraph (1) of regulation E5 substitute for the words from “together with” to the end of the paragraph—

“together with—

- (a) the rate specified in regulation E5A where that regulation applies, and
- (b) any amount determined in accordance with paragraph (4B) of regulation E6 where that paragraph applies,

(but nothing in this regulation, regulation E5A or regulation E6(4B) shall prevent different parts of a person’s retirement pension being paid at different times if the person becomes entitled to the parts at different times).”.

(2) In regulation E6 (which makes provision about a person’s retirement lump sum) insert after paragraph (4)—

“(4A) Paragraph (4B) applies in any case where, but for paragraph (4), a person would be entitled to a lump sum which exceeds the person’s permitted maximum (“the notional lump sum”).

(4B) The annual rate of the person’s retirement pension is increased by an amount which represents the value of the amount by which the notional lump sum exceeds the person’s permitted maximum.

(4C) The increase in the annual rate of the person’s retirement pension shall be determined by the Secretary of State after taking advice from the Government Actuary.”.

Meaning of “child” for the purposes of regulation E22

15.—(1) In paragraph (5) of regulation E22 (family benefits generally), after “adopted child,” insert—

“or

- (b) accepted by him as a member of the family and wholly or mainly financially dependent on him.”.
- (2) In paragraph (11) of that regulation, for sub-paragraph (a) substitute—
 - “(a) in paragraph (5)(b) omit “financially”.”.
- (3) Subject to paragraph (4), the amendment made by paragraph (1) applies for the purposes of determining a person’s entitlement to a pension under regulations E24 to E30 where the pension is payable at any time on or after 6th April 2006.
- (4) Paragraph (3) does not apply in respect of pensions payable under regulations E24 to E30 to the children of a deceased person during the period beginning on 6th April 2006 and ending on 31st March 2008 where—
 - (a) one or more payments have been made under those regulations to a child of that person during that period; and
 - (b) the amount of the pension paid to that child has been determined on the basis of paragraph (5) of regulation E22 having effect without the amendment made by paragraph (1) above.

Correction of minor errors

- 16.**—(1) In paragraph (4) of regulation E25 (amount and duration of short-term family benefits), for “E5(3)” substitute “E5(6)”.
- (2) In regulation H1(10) (modified application in case of employment at reduced rate)—
 - (a) in paragraph (1)(a)(ii), for “as a reduced rate” substitute “at a reduced rate”, and
 - (b) in paragraph (1)(f), for “1st of January” substitute “1st January”.
- (3) In paragraph 14 of Schedule 2A, insert “the” before “Secretary of State”.

Addition of Vocational Training Charitable Trust to list of employments pensionable on election

- 17.** In paragraph 24 of Schedule 2 insert the following entry after the entry for the Stapleford Centre—
 - “the Vocational Training Charitable Trust”.

Election in respect of protected benefits

- 18.**—(1) This regulation applies to a person—
 - (a) to whom a protected benefit is being paid or may become payable, and
 - (b) who is placed in a worse position than the person would have been if a provision made by these Regulations had not applied in relation to the protected benefit.
- (2) A protected benefit is one which is being paid, or may become payable, under the 1997 Regulations to, or in respect of, a person who was employed in qualifying employment but ceased to be employed, or died, before 1st April 2008.
- (3) A person to whom this regulation applies may, by giving written notice to the Secretary of State before 1st July 2008, elect that the relevant provision shall not apply in relation to the protected benefit.
- (4) If the election under paragraph (3) is made in relation to the benefit of a person who is in pensionable employment or subsequently becomes re-employed in pensionable employment—

(10) Sub-paragraphs (a) and (f) of regulation H1(1) were substituted by paragraph 62 of Schedule 3 to [S.I. 2006/3122](#).

- (a) the election has effect in relation to the benefit only to the extent that it accrues or has accrued by virtue of—
 - (i) periods of reckonable service before the cessation referred to in paragraph (2) (or, if there has been more than one cessation, the last of them before 1st April 2008), or
 - (ii) contributions paid in respect of such periods, and
 - (b) in determining entitlement to, or the amount of, the benefit to that extent the person is treated as having never re-entered pensionable employment again at any time after the cessation referred to in paragraph (2)) (but without prejudice to the application of this paragraph),
- and the 1997 Regulations apply accordingly.

- (5) In this regulation—
 - (a) “qualifying employment” means pensionable employment or excluded employment within the meaning of the 1997 Regulations; and
 - (b) “pensionable employment” and “reckonable service” have the meanings given to them by the 1997 Regulations.