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STATUTORY INSTRUMENTS

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**2010 No. 990**

**The Teachers' Pensions Regulations 2010**

**PART 9**

**Family benefits**

**Introduction**

- 88.** This Part makes provision for the payment of—
- (a) adult pensions;
  - (b) additional pensions for surviving adults;
  - (c) child pensions.

**Family benefits (further employment)**

**89.**—(1) For the purpose of calculating benefits under this Part in respect of each period after a person (P) enters further employment, P is to be treated as if P entered pensionable employment for the first time on entering the further employment.

- (2) Where P—
- (a) ceases to be in further employment (“the first further employment”) and satisfies the condition for retirement in relation to the first further employment, but
  - (b) re-enters further employment (“the second further employment”) before making an application under regulation 107 (payment of benefits on application to Secretary of State) in relation to the first further employment

the first further employment and the second further employment are treated as a single period of further employment.

(3) This regulation is subject to paragraph 22 of Schedule 13 (further employment commencing before 1st April 1997).

**Nomination of surviving nominated partner**

**90.**—(1) A person (A) may nominate another person (B) to receive a pension by giving the Secretary of State a declaration signed by both A and B that the condition in paragraph (2) is satisfied.

- (2) The condition is that—
- (a) A is able to marry, or form a civil partnership with, B,
  - (b) A and B are living with each other as if they were husband and wife or civil partners,
  - (c) neither A nor B is living with a third person as if they were husband and wife or civil partners, and
  - (d) either B is financially dependent on A or A and B are financially interdependent.

(3) A nomination ceases to have effect if—

- (a) either A or B gives written notice of revocation to the Secretary of State,
  - (b) A makes a subsequent nomination under this regulation,
  - (c) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or civil partners, or
  - (d) B dies.
- (4) B is A's surviving nominated partner if—
- (a) the nomination has effect at the date of A's death, and
  - (b) the condition in paragraph (2) was satisfied for a continuous period of at least 2 years ending on A's death.

**Nomination of surviving nominated beneficiary**

**91.**—(1) A person (A) may nominate another person (B) to receive a pension by giving written notice to the Secretary of State if Conditions 1 and 2 are satisfied.

(2) Condition 1 is that A has reckonable service which has not been used to calculate a retirement pension payable to A.

(3) Condition 2 is that—

- (a) A is neither married nor a civil partner,
  - (b) no nomination made by A under regulation 90 (nomination of surviving nominated partner) has effect,
  - (c) B is A's parent, step-parent, brother or sister,
  - (d) B is neither married nor a civil partner,
  - (e) where B is A's parent, brother or sister, either B has never married nor formed a civil partnership or B is widowed or a surviving civil partner,
  - (f) where B is A's step-parent, B is widowed or a surviving civil partner,
  - (g) where B is A's brother or sister, B is not an eligible child of A,
  - (h) B is not living with another person as if they were husband and wife or civil partners, and
  - (i) B is wholly or mainly financially dependent on A.
- (4) A nomination ceases to have effect if—
- (a) A gives written notice of revocation to the Secretary of State,
  - (b) A makes a subsequent nomination under this regulation,
  - (c) A makes a nomination under regulation 90 (nomination of surviving nominated partner),
  - (d) either A or B marries or forms a civil partnership,
  - (e) B begins to live with another person as if they were husband and wife or civil partners, or
  - (f) B dies.
- (5) B is A's surviving nominated beneficiary if, at the date of A's death—
- (a) the nomination has effect, and
  - (b) Condition 2 is satisfied.

**Meaning of “surviving adult”**

**92.** In these Regulations the “surviving adult” of a person who has died means the deceased's widow, widower, surviving civil partner, surviving nominated partner or surviving nominated beneficiary.

### **Meaning of “eligible child”**

**93.**—(1) For the purpose of these Regulations, a person (C) is the “eligible child” of another person (D) if—

- (a) (i) C is a child of D born during D’s lifetime or within 12 months after D’s death,
- (ii) C was adopted by D, or
- (iii) C was accepted by D as a member of the family and was wholly or mainly financially dependent on D at the date of D’s death;
- (b) C is neither married nor a civil partner and has never married nor formed a civil partnership; and
- (c) C satisfies any of Conditions 1 to 3.

(2) Condition 1 is that C is under 17.

(3) Condition 2 is that—

- (a) C is 17 or over and under 23,
- (b) C is receiving full-time education, and
- (c) C has received full-time education since reaching the age of 17 without a break.

(4) Condition 3 is that C—

- (a) C is incapable of earning a livelihood by reason of physical or mental impairment,
- (b) C was dependent on D at the date of the D’s death because of that impairment, and
- (c) C is not wholly maintained out of money provided by Parliament or raised by council tax by a local authority.

(5) For the purpose of Condition 2—

- (a) a person who takes no more than one break not exceeding a year or such longer period as the Secretary of State may determine in the circumstances of the particular case is not to be treated as ceasing to receive full-time education;
- (b) a person who ceases to receive full-time education is to be treated as receiving it up to and including the week which includes whichever of the following days occurs first after the end of the term in which the person ceases to receive it—
  - (i) the first Monday in January,
  - (ii) the first Monday after Easter Monday,
  - (iii) the first Monday in September.

(6) For the purpose of Condition 3 “local authority” includes a non-metropolitan district council for an area for which there is a county council.

(7) For the purpose of this regulation, a person is to be treated as receiving full-time education if the person attends a course of full-time vocational training of not less than 2 years’ duration.

(8) For the purpose of determining whether a person is the eligible child of a person who was not in pensionable employment on or after 1st May 1994, omit paragraph (3)(c).

(9) For the purpose of determining whether a person is the eligible child of a person who was entitled to payment of retirement benefits under regulation E4 of TPR 1997 on 5th April 2006 or whether a child (as defined in regulation E22 of those Regulations) to whom a pension was payable on that date is an eligible child—

- (a) in paragraph (1)(a)(iii), omit “financially”;
- (b) in paragraph (3)(a), omit “and under 23”;

- (c) in paragraph (4)(b) after “that impairment” insert “or became so incapable while satisfying Condition 1 or Condition 2”.

### Adult pensions

- 94.**—(1) This regulation applies on the death of a person (D) if—
- (a) D was in pensionable employment after 31st March 1972, and
  - (b) D had adult pension qualification service of—
    - (i) at least 2 years, where D was in pensionable employment at any time after 5th April 1988, or
    - (ii) at least 5 years, where D was not in pensionable employment after 5th April 1988.
- (2) For the purpose of calculating benefits in respect of a period after D entered further employment, paragraph (1) has effect as if for sub-paragraph (b) there were substituted—
- “(b) D was qualified for retirement benefits following further employment.”.
- (3) An adult pension is payable to D’s surviving adult from the day after the date of D’s death.
- (4) Except as otherwise provided in these Regulations, the pension is payable for life.
- (5) D falls within this paragraph if—
- (a) D was not in pensionable employment after 31st December 2006, or
  - (b) D did not pay contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force) in respect of a period after that date.
- (6) If D falls within paragraph (5), the pension ceases to be payable if D’s surviving adult marries, forms a civil partnership, or lives with another person as if they were husband and wife or civil partners.
- (7) Paragraph (6) does not apply—
- (a) if the Secretary of State determines that paragraph (6) does not apply in the circumstances of the particular case;
  - (b) to so much of any pension as is payable in respect of section 9(2B) rights to a widow or widower whose entitlement arose from a death occurring before 5th December 2005 and who forms a civil partnership or lives with another person as if they were civil partners;
  - (c) where D dies in service, as a phased retirement pensioner or as a retirement pensioner, during the first 3 months after D’s death.
- (8) The annual rate of the pension is to be calculated in accordance with regulations 95 (adult pensions: short-term rate) and 96 (adult pensions: long-term rate).
- (9) Schedule 8 (adult pension qualification service) has effect for determining D’s adult pension qualification service.

### Adult pensions: short-term rate

- 95.**—(1) The annual rate of an adult pension which becomes payable on the death of a person (D) is to be calculated in accordance with this regulation during the first 3 months after D’s death.
- (2) The annual rate of the adult pension is made up of the following—
- (a) where D dies in service and falls within paragraph (2)(a) or (b) of regulation 100 (short-term rate of adult and child pensions: supplemental), the annual rate of D’s contributable salary on D’s last day in pensionable employment, disregarding any reduction by reason of sick leave or maternity, paternity or adoption leave;

- (b) where D dies in service and falls within paragraph (2)(c) or (d) of regulation 100 (short-term rate of adult and child pensions: supplemental), the annual rate, at the date of D's death, of the notional salary mentioned in regulation C9(7) of TPR 1997 or, as the case may be, regulation 19(8);
  - (c) where D dies as a phased retirement pensioner, the annual rate at the date of D's death of any phased retirement pension;
  - (d) where D dies as a retirement pensioner, the annual rate at the date of D's death of any retirement pension.
- (3) Where—
- (a) D does not die in service, or die as a phased retirement pensioner or as a retirement pensioner, or
  - (b) where the annual rate of the adult pension calculated in accordance with paragraph (2) is smaller than the annual rate calculated in accordance with regulation 96 (adult pensions: long-term rate),

the annual rate of the adult pension is the same as the annual rate calculated in accordance with that regulation.

#### **Adult pensions: long-term rate**

**96.**—(1) Except as provided in regulation 95 (adult pensions: short-term rate), the annual rate of an adult pension is  $1/160 \times$  the average salary of the person (D) on whose death the pension is payable  $\times$  D's family benefit service (in years and fractions of a year).

(2) But where a pension-sharing order has taken effect, the amount of the pension must be reduced by the same proportion by which D's retirement benefits were reduced or would have been reduced if they had been payable at the date of D's death.

(3) Where paragraph 27 of Schedule 5 applies and a person entitled to limit the amount of the deduction or lump sum has done so, the retrospective salary increase is not to be taken into account in calculating D's average salary for the purpose of paragraph (1).

(4) Part 1 of Schedule 9 (family benefit service) has effect for determining D's family benefit service.

#### **Child pensions**

**97.**—(1) This regulation applies on the death of a person (D) if—

- (a) D was in pensionable employment at any time after 31st March 1972, and
- (b) D was qualified for retirement benefits or qualified for retirement benefits following further employment.

(2) A child pension is payable to an eligible child of D from the day after the date of D's death.

(3) But where child pensions payable on the death of more than two persons would, apart from this paragraph, be payable to an eligible child, the only pensions payable to that child are to be the pensions payable on the death of the two persons whose death results in pensions of the greatest value becoming payable.

(4) The pension is not payable—

- (a) while an eligible child is taking a break (as mentioned in paragraph (5)(a) of regulation 93 (meaning of "eligible child")) from full-time education or a course of full-time vocational training of not less than 2 years' duration;
- (b) while an eligible child attending such a course of full-time vocational training is being paid at a rate which equals or exceeds the annual rate at which an official pension within

the meaning of section 5(1) of PIA 1971 would be payable if the pension had begun, and first qualified for increases under that Act on 1st April 2010 and had then been payable at an annual rate of £2675.

(5) The pension ceases to be payable when the person to whom it was payable ceases to be an eligible child.

(6) Where D dies in service, or dies as a phased retirement pensioner or as a retirement pensioner, paragraphs (4) and (5) do not apply while the annual rate of the child pension is calculated in accordance with regulation 98 (child pensions: short-term rate).

(7) The annual rate of the pension is to be calculated in accordance with regulations 98 (child pensions: short-term rate) and 99 (child pensions: long-term rate).

### **Child pensions: short-term rate**

**98.**—(1) The annual rate of a child pension which becomes payable on the death of a person (D) is to be calculated in accordance with this regulation during the following periods—

- (a) where no adult pension becomes payable on D's death, the first 6 months after D's death;
- (b) where an adult pension becomes payable on D's death and continues to be payable for the first 3 months after D's death, those 3 months;
- (c) where an adult pension becomes payable on D's death but ceases to be payable before 3 months after D's death, the first 3 + BP months after D's death.

(2) BP is 3 minus the number of months (and fractions of a month) during which the adult pension was payable.

(3) The annual rate of the child pension is made up of the following—

- (a) where D dies in service and falls within paragraph (2)(a) or (b) of regulation 100 (short-term rate of adult and child pensions: supplemental), the annual rate of D's contributable salary on D's last day in pensionable employment, disregarding any reduction by reason of sick leave or maternity, paternity or adoption leave, divided by the number of D's eligible children to whom a pension is payable;
- (b) where D dies in service and falls within paragraph (2)(c) or (d) of regulation 100, the annual rate, at the date of D's death, of the notional salary mentioned in regulation C9(7) of TPR 1997 or, as the case may be, regulation 19(8), divided by the number of D's eligible children to whom a pension is payable;
- (c) where D dies as a phased retirement pensioner, the annual rate at the date of D's death (disregarding any reduction by virtue of a pension-sharing order) of any phased retirement pension, divided by the number of D's eligible children to whom a pension is payable;
- (d) where D dies as a retirement pensioner, the annual rate at the date of D's death (disregarding any reduction by virtue of a pension-sharing order) of any retirement pension, divided by the number of D's eligible children to whom a pension is payable.

(4) Where—

- (a) D does not die in service, or die as a phased retirement pensioner or as a retirement pensioner, or
- (b) where the annual rate of the child pension calculated in accordance with paragraph (3) is smaller than the annual rate calculated in accordance with regulation 99 (child pensions: long-term rate),

the annual rate of the child pension is the same as the annual rate calculated in accordance with that regulation.

### **Child pensions: long-term rate**

**99.**—(1) Except as provided in regulation 98 (child pensions: short-term rate), the annual rate of a child pension is  $R \times$  the average salary of the person (D) on whose death the pension is payable  $\times$  D's family benefit service (in years and fractions of a year)/EC.

(2) R is—

- (a) while an adult pension is payable in respect of D, 1/160;
- (b) where no adult pension becomes payable on D's death or where such a pension became payable on D's death but ceases to be payable, 1/120.

(3) EC is—

- (a) 2 while the number of D's eligible children to whom a child pension is payable is 1 or 2, and
- (b) the number of D's eligible children to whom a child pension is payable in any other case.

(4) Part 2 of Schedule 9 (family benefit service) has effect for determining D's family benefit service.

### **Short-term rate of adult and child pensions: supplemental**

**100.**—(1) This regulation has effect for the purpose of this Part.

(2) A person (D) dies "in service" if D dies in any of the following circumstances—

- (a) D dies in pensionable employment;
- (b) D ceases to be in pensionable employment because D is incapacitated and dies within 12 months after the cessation of the pensionable employment without returning to employment in a capacity mentioned in Schedule 2 and before a retirement pension, the calculation of which takes into account that pensionable employment, becomes payable;
- (c) D dies during a period in respect of which D is paying contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force);
- (d) the period in respect of which D is paying contributions under regulation C9 of TPR 1997 or regulation 19 ends because D is incapacitated, and D dies within 12 months after the end of that period without returning to employment in a capacity mentioned in Schedule 2 and before a retirement pension becomes payable.

(3) A person (D) dies "as a phased retirement pensioner" if D dies after a phased retirement pension (other than one which has ceased to be payable under regulation 59 (cessation of phased retirement pension)) becomes payable.

(4) A person (D) dies "as a retirement pensioner" if D dies after a retirement pension becomes payable.

(5) For the purpose of this regulation, an ill-health pension does not become payable before a person's death unless payment is initiated before the person's death.

### **Additional pensions for surviving adults**

**101.**—(1) This regulation applies on the death of the AP beneficiary (D) of an AP election.

(2) An additional pension is payable in respect of each AP election of which D is an AP beneficiary from the day after the date of D's death to D's surviving adult for life.

(3) The annual rate of the pension is half the amount with which D is credited under Schedule 4 in respect of the AP election multiplied by the factor mentioned in paragraph (5) if that factor is greater than 1.

(4) But where D dies in service, as a phased retirement pensioner or as a retirement pensioner, during the first 3 months after D's death, the annual rate of the pension is the annual rate, at the date of D's death, of the additional pension which was payable to D.

(5) The factor is  $RPI1/RPI2$ , where—

(6) RPI1 is the retail prices index for the penultimate month before the month which includes the day before the day on which the pension is deemed to begin for the purposes of PIA 1971 (see section 8(2) of that Act), and

(7) RPI2 is the retail prices index for the month which includes the start date.

(8) In this regulation—

(9) "AP election" means an election accepted by the Secretary of State under Schedule 4 (contributions for additional pensions) which is a dependant's election as defined in paragraph 1 of that Schedule;

(10) "AP beneficiary" has the same meaning as in that Schedule;

(11) "start date" has the same meaning as in that Schedule.