

department for
children, schools and families

TPS Regulations Consultees

Direct line: 01325 392060
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Our Ref: File 53/63

25 January 2008

Dear Colleague

The Teachers' Pensions (Amendment) Regulations 2008 and the Teachers' Superannuation (Additional Voluntary Contributions) (Amendment) Regulations 2008

Further to my previous letters dated 8 November and 18 December 2007 about the proposed amendments to the Teachers' Pensions Regulations 1997 (1997 TPS Regulations) and the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 (1994 AVC Regulations), I am enclosing a copy of the draft regulations plus accompanying commentary for your consideration and comment.

For the policy background on the proposals please refer to my previous letters which can also be viewed through a link to 'Announcements' on the Teachers' Pensions website at www.teacherspensions.co.uk

Please note that due to time constraints we have been unable to draft the regulations for the harmonisation of interest rates in relation to the payment of arrears of contributions. So the proposals, as outlined in paragraphs 6 to 9 of my letter dated 8 November, do not appear in these amending regulations. This issue will now form part of the ongoing regulatory consolidation exercise being carried out by my colleague, Valerie Tooth.

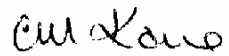
In recognition of the fact that there has been a delay in the distribution of these regulations the deadline for responses has been extended. They should now be made in writing **by 5.00pm Monday 4 February 2008** to:

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A copy of this document will be placed on the Teachers' Pensions website along with a list of the organisations being asked to take part in this consultation.

Yours faithfully



Christine Kane
Pensions and Medical Fitness Unit
School Resources Group

COMMENTARY ON THE DRAFT REGULATIONS

Amendments to the 1997 TPS Regulations are contained within Part 2

1. Paragraph 3(1) makes technical amendments to regulation C1 to reflect the fact that the Earnings Cap – the level at which the amount of contributable salary is capped for pension purposes (currently £112, 800) – is being removed from the TPS arrangements from 1 April 2008.
2. Paragraph 3(1)(c) introduces a second definition for ‘permitted maximum’ within the TPS Regulations for the purposes of the earnings cap only. Paragraph 3(6)(a) amends the current definition within Schedule 1 to reflect this change.
3. Paragraph 3(2) provides for, through new Regulation C1A, a transition period between 1 April and 31 December 2008 to allow for discussions to take place between those employees who are subject to the cap and his employer to reach agreement on whether the earnings cap is to apply going forward.
4. If agreement is reached between the two parties that the earnings cap will not apply, written notice must be sent to the Secretary of State at which point the service apportionment calculation will take place (see paragraph 6 below). If written notice is not received by 31 December 2008, the earnings cap will continue to apply until the individual is subject to a change in post or change in employer at which point the earnings cap will no longer apply and the service apportionment calculation will be carried out (again see paragraph 6 below).
5. The only exception being those individuals whose change in employment is as a result of a Transfer of Undertakings (TUPE) when previous remuneration arrangements will continue to apply.
6. Paragraph 3(4) introduces a calculation, through new Regulation D5, which will apportion the period of service that had been subject to the earnings cap to enable the uncapped salary to be used in the benefit calculations for **all** the service at the point of retirement. This prevents the necessity for multiple part-calculations on retirement whilst preventing a disproportionate amount of benefits against the level of contributions paid.
7. This calculation is slightly different from that included within the consultation commentaries previously issued but better reflects the situation in relation to transferred-in service.
8. It should be noted that individuals who have elections in place to purchase past added years (under previous regulations) should have the period of service purchased during the period of capped salary included within B. Any period of service purchased as part of an ongoing election (the Reform Regulations removed the ability to vary existing elections) after the earnings cap is lifted will fall within A and be bought on the same % basis of the **higher** uncapped salary.
9. Paragraph 3(5) is a technical change to ensure that adjustments may be made to the calculation of family benefits should the apportionment of service have taken place.

10. Paragraph 3(6) reflects technical changes; (a) that already mentioned in paragraph (2) of this Annex, while paragraph 3(6)(b) reflects an updating of the TUPE regulations.

11. Paragraph 4 introduces, through new Regulation B7A, the ability to discount periods of service in benefit calculations for which member contributions have not been paid in full within a three year period of the individual being notified. If only part-payment has been made and the individual elects not to pay for the outstanding amount by way of a lump sum payment then the part-payment contributions would be refunded and the whole of that period of service would be discounted. This regulation would only be applied in the most exceptional cases where all other avenues have been exhausted.

12. Paragraph 5 introduces the provision for members (or their employers) of the normal pension age (NPA) 60 arrangements who work beyond that date to purchase additional pension benefits based on the costs in place for those in the NPA 65 arrangements.

13. Paragraph 6 makes clear that those who have been (since 1 January 2007) or will be subject to a TUPE/involuntary transfer within the public services, will retain the NPA of their previous scheme when becoming members of the Teachers' Pension Scheme.

14. Paragraph 7 is a technical change which is inserted for avoidance of doubt so that those who submit an application for ill-health benefits within 6 months of leaving pensionable employment are treated as though they were in-service when assessing eligibility for partial incapacity benefits.

15. Paragraph 8 protects the scheme against the imposition of an H M Revenue and Customs scheme sanction charge in relation to a retirement lump sum in the same way as the existing regulation E6B in respect of persons aged 75 or over.

16. Paragraph 9 reinserts the definition of 'child' which was removed as part of the A-Day (6 April 2006) scheme amendments. The new regulation E22(5A) mitigates against the redistribution of children's pensions which have come into payment (where more than two children are involved) in the intervening period but TP will be asked to revisit those cases from 1 April 2008 onwards.

17. Paragraph 10 is self-explanatory.

18. Paragraph 11 is a technical change to insert parental leave into the relevant regulations.

19. Paragraph 12 is self-explanatory.

Amendments to the 1994 AVC Regulations are contained within Part 3

20. Paragraph 14 and 15 covers consequential amendments as a result of the 2008 Reform Amendments.

21. Paragraph 16 provides additional options to members of the Teachers' AVC (TAVC) Scheme who have transferred-out their main TPS benefits to another occupational pension scheme.

22. If they have not made a decision about the final destination for their TAVC fund within three months of their main scheme transfer their fund will be moved to an alternative product administered by the selected provider i.e. Prudential.
23. Paragraph 17 provides the opportunity for the authorised provider to extend the period of beneficiary payments within the over-arching boundaries.
24. Paragraph 18 includes two technical cross-reference changes.

Part 1
General

Citation and commencement

1. These Regulations may be cited as the Teachers' Pensions (Miscellaneous Amendments) Regulations 2008 and shall come into force on 1st April 2008.

Part 2

Amendment of the Teachers' Pensions Regulations 1997

Amendment of the Teachers' Pensions Regulations 1997

2. The Teachers' Pensions Regulations 1997 shall be amended in accordance with the following provisions of this Part.

Removal of the cap on contributable salary

3.—(1) In regulation C1—

(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;”

(2) After regulation C1 insert—

“Removal of the cap on contributable salary

C1A.—(1) Regulation C1(8) does not apply to—

(a) a relevant person who on or after 1st April 2008 elects in accordance with paragraph (3) for that provision not to apply for the purposes of determining the amount of the person's contributable salary;

(b) any relevant person who does not make such an election where the circumstances specified in paragraph (4) or (6) apply to that person; or

(c) any person other than a relevant person.

(2) In this regulation a “relevant person” is a person—

(a) who is in pensionable employment immediately before 1st April 2008; and

(b) whose contributable salary, calculated in accordance with paragraphs (1) to (7) of regulation C1 and regulation C2, immediately before that date exceeds the permitted maximum (within the meaning of regulation C1(12)).

- (3) The election referred to in paragraph (1)(a) must—
- (a) be made by notice in writing to the Secretary of State
 - (b) include a written notice from the relevant person’s employer confirming that the employer consents to regulation C1(8) not applying for the purposes of determining the amount of that person’s contributable salary, and
 - (c) be received by the Secretary of State on or before 31st December 2008.

(4) Subject to paragraph (5), the circumstances are that at any time on or after 1st April 2008 the relevant person referred to in paragraph (1)(b) begins pensionable employment with an employer who is different from the employer in relation to the pensionable employment referred to in paragraph (2)(a).

(5) Paragraph (4) does not apply where the person begins pensionable employment with a different employer by reason of a transfer of undertakings.

- (6) 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 substantially different from those he 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.

(7) In the case of a person to whom paragraph (1)(a) applies, regulation C1(8) shall cease to have effect in relation to that person on the last day of the month in which the election is received by the Secretary of State in accordance with paragraph (3).

(8) In the case of a person to whom paragraphs (1)(b) and (4) apply, regulation C1(8) shall cease to have effect in relation to that person immediately before the date on which the person begins the pensionable employment mentioned first in paragraph (4).

(9) In the case of a person to whom paragraphs (1)(b) and (6) apply, regulation C1(8) shall cease to have effect in relation to that person immediately before the date on which the variation in the contract of employment takes effect.”

(3) In regulation D1 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) Subject to paragraph (4), 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 regulation C1A (removal of the cap on contributable salary); and
- (b) who has made the election referred to in paragraph (1)(a) of that regulation, or is a person to whom paragraphs (1)(b) and (4) or (6) of that regulation apply.

(2) The reckonable service of such a person is—

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

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 (as defined in regulation C1(12)) which has effect on the relevant date;

D is—

- (a) the amount of contributable salary received by the person in the period of 12 months ending on—
 - (i) in a case to which paragraph (1)(a) of regulation C1A applies, the last day of the month in which the election is received by the Secretary of State in accordance with paragraph (3) of that regulation; or
 - (ii) in a case to which paragraphs (1)(b) and (4) of regulation C1A applies, the last day of the person's pensionable employment referred to in paragraph (2)(a) of that regulation; or
 - (iii) in a case to which paragraphs (1)(b) and (6) of regulation C1A applies, the day immediately before the date on which the variation of the contract of employment takes effect and which is referred to in paragraph (9) of that regulation.
- (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 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 by virtue of the employment having begun after 31st May 1989; or
 - (ii) in the case of transferred-in service, the benefits payable in respect of the employment under the relevant pension scheme were subject to the limits imposed by section 590C of the Taxes Act or regulation 4 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006.

and references to periods of uncapped reckonable service shall be construed accordingly;

(b) 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 value) or F4A(3) (acceptance of transfer value 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 pension scheme (within the meaning of regulation F4) or, as the case may be, the pension scheme under which the past service pension rights referred to in regulation F4A had accrued.

- (c) the reference to the amount of contributable salary received by the person is to the amount of contributable salary calculated—
 - (i) in accordance with paragraphs (1) to (7) of regulation C1, and
 - (ii) disregarding paragraph (8) of that regulation; and
- (d) the relevant date is—
 - (i) the first day of the first month after the date on which the election is received by the Secretary of State in accordance with regulation C1A(3), or
 - (ii) in the case of a person to whom paragraphs (1)(b) and (4) of regulation C1A apply, the date on which the person begins the pensionable employment referred to in paragraph (8) of that regulation, or
 - (iii) in the case of a person to whom paragraphs (1)(b) and (6) of regulation C1A apply, the date on which the variation of the contract of employment takes effect and which is referred to in paragraph (9) of that regulation.

(4) This regulation does not apply to any person to whom paragraph (8) of regulation C1 did not apply by virtue of paragraphs (9) and (10) of that regulation (as the regulation had effect immediately before 1st April 2008)."

(5) After paragraph (3) of regulation E27 (calculation of relevant service in connection with family benefits) insert—

"(3A) Regulation D5 shall have effect for the purposes of calculating the relevant service in relation to a deceased member, who was a person to whom paragraph (1) of that regulation applied, as it applies for the purposes of calculating the person's reckonable service.

(3B) For the purposes of paragraph (3A)—

- (a) references in regulation D5 to reckonable service shall be taken as references to relevant service; and
- (b) the reference in paragraph (3)(a) of that regulation to Part D shall be taken as a reference to this regulation."

(6) In the second column of Schedule 1—

- (a) in the definition of "Permitted maximum", for "Construe" substitute "Subject to regulations C1(12), C1A(2)(b) and D5(2), construe"; and
- (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, or a transfer which is treated as such by virtue of any enactment;
- (b) where the transfer takes place before that date a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or a transfer which is treated as such by virtue of any enactment."

Recovery of member contributions

4.—(1) In paragraph (1) of regulation B1 (which makes general provision about pensionable employment) for “regulations B4 to B6” substitute “regulations B4 to B7A”.

(2) After regulation B6 insert—

“Discounted periods of pensionable employment where member contributions are not made

B7A.—(1) This regulation applies where—

- (a) the Secretary of State makes a demand under paragraph (2) of regulation C18 in respect of salary contributions of any of the kinds referred to in paragraph (1) 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 salary 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.

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

5.—(1) In regulation C3C for paragraph (1) substitute—

“(1) Any person in pensionable employment—

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

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

(2) In paragraph 4 of Schedule 2A—

- (a) 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.
- (b) 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, the period ends before the person attains the age of 65, and”.

Retaining the previous normal pension age on entry from another public service pension scheme

6.—(1) Regulation EA1 is amended as follows.

(1) In paragraph (2) after “in paragraph (3)” insert “or the conditions in paragraph (3A)”.

(2) After paragraph (3) 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) is 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; and
- (b) the reference to arrangements equivalent to a transfer of undertakings are 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 age of 60, 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.”

Entitlement to incapacity benefit

7.—(1) Regulation E4 (which relates to payment of retirement benefits) is amended as follows.

(2) Paragraph (4)(c)(ii) is amended by inserting after “6th January 2007” the words “or, in a case where the application was received on or after that date, before the end of the period of 6 months beginning on the day immediately following the end of the person’s pensionable employment”.

(3) Paragraph (8) is amended by—

- (i) leaving out “and” at the end of sub-paragraph (a); and
- (ii) inserting after that sub-paragraph—

“(aa) where the person falls within the Case by virtue of paragraph (4)(cc)(ii) and by virtue of an application received by the Secretary of State on or after 6th January 2007, on the day immediately following the date on which he ceased to be in pensionable employment; and”.

Conversion of excess amount of lump sum into pension

8. Regulation E6 (which makes provision about a person's retirement lump sum) is amended by inserting 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 his permitted maximum (“the notional lump sum”).

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

Meaning of “child” for the purposes of regulation E22

9.—(1) In regulation E22 (family benefits generally)—

(a) in paragraph (5), after “adopted child,” insert—

“or

(b) accepted by him as a member of the family and wholly or mainly financially dependent on him,”.

(2) Subject to paragraph (3), 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.

(3) Paragraph (2) 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 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.

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

10. Paragraph 24 of Schedule 2 is amended by inserting the following entry after the entry for the Stapleford Centre—

“the Vocational Training Charitable Trust”.

Insertion of references to parental leave

11.—(1) In regulation B4(1)(b) after “paternity”, where it appears for the first time, insert “, parental”.

(2) In regulation C1(1), in sub-paragraphs (b) and (c), in each case for “or adoption” substitute “, parental or adoption leave”.

(3) 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);

- (f) regulation E25(1)(a);
- (g) regulation E31(7)(a);
- (h) regulation H3(1)(g).

Correction of minor errors

12.—(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 (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 (election in respect of additional benefits), insert “the” before “Secretary of State”.

Part 3

Amendment of the Teachers’ Superannuation (Additional Voluntary Contributions) Regulations 1994

13. The Teachers’ Superannuation (Additional Voluntary Contributions) Regulations are amended in accordance with the following provisions of this Part.

14. In regulation 2(3)—

(a) insert the following definition at the appropriate place in alphabetical order—

“ “old regulation C9” of the 1997 Regulations is to be construed in accordance with those regulations;”, and

(b) in the definition of “salary” for “regulation C9 or C10” substitute “old regulation C9 or regulation C10”.

15. In regulation 7 for “regulation C9 or C10” substitute “old regulation C9 or regulation C10”.

16. In regulation 11—

(a) in paragraph (2)(b) for “a transfer value is payable in respect of that person under regulations F1 or F1A of the 1997 Regulations” substitute “a Teachers Pension Scheme transfer is payable in respect of that person”.

(b) after paragraph (3) insert the following paragraphs—

“(4) Paragraph (5) applies where a person—

(a) who has ceased to be a contributor by virtue of regulation 7(2)(c), and

(b) in respect of whom a Teachers Pension Scheme transfer has been paid,

has not, within three months of the payment of the Teachers Pension Scheme transfer, or such longer period as the Secretary of State may allow, made any application under paragraph (1) for payment of a transfer value in accordance with paragraph (1).

(5) Where this paragraph applies the Secretary of State shall secure that the investments made under regulation 9(1) or 10(2) are transferred to another registered pension scheme determined by him, administered by the insurance company referred to in regulation 9.

(6) Where a transfer value has been paid under paragraph (1) or investments transferred under regulation (5) in relation to any person regulations 12 and 13 cease to have effect in relation to that person.

(7) For the purposes of this regulation a Teachers Pension Scheme transfer in respect of any person means a cash equivalent in respect of that person relating to the Teachers Pension Scheme or a transfer value in respect of that person under regulation F1 or F1A of the 1997 Regulations, and in this paragraph—

“cash equivalent” means the cash equivalent mentioned in section 94(1) of the Pension Schemes Act 1993, and

“the Teachers Pension Scheme” has the same meaning as in the 1997 Regulations.

17. In regulation 12(6) for “the period of 5 years” substitute “a period specified in the notice, being a period of no less than 5 years and no more than 10 years”.

18. In regulation 16—

(a) in paragraph (2A) for “12(1)” substitute “12(1A)”, and

(b) in paragraph (3)(a) omit “12(6) or”.