

The Teachers' Pensions Regulations 2010

The Teachers' Pensions Regulations 1997 (as amended), which govern the TPS, have been subject to a consolidation exercise to incorporate the numerous amendments made since they came into force on 3 February 1998. The Teachers' Pensions Regulations 2010 (SI 2010 No 990) were laid before Parliament on 1 April 2010 and will come into force on 1 September 2010. The Regulations can be downloaded from:

http://www.opsi.gov.uk/si/si2010/uksi_20100990_en_1

The consolidation exercise has involved a thorough review of the 1997 Regulations. In addition to removing outdated provisions, the regulations have been restructured and written in an updated, more user-friendly - and gender neutral - format. The consolidation exercise has not involved any fundamental changes to the TPS, but there are some changes that have a material effect. The Department for Education plans to issue a Teachers' Pensions Letter shortly setting out the changes and TP's Scheme literature is in the process of amendment. In the meantime, this is to alert employers to changes of a material effect and, in particular, those with employment implications and for which employers need advance warning:

Changes for which employers need advance warning

2010 Regs	1997 Regs	Topic	Description
12	N/A	Election for part-time employment before 1 st May 1995 to be pensionable ("Preston")	<p>New provision has been made for employers to deal with 'Preston' claims so that for the period 1 September 2010 until 31 August 2012, individuals will not have to lodge a claim with an Employment Tribunal.</p> <p>There are no changes to the criteria that have to be met for a claim to succeed - employers must still consider claims against the same rules as per Employment Bulletin No 9. Employers who settle claims will continue to be monitored and the Department will continue to reserve the right to charge employers the employer contribution if a claim is settled inappropriately.</p> <p>This is an attempt to encourage teachers who are still 'in time' for bringing a 'Preston' claim to do so, sooner rather than later. This option has a two-year life, after which any one</p>

			<p>who has yet to bring a claim would have to do so via the ET.</p> <p>There is an overhead in maintaining the calculation spreadsheet and over time the cost may become disproportionate. The position will be reviewed in two years' time, but there is no guarantee that the Model Settlement for calculating the employee contribution will continue to be available in the long term.</p>
39	E31(11)	Restriction of average salary	<p>The 2010 Regulations retain provision which protects the TPS against substantial increases in salary shortly before retirement.</p> <p>The provisions of the 1997 Regulations will continue to apply to this summer's retirements. But, for retirement benefits payable from 2 September 2010, average salary will be restricted if salary has been increased by "10% or £5,000 (index-linked over future years), whichever is the greater".</p> <p>There is no provision for a 'standard increase' to be ignored. And the regulation offers no discretion, removing any subjectivity.</p> <p>The option for an employer to pay the capitalised value to make up the difference in benefits was administratively burdensome and has been withdrawn. An employer who wishes to make up some or all of the effect of the restriction can purchase Additional Pension on behalf of the scheme member. An election for this purpose can be made within six months of cessation of pensionable employment.</p>
57	E4A	Election to receive phased retirement benefits	<p>From 1 September 2010, the required reduction in a person's contributable salary will be 20% (reduced from 25%).</p>
129	Various	Standard rate of	<p>The 2010 Regulations provide a single</p>

		interest	<p>rate of interest of 3.5% plus RPI that will apply in all cases of contribution arrears and back contributions that become payable when an election has been backdated. The 1997 Regulations contain different rates of interest payable arrears of contribution and back contributions which depend on the type of case.</p> <p>Transitional provision is made for debt cases that are in the pipeline on 1 September 2010. This is in order to ensure a 'no worsening'.</p>
--	--	----------	---

Other changes

1997 Regs	2010 Regs	Topic	Description
7	B4	Employment not pensionable	<p>The treatment of paid sick leave and maternity, paternity and adoption leave has been harmonised under the 2010 regulations. In all cases, a person remains in pensionable employment provided the person is being paid at least half pay or, in the case maternity, paternity and adoption leave, whilst the person is in receipt of statutory pay. (This guards against an employer keeping a person in pensionable employment whilst away from work by paying nominal salary.)</p> <p>(On an administrative note, where a person's maternity leave, paternity leave, adoption leave or parental leave is non-pensionable, the period should be recorded as "days excluded" on returns that are submitted to TP. A form TR8 (leaver notification) should only be submitted if the employment has ended.)</p>
10 and 11	N/A	Election for employment to be	Provision is introduced for employments that are pensionable on election (i.e. Parts 2 and 3 of Schedule 2) to be

		pensionable	subject to a three-month time limit. (The 1997 Regulations do not carry any time limit and this causes difficulties when late elections are made). Under regulation 10, an election made within three months of commencement would automatically be backdated. A later election would take effect from a current date, although this could be backdated under regulation 11 if there are grounds for doing so and contributions plus interest are paid.
15	C1	Contributable salary	Clarification of the types of payment that are excluded from contributable salary.
16	C1(d)	Contributable salary - residential accommodation	The 2010 regulations make explicit provision for the value of the residential emolument to be reviewed on a regular basis.
25	C16	Return of repaid contributions	The instalment option has been withdrawn. The sum required to be paid to reinstate previously withdrawn contributions must be paid as a lump sum.
34 and 126	N/A	Lifetime Allowance Charge (LTA)	This gives the Secretary of State power to deduct the amount of the LTA charge from a transfer value or from a person's retirement benefits. This is a consequence of the 2006 tax changes which requires the Scheme to pay the LTA charge to HMRC.
28	N/A	Deduction by employers of contributions etc	Provision is made for employers to deduct unpaid contributions from a person's salary in any subsequent month.
30	C18	Payment by Employers to the Secretary of State	The risk of conflict in the 1997 Regulations regarding liability for payment of arrears of employee contributions for earlier years of service has been removed. Under the 2010 Regulations, the employer is responsible for remitting all contributions due in respect of a person whilst that person remains an

			employee. The Secretary of State will only take responsibility for collecting employee contributions direct from an individual if the arrears come to light after the employment has ended.
78	N/A	Short-service annuity: unauthorised payment	This is new provision to deal with a person who would be entitled to a repayment of contributions but for the fact that the person has attained age 75. In order to avoid the tax surcharge associated with an unauthorised payment, the person will be paid an annuity.
79	E17	Short-service serious ill-health grant	This regulation has been amended to reflect the fact that, in order to avoid a tax surcharge, a short-service ill-health grant can now only be paid in circumstances of serious ill-health.
102	N/A	Pension credit members: normal pension age	Pension credit members have either a normal pension of 60 or 65 - it is not possible for a pension credit member to be a 'person with mixed service' where some pension has a normal pension of 60 and the remaining pension has a normal pension age of 65.
114 and 115	New	Cessation of benefits where no entitlement	This is new provision to give the Secretary of State power to withhold and recover pension if there is evidence of that the person is no longer entitled to it (eg if a person has ceased to be permanently incapacitated).
115	N/A	Evidence of continuing entitlement	This provides explicit power to withhold pension if the Secretary of State finds it necessary to require a person to provide evidence that they are entitled to the pension.
116	N/A	Election to take lump sum in place of pension	This has been extended to enable Pension Credit Members to commute pension to lump sum.
124	N/A	Unauthorised payments	This is a general provision to avoid payment of a benefit that would be an unauthorised payment, except where

			the Secretary of State determines otherwise (i.e. where an unauthorised payment is unavoidable).
Schedule 3 Para 4	N/A	Employees' Contributions: tiered contributions	Provision is made in case the Secretary of State determines that it is appropriate to introduce tiered employee contribution rates.
Schedule 7 Para 4	E4(4)	Ill-health retirement benefits	The provision that gives the Secretary of State power to withdraw entitlement to an ill-health retirement if person has been barred on grounds of misconduct has been aligned with the SVGA 2006 (and equivalent provision in Scotland and Northern Ireland) and the powers held by the GTC to issue prohibition orders. The Secretary of State has power to determine that a person who is being considered for, or been placed on the children's barred list or the adult's barred list, will not be entitled to an ill-health retirement pension. Similarly, a person who is being considered for, or is the subject of, certain GTC prohibition orders, may also be precluded from the award of ill-health retirement benefits.
Schedule 7 Para 7	E4(5)	Premature retirement benefits	The 2010 Regulations make it clear that a person only has an entitlement to premature retirement benefits if it is a matter of fact that a person has been made redundant or that employment terminated early on efficiency grounds. (The 1997 Regulations only required the employer to make a certification to this effect and benefits could not be rescinded if it transpired that cessation had not been on such grounds.)
Schedule 7 Para 11	N/A	Actuarially-adjusted benefits	The 2010 Regulations allow Pension Credit Members (who have attained age 55) to draw benefits before normal pension age on an actuarially-adjusted basis.
Schedule 9 Part 2		Family Benefits Service: Children's	This has been simplified. The 1997 Regulations restricted the service counting for the children's pension in certain circumstances. This only

		Pensions	affected a minority of cases. The restriction has been removed and all post-1 April 1972 service counts.
General			
		Scheme members with mixed service (i.e. a person with Normal Pension Age (NPA) of 65 with earlier service that counts towards NPA 60)	Various provisions made to deal with circumstances that will arise in future in relation to scheme members who have mixed service (a normal pension age of 65 with some service counting against a normal pension age of 60.
		Phased retirement	Various provisions made to deal with circumstances that will arise in future in relation to scheme members who have taken phased retirement.

April 2010