

(January 2010)

Commentary on DRAFT Teachers' Pensions Regulations 2010

This commentary highlights key features of the consolidated regulations. These regulations do not contain any significant policy changes affecting the Teachers' Pension Scheme.

PART 1 PRELIMINARY

Reg	
3	Meaning of “employer” in certain cases
	Simplified (but no change of effect).and local education authority has been changed to Local Authority
4	Meaning of “further employment”
	No change of effect (regulation E15A(1) in TPR1997)

PART 2 PENSIONABLE EMPLOYMENT
SCHEDULE 2 PENSIONABLE EMPLOYMENT

Reference points in TPR1997: Part B and Schedule 2

Reg	
<p>5</p>	<p>Meaning of “pensionable employment “</p> <p>Definition moved from Schedule 1 in TPR1997</p>
<p>6</p>	<p>Pensionable employment: general</p> <p>Incorporates the general provisions of regulation B1 and includes the residual provision for certain local authority organisers who elected (under regulation B1A(4) of the TPR97) for their current employment to be pensionable in the TPS.</p> <p>Other than local authority organisers, all categories of employment that come within the scope of the TPS are detailed in <i>Schedule 2</i> (see below).</p>
<p>7</p>	<p>Employment not pensionable: general</p> <p>Replaces regulation B4 of the TPR97 and brings together all other employments that are non-pensionable which are scattered across regulations B1, B3 and B4.</p> <p>Sub-paragraph (2) makes a slight change of effect. The provisions for adoption, maternity, parental and paternity leave are brought into line with the treatment of sick leave. It provides that a period of adoption, maternity, parental or paternity leave is not pensionable employment unless a person is in receipt of at least half pay or (in the case of adoption, maternity or paternity leave), statutory pay. Regulation B4(1) of the TPR97 did not specifying a minimum rate of pay for contractual adoption, maternity or paternity leave which exposed the Scheme to risk.</p> <p>Sub-paragraph (13) defines the categories of non-pensionable employment that comprise “excluded employment”. The term “excluded employment” is referred to in other parts of the regulations.</p>
<p>8</p>	<p>Employment not pensionable: contributions not paid</p> <p>Inserted into the TPR1997 (regulation B6A) when amending regulations come into force on 1 April 2008. This provides the Secretary of State with power to disregard a period of pensionable employment in cases where a person has not paid arrears of contributions within three years</p>

	<p>of the Secretary of State's demand.</p> <p>It may be worth re-iterating the following points:</p> <p>(i) It is intended that this provision will only be applied in exceptional cases once all avenues for recovery of the arrears have been exhausted.</p> <p>(ii) Notably, no provision is made to waive the employer contribution under any circumstances. There are good reasons for this:</p> <ul style="list-style-type: none"> - Unless a person has formally opted out, a person is in pensionable employment and an employer is statutorily obliged to remit employer and employee contributions. - Retention of the employer contribution is consistent with the Scheme's repayment provisions. - The regulations as a whole are framed in such a way that pensionable employment is paramount, and the Secretary of State has power to decide at retirement whether a deduction of contributions from a person's retirement lump sum would be appropriate. - Discretion to waive employer contributions could lead to disputes from employers unwilling to pay the employer contribution arrears (even though a scheme member is prepared to pay). - Discretion to waive employer contributions could act as an incentive to employers to treat employment as non-pensionable even though a person has not formally opted out.
9	<p>Election for employment not to be pensionable</p> <p>Replaces most of regulation B5. There are no changes of substance.</p>
10	<p>Election for employment to be pensionable</p> <p>This covers elections to opt-in by people who previously opted out and people entering employment listed in Parts 2 and 3 of Schedule 2 that is pensionable on election.</p> <p>As a consequence, there is a change of effect in that there is now a time limit for Schedule 2 elections. TPR1997 is silent on this point and backdating the start date of an election has had to be decided on a discretionary basis.</p>
11	<p>Backdating elections for employment to be pensionable</p> <p>Puts together all the provisions relating to the backdating of elections to opt in to pensionable employment. The effective date of an election is the date determined by the date of the election and a period of</p>

	<p>retrospection is called “the back period”.</p> <p>It remains the case that:</p> <p>(i) Except in the case of post-retirement employment (where backdating is only a matter of discretion on the part of a person’ employer(s)), agreement to backdate an election is at the discretion of the Secretary of State.</p> <p>(ii) In all cases, agreement is subject to payment of employer and employee contributions within prescribed timescales. And if there is more than one employer involved in the back period, then the back period cannot be earlier than the date from which all employers agree to pay the contribution.</p> <p><i>Sub-paragraphs (9) and (10) replace the provisions of regulation B1(7A), which provide that a “back period” awarded to a post-2007 entrant or a person with mixed service counts as service with a normal pension age of 65.</i></p>
<p>12</p>	<p>Pensionable employment: claims in respect of part-time employment before 1st May 1995</p> <p>Deals with “Preston” claims (i.e. claims from individuals who are still within time to lodge a claim). This will enable employers to settle successful claims without the need for an applicant to lodge a claim with the Employment Tribunal.</p> <p>The purpose here is to replicate the arrangements agreed by the Employment Tribunal and to continue to rely on the Treasury Model Agreement for calculating the employee contribution and for dealing with the employer contribution.</p> <p>But it is proposed to prescribe a time limit for claims to be brought under the regulations in order to benefit from the Model Settlement arrangements. (Two years from the date the consolidated regulations come into force.) After that, claimants would have to resort to lodging a claim with an Employment Tribunal and there would be no certainty that the Model Settlement arrangements for calculating the employee contribution could be sustained indefinitely after that. (There is an administrative overhead in keeping the spreadsheet up to date and, as the number of claims diminishes, the maintenance cost will become disproportionate.)</p>
<p>13</p>	<p>Accepted schools</p> <p>There are some additional grounds for removal of accepted status. These are:</p> <p>(i) Where a school’s accepted status relies on the existing of a guarantee, failure to keep the guarantee in place and failure to maintain</p>

	<p>the value of the guarantee.</p> <p>(ii) If the proprietor or school goes into administration. This puts accepted schools on the same footing as accepted function providers.</p> <p>(iii) Failure to notify the Secretary of State of a change of ownership.</p>
14	Accepted function providers
	There are no changes of effect.

PART 3 CONTRIBUTIONS
SCHEDULE 3 EMPLOYERS' AND EMPLOYEES' CONTRIBUTIONS
SCHEDULE 4 CONTRIBUTIONS FOR ADDITIONAL PENSION
SCHEDULE 5 FAMILY BENEFIT CONTRIBUTIONS

Reference points in TPR1997: Part C, Regulations G5 & G7 and Schedule 6

Notes: This Part (together with Schedules 3, 4 and 5) incorporates contribution-related provisions.

General

This Part is divided into four chapters and Schedule 3:

- Chapter 1: Contributable Salary
- Chapter 2: Employees' Contributions
- Chapter 3: Employers' Contributions
- Chapter 4: Deduction and Payment of Contributions
- Schedule 3: Employers' and employees' contributions

Reg	
	CHAPTER 1 Contributable Salary
15	Contributable salary
	<p>Sub-paragraph (2)(b): This makes provision for paid parental leave to be pensionable. This is <i>in case</i> an employer has a contractual arrangement to pay salary during a paid of statutory parental leave. Of course, this does not place any obligation on an employer to provide pay of any amount during statutory parental leave. If the salary is less than half pay, the parental leave will not be pensionable employment.</p> <p>Sub-paragraph (4): The list of payments has been extended to mention certain payments that have traditionally not been pensionable (untaken holiday pay, payment in lieu of notice, honorarium, payments not associated with pensionable employment. Occasionally, their absence from the list prompts an employer to wonder whether such payments are pensionable. Adding them to the list of exclusions removes any doubt.</p>
16	Contributable salary - residential accommodation
	<p>There is no change to the general principle that an employer can arrange for a residential emolument to form part of a teacher's contributable salary. But new regulations have been inserted to deal with problems commonly associated with this arrangement and which take up a disproportionate amount of administrative time. The regulations prescribe a time limit for employers to request that an</p>

	emolument be pensionable and to formally agree to carry reviews. at two year intervals. If reviews are not carried out the agreement may be voided. Also, the date from which an emolument is pensionable is now prescribed (and no longer left to chance or negotiation).
17	Cap on contributable salary
	No change of effect
	CHAPTER 2 Employees' Contributions
18	Teachers' ordinary contributions
	No change of effect
19	Election to pay contributions by a person serving in a reserve force
	No change of effect
20	Contribution for Additional Pensions
	No change of effect
21	Family benefit contributions
	No change of effect
22	Election to repayment of balance of contributions
	No change of effect
23	Calculation of contributions to be repaid
	No change of effect
24	Application for repayment of contributions
	No change of effect
25	Return of repaid contributions
	The option to reinstate previously repaid contributions by an instalment plan has been removed. The nominal rate of interest that has to be paid means that sum to be paid is fairly nominal and, administratively, it is not cost effective to set up payment plans. Payment plans already underway when the consolidated regulations come into force will not be affected by this.

	CHAPTER 3 Employers' Contributions
26	Employers' contributions
	No change of effect
	CHAPTER 4 Deduction and payment of contributions
27	Deduction by employers of contributions etc from salary, payment in default and interest
	<p>This regulation provides that the employer is (and remains) responsible for the deduction and remittance of contributions in respect an employee's pensionable employment. The Secretary of State only has responsibility for collecting employee contributions directly if the person has left employment when the missing contributions come to light. NB employer contributions are payable even if an employee refuses to pay the employee contribution arrears - and even if the Secretary of State decides to cancel a period of pensionable employment.</p> <p>There is a minor correction to sub-paragraph (3)(b) to remove a rogue reference to regulation C10. (Employer contributions are not payable on C10 (Reserved Forces) elections.)</p> <p>Sub-paragraph (4) deals with the situation when a person is buying Additional Pension by monthly payments and is in multiple employment.</p>
28	Recovery of unpaid contributions from benefits
	No change of effect
29	Payment by employers to Secretary of State
	<p>Provision for payment of contributions by employers has been moved across from the Finance provisions (Part G in TPR1997).</p> <p>Sub-paragraph (4)(a). The 'standard rate of interest' on contribution arrears and back contributions (because an election to enter pensionable employment has been backdated) are being harmonised. The same rate - 3.5% plus RPI compounded with monthly rests - will apply in all cases subject to a (no worsening) transitional provision for cases in hand when the regulations come into force.</p> <p>Sub-paragraph 4)(b) is new and makes provision for the Secretary of State to charge an administration fee (of up to £100) in addition to interest on unpaid contributions in circumstances where it is appropriate to do so. (This is necessary to tackle cases where the interest payable</p>

	<p>is disproportionate to the effort involved in collecting the arrears (and can even end up being written off.) Thus, there are cases where there is no effective incentive to pay monthly contributions on time. As a matter of policy, the administration fee will not be routinely charged for every underpayment of contributions but it may be charged if an employer persistently fails to pay contributions on time.</p>
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PART 4 TRANSFERS
SCHEDULE 6 TRANSFER VALUES

Reference points in TPR1997: Part F and Schedule 12

Note

(i) **Transfers-out:** Certain deferred scheme members (i.e. ‘early leavers’ (deferred scheme members who left pensionable employment since 31 December 1985 with sufficient service to qualify for deferred benefits)) have an overriding right to payment of a CETV until a year before normal pension age. These regulations provide the statutory basis for payment of a transfer value (calculated on a CETV basis) in circumstances where an overriding right does not exist. For example, whereas an overriding right to a CETV is lost a year before normal pension age, the regulation provides power to pay a transfer value until a person has attained normal pension age (and in such cases, the transfer value is calculated on a CETV basis).

(ii) **Transfers-in:** There is nothing in the overriding legislation that places an obligation on pension schemes to accept a transfer value. The Secretary of State can, therefore refuse to accept a transfer value eg if the former scheme is not prepared to indemnify the TPS against a legal judgment that affects transfer values previously paid.

Reg	
30	Payment of transfer values
	<p>Sub-paragraph (6) has been inserted for deferred scheme members with mixed service who have attained age 64 when a transfer out was requested. Such a person could not take a transfer value in respect of reckonable service attributed to a normal pension age of 60 (because the entitlement to age benefits overrides payment of a transfer value). A transfer value in respect of the reckonable service attributed to a normal pension age of 65 would be payable provided the person had not attained age 65.</p> <p>Sub-paragraph (10) is new and qualifies sub-paragraph (9)(c) by making provision for a person who is in receipt of phased retirement benefits who subsequently leaves pensionable employment to arrange a transfer-out.</p> <p>Sub-paragraph (11) replaces in part regulation I8 (Pension Sharing and transfers). It remains the case that a transfer value not payable in respect of pension credit benefits.</p>
31	Limitations on payment of transfer values under regulation F1

	No change of effect but it is worth noting that this is an historic provision providing a residual right (if better than a CETV) to an 'old style' transfer value calculation in respect of pre-1 September 1988 service if the destination of the transfer value is a UK occupational pension scheme. In other words, an 'old style' transfer value could not be paid to a personal pension, a section 32 buy-out policy or to an overseas scheme.
32	Payment of Bulk Transfer Values
	No change of effect
33	Reduction in transfer value: lifetime allowance charge
	This is new and is necessary to give the Secretary of State power to reduce a person's transfer value if the person has exceeded HMRC's lifetime allowance and incurred a charge. In such an event, HMRC require the Scheme to pay the charge therefore it is necessary to provide the Secretary of State with power to deduct the charge.
34	Acceptance of transfer value
	No change of effect. Sub-paragraph (5) replaces in part regulation I8 (Pension Sharing and transfers). It remains the case that pension credit benefits cannot be transferred in from another scheme.
35	Acceptance of bulk transfer values
	No change of effect

PART 5 AVERAGE SALARY

Reference points in TPR97: Regulations E31 and E31A. Also, paragraph 12 of Schedule 5 of the Teachers' Pensions etc (Reform Amendments) Regulations 2006

Notes:

(i) The draft regulations have been re-worked since they were first issued for consultation. There is now a separate regulation (regulation 37) to distinguish more clearly the average salary calculation for cases where a person has not been in pensionable employment since 1 January 2007.

(ii) The provision which restricts average salary if there has been a substantial increase in salary prior to cessation of pensionable employment has been changed.

Reg	
36	Average salary: teacher in pensionable employment, etc on or after 1st January 2007
	No change of effect, but sub-paragraph (8) has been inserted to provide for the average salary calculation where a person who has more than 365 and less than 1,095 days of average salary service. This was omitted from the TPS Reform Amendments.
37	Average salary: teacher not in pensionable employment, etc on or after 31st December 2006
	No change of effect.
38	Restriction on average salary
	This replaces the arrangements contained in regulation E31(11) to (14) of TPR1997. There is no 'standard increase' and the provision (contained in Part G of TPR1997) for employers to pay the capitalised value of the difference in benefits has been withdrawn. It remains the case that only cases that will invoke a possible restriction will be ones where the best average salary is the final 365 days of service. The salary will be restricted if - regardless of the reason - 'year on year' there is an increase of more than 10% or £5,000 (index-linked). (It is hoped to provide some examples of the new calculation for the meeting on 16 December.) Contributions on 'unused' salary will be refunded (see regulation 135).
39	Average salary: supplemental

	<p>Sub-paragraphs (1) to (5) reflect the current provisions in TPR1997.</p> <p>NOTE Sub-paragraph (2)(d) is in square brackets because CBS schemes are still considering whether the arrangement whereby CBS transferred-in service counts for average salary purposes can remain as a viable provision in the light of the 10-year average salary arrangement. There is the added complication that the Scottish Teachers' Pension Scheme introduced the reforms on 1 April 2007.</p> <p>Sub-paragraphs 3(6) to (11) have been drafted to prescribe how average salary is calculated when a person has been employed in concurrent part-time employment during the average salary period. In practice, just as reckonable service is calculated by 'averaging' the multiple employments, average salary is based the average of the full-time equivalent salaries relative to the reckonable service accrued in each employment.</p>
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PART 6 RECKONABLE SERVICE

Reference points in TPR97: Part D and regulations C10(10) and (11), E7 and E32

Notes

(i) The draft regulations have been re-worked since they were first issued for consultation. The provision which prescribes the exclusions from reckonable service are now in a separate regulation (regulation 41).

(ii) References to half-rate war service in regulation D1(d) and (e) of TPR1997 are no longer relevant.

(iii) The provision in regulation E7 which serves to restrict the calculation of retirement benefits if a person had been paying contributions on a former higher salary is redundant and will be revoked. (As will parts of regulation E32, which serve to limit the service that can count in the calculation of retirement lump sum in certain circumstances.)

Reg	
40	Reckonable service
	No change of effect, but this brings together under one regulation everything that counts as reckonable service.
41	Reckonable service: exclusions
	No change of effect, but this brings together under one regulation everything that does not count as reckonable service. Sub-paragraph (f) still has to be ratified.
42	Calculation of reckonable service where pensionable employment is part-time
	No change of effect.
43	Calculation of reckonable service where cap on contributable salary is removed This replicates regulation D5 of TPR1997 (inserted on 1 April 2008) to adjust reckonable service where a person elected for the Earnings Cap to be removed

PART 7 BENEFITS FOR TEACHERS
SCHEDULE 7 RETIREMENT BENEFITS

Reference points in TPR1997: Part E, Regulations C3C and Schedule 2A

PART 7 is divided into eight chapters:

- Chapter 1: Preliminary
- Chapter 2: Interpretation of provisions relating to normal pension age
- Chapter 3: Meaning of qualified for retirement benefits and qualified for retirement benefits following further employment
- Chapter 4: Phased retirement and retirement benefits
- Chapter 5: Ill-health pensions: cessation, etc.
- Chapter 6: Total incapacity benefits
- Chapter 7: Additional pensions
- Chapter 8: Other benefits

Reg	
	CHAPTER 1 Preliminary
44	Introduction
	Self-explanatory
45	Benefits for teachers (further employment)
	This serves to distinguish between entitlement to main scheme benefits and further benefits which accrues after Case A age benefits, Case D premature retirement benefits or Case E actuarially-adjusted benefits have become payable. The main issue at stake is that main scheme benefits accrue even if a person has not applied for them, further benefits do not accrue until a person has decided to draw them - this leaves it open to the individual to decide whether (or not) to aggregate separate periods of further employment.
	CHAPTER 2 – Interpretation of provisions relating to normal pension age
	Notes:
	Regulation EA1 of TPR1997 has been reconstructed but with no material change of effect, but note that:
	(i) Regulations 47, 50 and 51 deal with UK transferees and compulsory transferees who have ‘mixed service’ in the former scheme. Provision is made in regulations 50(2) and 51(4) where part of a person’s

	<p>transferred-in service counts towards NPA 60 and part of the transferred-in service to count towards NPA65.</p> <p>(ii) In regulation 51(4)(b) the reference to age 61 is for the case where a compulsory transferee's ceding scheme had a normal pension age (or equivalent term) between 61 and 65.</p> <p>(iii) The position remains that a person who is compulsory transferred from LGPS (and who might meet the 85 year rule before attaining age 65) is excluded from regulation 51.</p> <p>(iv) There are a some changes of terminology:</p> <ul style="list-style-type: none"> • The term "disqualifying break" is used in place of "relevant break". • The terms "UK comparable service" and "UK transferee" has been introduced to describe service in the respective teachers' pension schemes in Northern Ireland and Scotland.
46	2007 or later entrant: meaning and normal pension age
	See above
47	Person with mixed service: meaning and normal pension age
	See above
48	Pre-2007 entrant: meaning and normal pension age
	See above
49	Meaning of NPA 60 reckonable service and NPA 65 reckonable service
	See above
50	Meaning of UK transferee with NPA 60 rights, etc
	See above
51	Meaning of public sector TUPE transferee, etc
	See above
52	Meaning of disqualifying break and post-break employment start date
	See above

	<p>CHAPTER 3 – Meaning of qualified for retirement benefits and qualified for retirement benefits following further employment</p> <p>Reference points in TPR97: Regulation E3, Schedule 8, paragraph 35 of Schedule 10 and paragraph 8 of Schedule 12</p> <p>Note: These draft regulations have altered slightly since the consultation version was issued in February 2008. Regulation 55 has been inserted to deal with qualification for further benefits with the consequential insertion of sub-paragraph (2) into regulation 53.</p>
53	<p>Meaning of “qualified for retirement benefits”</p> <p>The qualification provisions have been re-cast into six qualification methods, there is no material change of effect except for sub-paragraph (10) (Condition 6). This is necessary to reflect an overriding restriction on repayment of contributions in respect of pension rights credited as a consequence of receipt of a transfer value from a former personal pension scheme.</p> <p>Sub-paragraph (6) incorporates the provisions in paragraph 35 of Schedule 10 of TPR97 (certain former NHS staff who were part of a bulk transfer to a TPS employer) and paragraph 8 of Schedule 12 of TPR97 (CBS transfers in), which prescribe that a person who transferred service in under both of these arrangements is entitled to count the period on a literal ‘day for day’ basis as it stood to a person’s credit in the former scheme.</p>
54	<p>Retirement benefits qualification service</p> <p>No change of effect. This replaces Schedule 8 and incorporates (in paragraph (h)) the current provision in paragraph 35A of Schedule 10 of TPR1997.</p>
55	<p>Meaning of “qualified for retirement benefits following further employment”</p> <p>See Note above.</p>
	<p>CHAPTER 4 – Phased retirement and retirement benefits</p> <p>Reference points in TPR1997: Part E</p> <p>Note:</p> <p>(i) The regulations on elective lump sums are contained in Part 12 (General).</p>

	(ii) Chapter 4 deals common provisions that apply across all types of retirement benefits, including the phased retirement benefit arrangements. The 'Case-specific' provisions are set out under each Case type in Schedule 4.
56	Election to receive phased retirement benefits
	Changes of effect: (i) Sub-paragraph (2)(b). The only change of effect is the reduction (from 25% to 20%) of the minimum amount by which a person's contributable salary must reduce to enable a phased retirement election to be made. (ii) Sub-paragraphs (3) and (13)(b). Provision has also been made to disregard a "standard increase" in salary awarded to a person on the first day of the phased retirement period. This is necessary otherwise an annual pay rise on the first day would prevent a person from meeting the condition. There is a new definition of "standard increase" to be used for this purpose and to trigger cessation of a phased retirement pension if person's contributable salary increases in excess of the "standard increase" during the first 12 months (and regulation 58(3)). This is needed in part because the definition relied on in regulation E31 of TPR997 Regulations will not be carried forward into the consolidated regulations, but also in an attempt to simplify the definition. (iii) Sub-paragraph (8)(b). A person who attains normal pension age during the break between employments remains eligible for phased retirement provided no application for age benefits is made.
57	Phased retirement benefits
	No change of effect.
58	Cessation of phased retirement pension
	No change of effect other than to adjust the threshold that would cause a phased retirement to fail to 80% (from 75%). At retirement, the person is deemed to automatically commute the same rate of pension so that the original lump sum can be deducted from the retirement lump sum.
59	Retirement benefits
	This regulation contains the elements of regulation E4 of TPR1997 which are applicable to all Case types and phased retirement benefits, including benefits which are payable on cessation of further employment. Sub-paragraph (5) is the provision in regulation E12 of TPR1997 which

	<p>deals with the duration of retirement benefits.</p> <p>Sub-paragraphs (9) to (11) are new and deal with a person with mixed service who might fall within more than one Case type.</p>
60	<p>Annual rate of phased retirement and retirement pension</p> <p>This regulation takes forward the relevant provisions of regulation E5 of TPR1997 (eg regulation E5(8) is redundant) and incorporates the provisions in regulation E6B of TPR1997 that are specific to persons aged 75 or over.</p> <p>Sub-paragraph (3) relates to regulation E5(9) of TPR1997 with the formula adjusted to take account of phased retirement pension already in payment.</p>
61	<p>Amount of phased retirement and retirement lump sum [E6]</p> <p>This regulation deals with a person's automatic entitlement to a minimum level of retirement lump sum (regulation E6 of TPR1997) - provision for a person to elect to commute pension to lump sum (regulation E6A of TPR1997) is contained in Part 13 (General).</p> <p>Sub-paragraph (5) lists the lump sum payments already paid that will be deducted from a subsequent award of benefits.</p>
62	<p>Reduction of benefits: duplicate pensions</p> <p>No change.</p>
63	<p>Abatement</p> <p>No changes of effect other than to address the case of a person with mixed service who might be in receipt of NPA60 and NPA65 pension during re-employment. Any pension in payment that is actuarially-adjusted will not be abated.</p>
<p>CHAPTER 5 – Ill health pensions; cessation, etc</p>	
64 to 69	<p>This set of regulations is intended to deal with complex issue of entitlement to benefits which have to encompass circumstances where a person awarded ill-health retirement benefits (IHRB) returns to pensionable employment and then retires again on grounds of age/premature retirement/actuarially-adjusted benefits or ill-health. Various scenarios are anticipated:</p> <p>(i) A person who first applied for IHRB before 6 January 2007. Such a person would invariably have been awarded 'old-style' enhancement under regulation E8, which is protected (subject to the 'slideback' rule in regulation E15 of TPR97), even though they may subsequently retire on</p>

	<p>grounds of age or IHRB that comprise immediate payment of unreduced benefits (but not total incapacity benefits (TIB)). And if such a person again became entitled to IHRB plus TIB, any residual E8 enhancement (following slideback) would be unaffected by the TIB.</p> <p>(ii) If a person awarded IHRB plus TIB ceases to be entitled to the TIB, the TIB is never re-instated. The person might again become entitled to IHRB plus TIB, but the TIB be a new TIB based on the period between last day of pensionable employment and NPA.</p> <p>(iii) Cases where a person returns to pensionable employment as a 'person with mixed service'. A first IHRB (plus 'old-style enhancement (subject to slideback)) would continue to count against NPA60 but a subsequent IHRB (and, if awarded, a new TIB) would count against NPA65).</p> <p>NB</p> <p>Regulations 67 and 69 have been drafted in error. In practice, a "supplementary award" would only be paid to a person who retired before 1 April 1997 on grounds of age or premature retirement and who, on cessation of further employment (undertaken as a pensioner), was on a salary that was lower than the salary used to calculate the original award - making a 'fresh award' (benefits based on aggregated service and final salary) untenable.</p> <p>Re-employment following IHRB is not 'further employment' because the person has ceased to be a pensioner. A person might remain entitled to old-style (regulation E8 of TPR97) enhancement, subject to 'slideback', but on return to pensionable employment, the scheme's usual unlimited aggregation is triggered. A person whose final average salary was lower than the average salary on first retirement would have the protection of the Pensions Increase Act 1971 (a 'hypothetical' calculation or the 10-year average salary provision).</p>
64	Cessation and reinstatement of ill-health pension (application received before 6 January 2007)
65	Cessation of ill-health pensions (application received after 5 January 2007)
66	Calculation of retirement benefits after ill-health pension ceases to be payable (application received after 5 January 2007): combined award.
67	Unused

68	Calculation of retirement benefits after ill-health pension ceases to be payable (application received after 6 January 2007): supplementary award: combined award.
69	Unused
	CHAPTER 6 – Total incapacity benefits
70	Total incapacity benefits
	No change of effect.
71	Annual rate of total incapacity pension and amount of total incapacity lump sum
	No change of effect, although sub-paragraph (2) might have to be amended once regulations 64 - 69 are finalised (to deal with any reduction of TIB in account of entitlement to regulation E8 enhancement).
72	Cessation of total incapacity pension
	No change of effect.
	CHAPTER 7 Additional pensions
	Note: Chapter 7 deals with payment of additional pensionable with retirement benefits. The provisions relating to payment of contributions to purchase additional pensions and the election arrangements are in Chapter 2 of Part 3 (Contributions) and Schedule 4.
73	Election to receive additional pension with phased retirement pension
	No change of effect.
74	Cessation of additional pension paid with phased retirement pension
	No change of effect.
75	Additional pension paid with retirement pension
	No change of effect.

76	Cessation of additional pension paid with ill-health pension
	No change of effect.
	CHAPTER 8 – Other benefits
	Note: This chapter brings together all “non-mainstream” benefits, included Admitted Service benefits.
77	Short-service annuity
	No change of effect. (This is a longstanding provision that is necessary to deal with a tax rule that prevented high earners of the day from taking a repayment of contributions (and generating a windfall in tax relief).)
78	Short service annuity: unauthorised payments
	This is new and is necessary to deal with circumstances where a person only entitlement would be to a repayment, but a repayment would be an unauthorised payment (i.e. because the repayment is linked to further employment or the person has attained age 75).
79	Short service serious ill health grant
	There is a necessary change of effect here. It is not possible to pay a short-service incapacity grant to a person solely on grounds of incapacity. Unless the has limited life expectancy the grant would be an unauthorised payment (hence the change to the title of the regulation).
80	Admitted service benefits
	No change of effect.
81	Annual rate of admitted service pension and amount of admitted service lump sum
	No change of effect.

PART 8 DEATH GRANTS

Reference points in TPR97: Regulations E20 and E21

Notes:

(i) These regulations refer in places to a 'short-service serious ill-health grant'. By way of explanation, the tax regime only permits these lump sum payments to be awarded to a person who has a life expectancy of less than 12 months.

(ii) In the light of the January 2007 Reforms, provision is made for:

- Death of a person during phased retirement.
- Death of a person with mixed service who dies having attained age 60 but before age 65.
- Deduction (where appropriate) of elective retirement lump sums.

Reg	
82	Persons to whom a death grant is payable
	No change of effect but provision is made in sub-paragraph (4) to require a scheme member who wishes the death grant to be shared by more than one person to specify the share and to state their wishes with regard to the situation if a nominee predeceased the scheme member (and the scheme member did not make a fresh nomination).
83	Death grant: death in service
	No change of effect but sub-paragraph (1)(d) corrects an omission from TPR1997 by providing for payment of an in-service death grant in the situation where a reserved forces person became incapacitated whilst on call-up, but died within 12 months and without payment of ill-health retirement benefits being initiated. Sub-paragraph (3) provides clarity over the point up to which a death grant would be paid if a person died whilst an application for ill-health retirement benefits was being processed. Similar provision is made in regulations 85(3) and 87(4).
84	Death grant: death in service (further employment)
	No change of effect.
85	Death grant: death out of service
	Sub-paragraph (8) makes provision for payment of an out of service death grant at the rate of $\frac{3}{80}^{\text{th}}$ x average salary x reckonable service for all cases - including a post-2007 entrant who died in deferment.

	<p>Sub-paragraph (8)(a) to (e) makes provision for the deduction of previous lump sum payments from the out of service death grant. This includes (at (a)) deduction of a lump sum taken with a 'failed' phased retirement. This is because on a failed phased retirement, the lump sum is not reclaimed even though the service used to calculate the phased retirement benefits would be 'resurrected' and used in the calculation of subsequent benefits.</p> <p>Sub-paragraph (8)(e) is linked to a change of effect with regard to the award of a short-service incapacity grants (SSIG). Going forward, people will return to pensionable employment with NPA 65 and 1/60th accrual with no automatic lump sum - so there is a risk that the SSIG cannot be clawed back. Even if the person was forced to take a 3/0th lump sum there would be a risk that there would be insufficient lump sum from which to claw back the SSIG. So, going forward, if a person returned to pensionable employment following the award of an SSIG, the person will return to further employment and have to complete a one year qualifying period to become entitled to further benefits. As a consequence, the provision for deduction of an SSIG following re-employment will be restricted to SSIGs awarded before the consolidated regulations come into force.</p> <p>Sub-paragraph (9)(b) and (10) make provision to disaggregate NPA60 and NPA65 service in respect of a person with mixed service.</p>
86	<p>Death grant: death out of service (further employment)</p> <p>No change of effect.</p>
87	<p>Death grant: death of pensioner</p> <p>No change of effect, but explicitly provides for a balance of 5 years' of pension to apply to all types of pension in payment on the date of death - including balance of Additional Pension and balance of total incapacity pension.</p> <p>For the record, if a person with an entitlement to NPA 65 benefits died without applying for them, no assumption would be made about whether the person might have elected to commute pension to lump sum. The pension arrears due up to date of death and any death grant would be based on a 1/60th pension rate.</p>

PART 9 FAMILY BENEFITS
SCHEDULE 9 ADULT PENSION QUALIFICATION SERVICE
SCHEDULE 10 FAMILY BENEFIT SERVICE

Reference points in TPR97: Part E Regulations E8, E22 to E30 and
Schedule 6

Notes:

(i) Consolidation has been used as an opportunity to reconstruct the family benefit regulations which, as scope of family pensions has evolved, have become unwieldy. In the consolidated regulations, the provision is split between a suite of regulations which deal with the characteristics of each type of beneficiary on an individual basis and two Schedules which prescribe the service that counts for qualification purposes and service that counts for calculation purposes. The provisions for payment of Family Benefit contributions to purchase earlier service are in Schedule 5 (linked to Part 3 Contributions).

(i) There are no changes of effect other than a streamlining of children's pensions (see Schedule 10 Part 2 below).

Reg	
88	Introduction
	This is straightforward and simply lists the various benefit types covered in this Part.
89	Family benefits (further employment)
	This creates a distinction between family benefit service that accrues before retirement and family benefit service that accrues during further employment.
90	Nomination of surviving nominated partner
	No change of effect. This replicates the arrangements in regulation E22A of TPR1997 introduced on 1 January 2007 for nomination of partners (SNP) to receive a survivor pension, subject to the existence of a valid nomination and conditions being met at death. NB1 Only service from 1 January 2007 counts automatically towards the two-year qualifying period and in the calculation of an SNP pension. Service before that date only counts for both purposes if the service has been purchased via payment of additional contributions. NB2 As with other adult pensions, if a SNP is payable, then child's pension is at the child's rate. If no SNP is payable, the child's pension is at the orphan's rate.

91	Nomination of surviving nominated beneficiary
	No change of effect. This carries forward that provisions currently contained in regulation E23 of TPR1997 whereby a scheme member who is not married or in a civil partnership can nominate a financially dependent single close family member to receive an adult pension. A pension will be paid if the nominee is still single and financially dependent on the scheme member at the time of the scheme member's death. A nomination can only apply in relation to pensionable service that has not crystallised into retirement benefits.
92	Meaning of "surviving adult"
	Solely for clarification purposes.
93	Meaning of "eligible child"
	<p>There is no change of effect here but it is worth recording that the definition of an "eligible child" changed on 6 April 2006 in three ways:</p> <p>(i) A child's pension could only be paid to a biological child or a legally adopted child. But in April 2008, this restriction was revoked with retrospective effect and, as before, pensions are payable to financially dependent children accepted as a member of the family.</p> <p>(ii) A tightening up by lowering of the upper age limit for payment of a child's pension to age 23.</p> <p>(iii) A relaxation of payment of an adult child who is incapacitated and financially dependent on the scheme member. Pre-6 April 2006, the incapacity had to have existed before the child ceased to be a child. Post- 5 April 2006, both conditions needs only to be met at death.</p> <p>Sub-paragraph (9) modifies (ii) and (ii) to disapply the changes in relation to pensions already in payment on 6 April 2006 and to children of scheme members whose retirement benefits were in payment on 6 April 2006.</p> <p>The provisions for non-payment of a child's pension (during a break in education or if earning disqualifying income) can be found in regulation 97, which deals with payment of a child's pension.</p> <p>Sub-paragraph (8) is an historic 'no worsening' provision currently contained in the savings in Schedule 15 of the 1997 Regulations for children of scheme members who left pensionable employment before 1 May 1994. Prior to that date the regulations had not explicitly stated that the child had been receiving continuous full-time education or training.</p>
94	Adult pensions

	<p>Regulations 94 to 96 bring together common provisions relating to short-term and long-term adult pensions that are currently spread across regulations E24, E16 and E30 of TPR1997. Regulation 94 deals with qualification, commencement and duration. Regulations 95 and 96 deal with the rates of pensions.</p> <p>There are no changes of effect and the only point of note is that regulation 94(7)(c) makes explicit provision for payment of a short-term pension for three months, regardless of any change in a beneficiary's status (eg re-marriage) in that period.</p>
95	Adult pensions: short-term rate
	See above
96	Adult pensions: long-term rate
	See above
97	Child pensions
	As with Adult pensions, common provisions relating to short-term and long-term children's pensions have been brought together. Regulation 97 deals with qualification, commencement and duration (including the circumstances when a child's pension is not payable). Regulations 98 and 99 deal with the rates of the pensions.
98	Child pensions: short-term rate
	See above
99	Child pensions: long-term rate
	See above
100	Short-term rate of adult and child pensions: supplemental
	No change of effect. The purpose of this regulation is to distinguish between a person who dies 'in-service' and a person who dies as a pensioner which determines whether the short-term pension is paid at the salary rate or the pension rate.
101	Additional pensions for surviving adults
	No change of effect. This regulation makes provision for payment of half-rate Additional Pension (for life) to a surviving spouse, civil partner or surviving nominated partner, where a scheme member purchased Additional Pension for this purpose. The Additional Pension provisions to not include children's pensions.

PART 10 BENEFITS FOR PENSION CREDIT MEMBERS

Reference points in TPR97: Part I

Notes:

(i) This Part deals with provisions that are specific to pension credit member. Provisions that are common to both pension credit members and main scheme members (eg written application, deferment) are contained in the Part headed General Provisions.

(ii) The Pension Sharing (Pension Credit Benefit) Regulations 2008 come into force on 6 April 2009 which relax the constraints that currently exist affecting pension credit members' 'safeguarded rights'. This enables schemes to allow pension credit members to:

- Commute pension to lump sum. (**See regulation 105**)
- Take benefits from the same minimum age as pension debit members. (**See regulation 119**)
- Be awarded benefits early on grounds of ill-health. (There are no plans to provide ill-health retirement benefits for pension credit members. Benefits, can, however, be commuted on grounds of limited life expectancy. **Regulation 121**)

Reg	
102	Introduction and interpretation
	This is straightforward and simply identifies the two benefit types covered in this Part.
103	Person to whom death grant is payable on death of pension credit member
	<p>No change of effect except that, as main scheme members, a death grant nomination now requires the pension credit member who wishes to nominate more than one person to receive the death grant to specify how it should be shared and who should receive a nominee's share, should a nominee pre-decease the pension credit member.</p> <p>It remains the case that a pension credit member can nominate another person to receive the death grant. But, in the absence of a nomination the death grant would be paid to a surviving spouse, surviving civil partner or to the estate. There is no provision for a pension credit member to nominate an SNP (because there is no family benefit entitlement attached to pension credit member benefits). So, a pension</p>

	credit member would have to make a death grant nomination to ensure automatic payment to a partner.
104	Death grant: death of pension credit member before benefits payable
	<p>Provision has been made for payment of a death grant based on a notional 3/80th lump sum in respect of pension credit members with a normal pension age of 65 (see the definition of “normal pension age” in draft regulation 102).</p> <p>(No provision has been made to create “a pension credit member with mixed service”. This is because pension credit members are awarded retirement benefits which are not converted into service. If the pension debit member’s transfer value included some NPA60 service, this will be reflected appropriately in the NPA65 benefits awarded to the pension credit member. And in any case, overriding legislation requires that pension credit members can only have one NPA.)</p>
105	Pension credit retirement benefits
	<p>Regulation 5 Pension credit retirement benefits</p> <p>When reading this regulation, it should be noted that the references to retirement lump sum relate to any <i>automatic</i> 3/80th lump sum to which the pension credit member might be entitled. New provision is made for pension credit members to commute pension to lump sum (1/80th or 1/60th pension), but this is contained in General Provisions.</p> <p>Other points to note with regard to this regulation:</p> <ul style="list-style-type: none"> - Sub-paragraph (4)(a): This provides that, as with main scheme members, a retirement lump sum cannot be paid if the pension credit member has attained age 75 when he or she applies for benefits to be paid. (There will be provision to convert the lump sum to a pension equivalent in General Provisions). - Sub-paragraph (4)(b): The effect here is to provide that a pension credit member cannot be paid a retirement lump sum in respect of any period of the pension debit member’s service that had crystallised into retirement benefits. If the pension debit member is in further employment or has left further employment and has not drawn further (NPA6 60) benefits, there will be some automatic lump sum available to the pension credit member. - Sub-paragraph 105(5), (6) and (11): This is new. These sub-paragraphs make new provision for pension credit members to draw benefits early from age 55 on an actuarially-adjusted basis if the pension debit member is able to do so. Just as with main scheme members, the pension credit member must nominate a payment date at

	<p>least 6 weeks ahead to allow time to process the application.</p> <ul style="list-style-type: none"> - Sub-paragraph (8): This is for the case where, on the transfer day, the pension debit member had not retired, although he or she might have taken phased retirement benefits. The pension credit member will get an automatic pension credit lump sum of three times the pension - Sub-paragraph (9): This is for the case where the transfer day occurs during further employment or following further employment in respect of which benefits have not crystallised. In these cases the pension-sharing pot will be a combination of pension-only <u>and</u> pension + lump sum. The draft regulation provides for GAD to calculate the pension credit retirement lump sum entitlement. (We are taking advice from GAD about the practicalities of putting a formula in the regulations.) - Sub-paragraph (10): This is for the case where the pension debit member is a pensioner and, thus, all of the retirement lump sum has been taken. This sub-paragraph is needed to prescribe how the pension is calculated.
106	Death grant: death of pension credit member after benefits payable
	No change of effect.

PART 11 CONTRACTING OUT

Reference points in TPR1997: Regulation E1, E1A [H5]

Reg	
107	Guaranteed minimum pensions
	This regulation (formerly regulation E1) has been re-worked but with no change of effect other than to incorporate the provision for payment of GMP that has remained in the TPS after payment of a cash equivalent transfer value. This might occur if the receiving scheme was unable or unwilling to accept the GMP liability, or it might be because the person has chosen to leave the GMP liability in the TPS.
108	Residual liability for section 9(2B) rights
	Section 9(2B) rights are TPS benefits accrued from 6 April 1997.
109	Not used
	(It was intended to include here the provision in regulation H5 of TPR97. However there is no longer a requirement to prescribe rates of revaluation of GMP on payment of a transfer value to a section 32 policy which provides an annuity.)

PART 12 GENERAL

Reference points in TPR1997: Part E, Part I, Part H

General

This is a new Part that brings together common provisions relating to the application and payment of benefits for scheme members, beneficiaries and pension credit members.

Reg	
110	Payment of benefits on application to Secretary of State
	No change of effect.
111	Lump sums: declaration
	No change of effect.
112	Monthly payments
	No change of effect - but see also regulation 139.
113	Quarterly payments
	No change of effect - but see also regulation 139
114	Apportionment Act 1870 not to apply
	No change of effect.
115	Interest on late payment of benefits [E34 and 14]
	Changes of effect are: (i) Sub-paragraph (1)(b) which includes phased retirement benefits as an exclusion from the automatic interest provision. This is because it is likely that there will be a time lag in a person applying for phased retirement benefits. Unlike out-of-service actuarially-adjusted benefits and further benefits (where the payable date is prospective), the payable date of phased retirement benefits would be backdated to the date following that on which the person had ceased to receive the higher salary. (ii) Sub-paragraph (10) which is linked to new regulation 118. This gives the Secretary of State power to not pay interest on back payments of pension if there was a delay in investigating a person's entitlement to pension and it is evident that the delay was not outside of the individual's control.

116	Payment of benefits in certain cases
	No change of effect.
117	Cessation, etc of benefits where no entitlement
	<p>This regulation and regulation 118 are new. They make provision for the cessation or suspension of pension.</p> <p>This is intended to put the Scheme in a firmer position when faced with cases where, after a pension has gone into payment, it transpires that the person was, not, in fact, entitled to it. The provision will also help deal with cases more effectively where it becomes evident that a person has ceased to be entitled to a pension (eg a person has ceased to be entitled to an ill-health pension because they are, say, teaching abroad).</p>
118	Evidence of continuing entitlement, etc to benefit
	Under this regulation, the Secretary of State has power to withhold pension whilst a person's entitlement is being checked. Without this, there is no incentive on an individual to comply with an investigation.
119	Election to receive lump sum in place of part of pension
	No change of effect.
120	Person to be treated as electing to receive lump sum in place of pension
	No change of effect.
121	Commutation: serious ill health
	There is a change of effect here in that provision has been whereby, where a person with a short life expectancy who chooses to commute their ill-health retirement pension, will be deemed to have elected to commute the maximum at the 12:1 rate. The balance will be paid as a multiple of 5. Under TPR1997, a person has to follow a two-stage election process.
122	Commutation: small pension
	<p>There is a minor change of effect in that the commutation option has been extended to family pensions (sub-paragraph (7)).</p> <p>The regulation has been expanded to be more explicit about the conditions under which a small pension can be commuted to comply with the restrictions on lump sum payments in the Finance Act 2004.</p>
123	Forfeiture of benefits

	No change of effect.
124	Benefits not assignable
	No change of effect. Sub-paragraph (2) replaces regulation E34 (3) and (4).
125	Reduction of benefits: lifetime allowance charge
	This is new and is necessary to give the Secretary of State power to reduce a person's benefits if the person has exceeded HMRC's lifetime allowance and incurred a charge. In such an event, HMRC require the Scheme to pay the charge therefore it is necessary to provide the Secretary of State with power to deduct the charge.
126	General prohibition on unauthorised payments
	This is new and is a general protection against the Scheme making an unauthorised payment and incurring a tax surcharge. However, there might be cases where an unauthorised payment is unavoidable, therefore, the regulation gives the Secretary of State power to deal with such exceptional cases.

PART 13 FINANCE

Reference points in TPR97: Part G and regulations B6, C2,C3, C3C, C4, C8, C9, C10, C11, C12, C14, C16, C17, C18, D6, E31, E32, F1, F1A, F4 and F4A Schedules 4 and 5 and paragraph 9, 12 of Schedule 15, paragraph 36 of Schedule 10

Notes: The Finance Part has changed since the consultation draft of 1 February 2008 as follows:

- (i) The provisions relating to employers’ contributions has been moved to Chapter 3 of Part 3 (Contributions) and the provisions relating to cost-sharing are in Schedule 3 (Employers’ and employees’ contributions).
- (ii) Regulation 131 has been inserted to introduce a standard rate of interest that will apply to all cases where interest is payable on unpaid employer/ee contributions or employer/ee contributions in respect of a back period.
- (iii) Regulations G8(1) and (2) to (6) of TPR1997 have not been replicated as they are redundant.
- (iv) There are some Savings in Schedule 13

Reg	
127	Teachers’ Pension Budgeting and Valuation Account
	No change of effect but the title has been changed from “Teachers’ Pension Account” to “Teachers’ Pension Budgeting and Valuation Account” to avoid confusion with Resource Accounts and give a better indication of its purpose.
128	Receipts etc. to be credited
	No change of effect. Sub-paragraph G2(4)(aa) of TPR1997 has not been carried forward as it is no longer necessary.
129	Payments to be debited
	No change of effect. Sub-paragraph 129(d) does not refer to war service (as regulation G3(d) of TPR1997 did) because this is now redundant.
130	Actuarial review
	No change of effect, but the following should be noted:

	<p>Sub-paragraph G4(1C) of TPR1997 has not been carried forward as it is no longer necessary.</p> <p>Sub-paragraph (2)(b) reflects the four yearly valuation.</p> <p><i>Sub-paragraphs (4), (7) and (8)</i> the phrase “contribution period” has been used in place of "relevant period".</p> <p><i>Sub-paragraphs (9) to (13)</i> (and paragraph 4 of Schedule 3) make provision for tiered employee contribution rates in case the Secretary of State should determine that tiered contributions should be introduced.</p>
131	<p>Meaning of the standard rate of interest</p>
	<p>This is new and introduces a standard rate of interest that will apply in all cases where interest is payable on monies payable to the TPS (unless the case is covered by transitional provisions).</p> <p>The provisions within the TPR1997 (as amended) contained different rates of interest for different circumstances. It appears that the differences are simply down to historic reasons with no clear justification for the various rates. On grounds of simplification, a single standard rate is being introduced of ‘RPI plus 3.5%’.</p> <p>The justification for this interest rate is that the scheme valuation allows for a notional increase on the notional investment of 3.5% above inflation when calculating the future scheme costs. The calculation of RPI for the "standard rate" will use the previous September interest rate. (NB The change is not intended to raise any additional funding and will generally result in lower interest charges. However, this is clearly dependent on the RPI rate during the period to which the payments relate.)</p> <p>The change to a standard rate of interest will take place three months after the consolidation regulations come into force (the “relevant date”). This is to provide adequate time to raise awareness for those who may be affected by the change. All debt identified after that date will be invoiced using the standard rate of interest, regardless of the date to which the contributions relate.</p> <p>Where an invoice has been issued prior to the “relevant date”, the invoice will stand and the interest will remain as it did under TPR1997.</p> <p>Where money (and interest) is owed to the scheme prior to the “relevant date” and it is not paid, an additional invoice may be issued with further interest (which will accrue as payment hasn't been made). The additional interest will be charged at the "standard rate".</p>

PART 14 MISCELLANEOUS AND SUPPLEMENTAL

Point of reference in TPR1997: Part H

Reg	
132	Appropriate factor
	This has been imported from Schedule 1.
133	Employers: records etc
	No change of effect.
134	Teachers etc: information and documents
	No change of effect.
135	Repayment of contributions
	Provision to refund contributions on 'unused' salary if a person's average salary has been restricted under regulation 38.
136	Extension of time
	No change of effect.
137	Calculation of FTE salary
	Note: This has yet to be re-drafted. (We hope that a more 'user friendly' form of words can be drafted.) This regulation requires employers to provide a full-time equivalent salary rate for employment that is remunerated on a flat-rate hourly or daily basis.
138	Determination of questions
	No change of effect.
139	Modified application in certain cases
	See Schedule 10 below.
140	Meaning of payment being initiated
	This is new and supports regulations 112 and 113 in providing certainty over when a pension has been initiated.
141	Election in respect of protected benefits
	This is the standard 'no worsening' provision.

142	Revocations, savings and transitional provisions and consequential amendments
	To be finalised.

SCHEDULES

	<p>SCHEDULE 1 Glossary of expressions</p> <p>To be finalised</p>
	<p>SCHEDULE 2 Pensionable employment</p> <p>The Schedule has now been divided into three parts: Part 1 (employment automatically pensionable, unless a person opts out), Part 2 (employment pensionable on election) and Part 3 (employment pensionable on election with employer consent).</p> <p>The Schedule now includes all categories of pensionable employment except the special provisions for local authority organisers that are dealt with in <i>regulation 2</i>.</p> <p>Existing categories have been refreshed and updated (and deleted where appropriate) in the light of research. This work will continue until the regulations are ready to be laid.</p> <p>Note: Schedule 2 will remain ‘work in progress’ until the latest opportunity.</p>
	<p>SCHEDULE 3 Employers’ and employees’ contributions</p> <p>The schedule deals with the arrangements for deciding how the employer and employee contribution rates are determined and includes the cost-sharing provision.</p> <p><i>Employer contributions:</i> Paragraph 2(4)(a) (which replaces regulation G5(a) of TPR1997) has been re-worded to provide greater clarity over about the treatment of changes in demographic assumptions within the valuation for cost-sharing purposes.</p> <p><i>Employee contributions:</i> Paragraph 4 Provision is made for tiered contributions in case the Secretary of State decides that it is appropriate to do so.</p>
	<p>SCHEDULE 4 Contributions for additional pensions</p> <p>(Note: The provisions relating to payment of additional pensions with retirement benefits is in Chapter 7 of Part 7(Benefits for teachers).)</p> <p>The Schedule deals with everything to do with payment of Additional Pension contributions eg refunds if a person becomes entitled to ill-health retirement benefits or dies either with the 12 month “refund period”, and the ‘paid up credit’ arrangements if payment of Additional Pension</p>

contributions is not completed. There are no changes of effect.

There are a few technical amendments which are administratively related an/or deal with gaps in the original regulations:

(i) The “start date” is defined (for monthly payment elections) as the **first day of the second month** after the month in which the AP beneficiary is notified that the election is accepted (paragraph 1 of Schedule 1). This gives the employer a clear month to set up the payment. But the first payment must be made **by the last day of the second month after the month in which the AP beneficiary is notified that the election is accepted** (paragraph 6(3) of Schedule 1). This allows for the first payment to be made at any time during the second month after the month in which the AP beneficiary is notified that the election is accepted. This accommodates different payroll arrangements.

(ii) The “refund” period commences on the “start date”.

(iii) A lump sum payment can be accepted provided it is paid within one month of the election (paragraph 5(2)). It remains a requirement that a person must be in pensionable employment when the election is made. But this easement allows time for payment to be made if an election is made shortly before retirement.

(v) An AP beneficiary who is a person in the Reserved Forces who is called up during a payment period and who elects to pay contributions direct to the Scheme (regulation 19) is deemed to have remained in pensionable employment so that an automatic ‘paid up credit’ is not triggered (paragraph 9(6)).

(vi) Similarly, a person who has exhausted paid sick leave and is in non-pensionable employment whilst on unpaid sick leave (or less than half pay) is deemed to remain in pensionable employment (paragraph 9(7)). This means that if a person is subsequently awarded ill-health retirement benefits, the provision in paragraph 10(5)(a) (credit of all Additional Pension) is not precluded).

New definitions to note are:

The term “AP beneficiary” is used to describe both a person who makes an election and a person on whose behalf Additional Pension has been purchased. (See the definitions in paragraph 1.)

The term “refund period” has been introduced. This is the 12 month period during which a refund of Additional Pension contributions would be triggered if a person became entitled to ill-health retirement benefits or died. (See the definitions in paragraph 1 of the Schedule.)

SCHEDULE 5 Family Benefit Contributions

This provisions contained in schedule 6 of TPR1997 have been reworked with no material change of effect other than to remove the restriction whereby a woman had only one opportunity to elect to pay additional contributions to cover her pre-6 April 1988 service.

(Historically, a woman who was not in service on 6 April 1988 or who was not married on 6 April 1988 could make an election as soon as she 'met the rule' (i.e. entered pensionable employment or got married). But if she did not take the opportunity in relation to the first marriage, she could not make an election on a subsequent marriage. This was because the contribution was at a subsidised rate. This restriction could no longer be justified on grounds of equality for two reasons - (i) new contribution rates were introduced in January 2007 and the same rate applies across the board to all types of beneficiary pension, and (ii) scheme members wishing to cover pre-1 January 2007 service for SNP purposes are not restricted to making an election on the first nomination.)

Part 1 - Elections

This part covers the election arrangements for each beneficiary type and the calculation of the lump sum cost. None of the cost factors (which were published with the TPS Reform amendments) are quoted in the regulations. This means that changes to the factors do not have to be delayed by the need to wait for the regulations to be amended.

A saving is made in paragraph 16 of Schedule 13 (Savings and transitional provisions) for the unlikely eventuality of a male scheme member wishing to purchase pre-1 April 1972 service in case the cost under Part 1 of Schedule 6 of TPR1997 was more beneficial.

Part 2 - Further provision where family benefit contributions are to be paid by Method 1

This part contains the provisions that come into play if the scheme member elects to pay contributions by monthly contributions. There are no changes of effect.

SCHEDULE 6 TRANSFER VALUES

Part 1 Outward Transfers

This part broadly replicates Part 1 of Schedule 12 to TPR1997 with the odd technical change. Paragraph 2 has been inserted to show that paragraphs 3 to 6 are subject to qualification.

Sub-paragraph 8 is new and deals with a person who is in receipt of phased retirement benefits.

Part 2 Inward Transfers

Paragraph 13 is new and is consequential on regulation EA1(12), introduced on 1 January 2007. It is not possible for a person who has moved from the teachers' pension scheme in the Channel Islands and the Isle of Man to use the service with that scheme to act as a 'bridge' for the purposes of avoiding a relevant break in service. However, provided previous pensionable employment still stood to a person's credit, a person moving back to the TPS (E&W) from the Channel Islands or the Isle of Man within five years would retain NPA 60 for future reckonable service.

The Channel Islands and the Isle of Man remain members of the public service transfer club, the service credit will be calculated on the beneficial club terms. And it is proposed that the 12 month application continues to be suppressed (but this is subject to confirmation of reciprocity).

Paragraph 14 deals with the pensions mis-selling cases. Strictly speaking these cases should all have been dealt with by now, but TP report that the industry is still identifying cases of mis-selling, therefore it is necessary to retain provision to deal with re-instatement.

Part 3 Inward Transfers: Bulk Transfers

No change of effect.

SCHEDULE 7 Retirement benefits

The Schedule is arranged by putting together all of the provisions relating to the particular type of retirement under each Case type. (**NB** Case B (regulation E4(3) of TPR1997 is redundant)

Points of substance are as follows:

- **Case C - Paragraph 4(3)(c) & (d) and 4(4).** No change of effect, but the provisions which disentitle a person to ill-health retirement benefits on grounds of misconduct are new. They now reflect the new arrangements whereby certain cases of misconduct are dealt with under the Safeguarding Vulnerable Groups Act 2006 (SVGA) and other cases are dealt with by the General Teaching Councils.
- **Case C - Paragraph 6(2).** This is a new and deals with cases where a person's ill-health retirement benefit application was rejected but the person was successful on making a fresh application and the payable date will be backdated. This prevents the payable date from being a date earlier than the date of a report on which the first application had been rejected.
- **Case D - Paragraph 7(a).** This is new and serves to give the Secretary of State power to cancel premature retirement benefits if it transpires that an employer erred in making the certification about the

grounds for cessation of a person's employment.

- **Case D - Paragraph 7(b).** This is drafted on the basis that the consolidated regulations will come into force after 6 April 2010. From that date onwards all schemes are required to have a minimum pension age of 55. As a consequence, paragraph 6 which was included in the original consultation draft has been dropped as, from 6 April 2010 it will not serve any purpose.
- **Case E** - note that the heading now refers to "actuarial adjustment" and not "actuarial reduction". This is intended to convey the fact that in actuarial terms, benefits awarded under Case E are of equivalent value to if they had been drawn as deferred benefits at normal pension age.

General

Paragraph 14(b) is new and is for a person who has attained normal pension age when he has ceased pensionable employment by virtue of a TUPE transfer and who is part of a bulk transfer exercise. This paragraph suppresses the person's automatic entitlement to age benefits to give the person time to consider whether transfer accrued pension rights into the new employer's scheme.

Paragraph 14(d) clarifies the status under the regulations of scheme members who are members of the reserved forces and who are called up and who elect to pay contributions direct to the Scheme (or is deemed to have made an election if he or she died whilst on active service without making an election). The policy is to put the person in the position he or she would have been in if he or she had remained in pensionable employment.

SCHEDULE 8 Adult pension qualification service

The provisions contained in regulation E27 of TPR1997 have been segmented according to the type of beneficiary. Although this might seem repetitive, it is hoped that it will be easier to identify the differences that exist because of the way that family benefits have evolved.

For the record, "a widower with pre-1988" rights is either (a) the widower of a woman who, whilst in pensionable employment before 6 April 1988, had nominated him on grounds of his incapacity and financial dependency or (b) a widower who 'inherited' pre-1988 entitlement from another close family relative who had been nominated by the scheme member (when widowers' pensions were introduced in 1988, married women who had nominated a financially dependent close family relative were asked whether they wanted to transfer the entitlement to the husband. Where the woman was single, the entitlement may have automatically transferred to her husband on marriage). This will be contained in a definition in Schedule 1 to the consolidated regulations.

	<p>SCHEDULE 9 Family Benefit Service</p> <p>The provisions contained in regulation E28 of TPR1997 which prescribe the service that counts in the calculation of beneficiary pensions have been segmented, again with the intention of making it easier to see the differences that exist according to the type of beneficiary.</p> <p>Part 1 Family Benefit Service: Adults</p> <p>No change of effect.</p> <p>Part 2 Family Benefit Service: Children</p> <p>This part has been substantially simplified by providing that all post-1 April 1972 service counts towards children's pensions. This constitutes an improvement but the impact will be negligible. Under TPR1997, service counting for children's pensions if there was a widow's pension and the deceased scheme member's dependent children included a step-child from a previous marriage. This only affected people with pre- 5 April 1978 and where the second marriage took place after cessation of pensionable employment. Going forward, the number of new children's pensions affected by the restriction will be minimal and depreciating.</p> <p>Part 3 Supplemental</p> <p>No change of effect, but paragraphs 7 and 8 make provision for the circumstances where family pensions are enhanced. The rates of enhancement have had to be imported into the Schedule because they will have no other relevance in the consolidated regulations.</p>
	<p>SCHEDULE 10 Modified application in certain cases</p> <p>This carries forward the 'ad hoc' provisions that are in Schedule 10 of TPR1997 with the exception of Part I (National Insurance Modification) has not been imported into the consolidated regulations. National Insurance Modification and Graduated Abatement are 'dying' provisions. There are existing scheme members for whom these provisions will apply, but there will not be any new cases so provision has been made in</p>
	<p>SCHEDULE 11 Consequential amendments</p> <p>This deals with consequential amendments to:</p> <ul style="list-style-type: none"> - The Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994 (PART 1) - The Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 (PART 2)

	<p>SCHEDULE 12 Revocations</p> <p>To be finalised</p>
	<p>SCHEDULE 13 Savings and transitional provisions</p> <p>Parts 1 and 2 - Standard</p> <p>Part 3 Contributions</p> <p>There are a number of savings that are necessary to provide a statutory basis for cases that relate to 'old' regulations.</p> <p>Part 4 Interest on unpaid contributions - transitional and transitory provisions</p> <p>Provides a 'no worsening' for 'pipeline' cases which are in hand when the consolidated regulations come into force so that the 'old' interest rates apply if the new interest rates would be higher.</p> <p>Part 5 Other provisions</p> <p>Provides a 'no worsening' for various issues.</p> <p>EG:</p> <p>Paragraph 21 provides a saving whereby Schedule 7 of TPR1997 will continue to have effect for scheme members who have yet to be credited with reckonable service by virtue of their Past Added Years contributions.</p> <p>Paragraph 23 deals with cases which will continue to be subject to National Insurance Modification (Part 1 of old Schedule 10 of TPR1997). Paragraph 6 is a saving for elections made by employers under regulation G6 "Employers' contributions – employees' elections under regulation C2" (contributions on a former higher salary) which is a closed provision.</p>