

# **CONSOLIDATION OF TEACHERS' PENSIONS REGULATIONS 1997 ("TPR97"): CONSULTATION ON DRAFT REGULATIONS**

Topic: **Core Definitions (Pre-2007 entrant etc)**

Reference points in TPR97: **Regulation EA1**

## **Commentary**

1. This set of regulations deals with the provisions that determine whether reckonable service counts towards a normal pension age of 60 or a normal pension age of 65.

2. These regulations consolidate the terms of regulation EA1, introduced with the TPS reform package on 1 January 2007 and the amendments which came into force on 1 April 2008. The purpose of the amendment was to protect NPA60 rights of certain public sector staff who are obliged to enter pensionable employment as a consequence of a compulsory transfer.

3. A Table of Derivations was not considered necessary because everything is derived from regulation EA1.

4. The regulation has been sub-divided under sub-headings. This is mainly cosmetic:

Regulation 1 'A 2007 or later entrant': meaning and normal pension age

Regulation 2 'Person with mixed service': meaning and normal pension age

Regulation 3 'Pre-2007 entrant': meaning and normal pension age

Regulation 4\* Meaning of NPA60 reckonable service and NPA65 reckonable service

Regulation 5 Meaning of UK transferee with NPA 60 rights, etc

Regulation 6 Meaning of public service TUPE transferee, etc

Regulation 7 Meaning of disqualifying break and post-break employment start date

\* This is likely to be included in the Schedule 1 definitions in the consolidated regulations

5. There are a couple of changes of terminology (which have no change of effect):

- 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.

6. The only change of substance is that provision has been made in regulations 2, 5 and 6 to deal with UK transferees and compulsory transferees who have 'mixed service' in the former scheme. Provision is made in regulations 5(2) and 6(4) where part of a person's transferred-in service counts towards NPA 60 and part of the transferred-in service to count towards NPA65.

7. In regulation 6(4)(b) age [61] is in square brackets in case a compulsory transferee's ceding scheme had a normal pension age (or equivalent term) between 61 and 65. If we can establish that this is impossible, then 'the age of 61' will be changed to 'the age of 65' in the consolidated regulations.

8. 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 6.

## PART 1

### Normal pension age

#### **2007 or later entrant: meaning and normal pension age**

- 1.—(1) A person (P) is a 2007 or later entrant if P falls within paragraph (2) or paragraph (3).
- (2) P falls within this paragraph if—
- (a) P enters pensionable employment for the first time on or after 1<sup>st</sup> January 2007, and
  - (b) P is not a [UK transferee with NPA 60 rights], a [UK transferee with NPA 60 and NPA 65 rights] or a public sector TUPE transferee.
- (3) P falls within this paragraph if—
- (a) P was in pensionable employment [at any time] before 1<sup>st</sup> January 2007, and
    - (b) (i) a transfer value or a cash equivalent is paid in respect of P's pensionable employment under regulation x other than to a comparable United Kingdom scheme, or
    - (ii) P's contributions in respect of P's pensionable employment have been repaid under regulation x.
- (4) A 2007 or later entrant has a normal pension age of 65 in relation to all of the person's reckonable service.

#### **Person with mixed service: meaning and normal pension age**

- 2.—(1) A person (P) is a person with mixed service if P falls within paragraph (2), is a [UK transferee with NPA 60 and NPA 65 rights] or is a public sector TUPE transferee with NPA 60 and NPA 65 rights.
- (2) P falls within this paragraph if—
- (a) P was in pensionable employment [at any time] before 1<sup>st</sup> January 2007, is a [UK transferee with NPA 60 rights] or is a public sector TUPE transferee with NPA 60 rights,
  - (b) P is not a 2007 or later entrant,
  - (c) P ceases to be in pensionable employment or comparable United Kingdom service, and
  - (d) P re-enters pensionable employment after a disqualifying break.
- (3) A person with mixed service has a normal pension age of 65 in relation to all of the person's reckonable service except that—
- (a) a person who falls within paragraph (2) has a normal pension age of 60 in relation to such of the person's reckonable service [which is] before the post-break employment start date;
  - (b) a [UK transferee with NPA 60 and NPA 65 rights] has a normal pension age of 60 in relation to such of the transferee's reckonable service which is attributable to the benefits which, under the rules of the comparable United Kingdom scheme from which the transfer value [or cash equivalent] mentioned in regulation 5(2)(c) was accepted, P would have been entitled to receive on retirement on reaching the age of 60;
  - (c) a public sector TUPE transferee with NPA 60 and NPA 65 rights has a normal pension age of 60 in relation to such of the transferee's reckonable service which is attributable to the benefits mentioned in regulation 6(4)(a) (meaning of public sector TUPE transferee, etc).
- (4) For the purpose of paragraph (3)(a), where a transfer value [or cash equivalent] other than one from a comparable United Kingdom scheme is accepted when a person is a person with mixed

service, the reckonable service attributable to the transfer is to be treated as not [being] before the post-break employment start date.

(5) For the purpose of paragraph (3)(a), where a transfer value [or cash equivalent] is accepted from a comparable United Kingdom scheme in respect of a person (P)—

- (a) P's reckonable service attributable to the benefits which under the rules of the scheme P would have been entitled to receive on retirement on reaching the age of 60 is to be treated as [being] before the post-break employment start date;
- (b) P's reckonable service attributable to the benefits which under the rules of the scheme P would have been entitled to receive on retirement on reaching the age of 65 is to be treated as not [being] before the post-break employment start date.

(6) For the purposes of this regulation, a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits before or on reaching the age of 60 where such entitlement arises by virtue of any scheme rule making special provision as to early retirement—

- (a) on grounds of ill health, redundancy or otherwise, or
- (b) with reduced benefits.

#### **Pre-2007 entrant: meaning and normal pension age**

3.—(1) A person (P) is a pre-2007 entrant if—

- (a) P was in pensionable employment [at any time] before 1st January 2007, is a [UK transferee with NPA 60 rights] or is a public sector TUPE transferee with NPA 60 rights, and
- (b) P is not a person with mixed service or a 2007 or later entrant.

(2) A pre-2007 entrant has a normal pension age of 60 in relation to all of the person's reckonable service.

#### **Meaning of NPA 60 reckonable service and NPA 65 reckonable service**

4. In these Regulations—

- (a) a reference to a person's "NPA 60 reckonable service" is a reference to the reckonable service in relation to which the person has a normal pension age of 60;
- (b) a reference to a person's "NPA 65 reckonable service" is a reference to the reckonable service in relation to which the person has a normal pension age of 65.

#### **Meaning of [UK transferee with NPA 60 rights], etc**

5.—(1) A person (P) is a [UK transferee with NPA 60 rights] if—

- (a) P enters pensionable employment on or after 1<sup>st</sup> January 2007 other than after a disqualifying break,
- (b) P was in comparable United Kingdom service [at any time] before that date, and
- (c) no transfer value or cash equivalent is paid in respect of that comparable United Kingdom service by a comparable United Kingdom scheme other than to the Secretary of State under regulation x or to another comparable United Kingdom scheme, and
- (d) P's contributions in respect of P's comparable United Kingdom service are not repaid.

(2) A person (P) is a [UK transferee with NPA 60 rights and NPA 65 rights] if—

- (a) P enters pensionable employment on or after 1st January 2007 after a disqualifying break,
- (b) P was in comparable United Kingdom service [at any time] before that date, and
- (c) a transfer value [or cash equivalent] is paid in respect of that comparable United Kingdom service by a comparable United Kingdom scheme to the Secretary of State under regulation x.

### **Meaning of public sector TUPE transferee, etc**

6.—(1) A person (P) is a public sector TUPE transferee if—

- (a) P enters pensionable employment on or after 1st January 2007,
- (b) P enters pensionable employment by virtue of a transfer of undertakings or by virtue of arrangement equivalent to a transfer of undertakings, and
- (c) immediately before entering pensionable employment, P was—
  - (i) in employment (“the previous employment”) [which was] pensionable under a public service pension scheme (“the previous scheme”), and
  - (ii) entitled under the rules of the previous scheme to receive some or all benefits on retirement from the previous employment before or on reaching the age of 60.

(2) In paragraph (1)—

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

(3) A “public sector TUPE transferee with NPA 60 rights” means a public sector TUPE transferee who immediately before entering pensionable employment was entitled under the rules of the previous scheme to receive on retirement from the previous employment all benefits under the previous scheme before or on reaching the age of 60.

(4) A “public sector TUPE transferee with NPA 60 and NPA 65 rights” means a public sector TUPE transferee who immediately before entering pensionable employment was entitled under the rules of the previous scheme to receive on retirement from the previous employment—

- (a) some benefits under the previous scheme before or on reaching the age of 60, and
- (b) other such benefits on or after reaching the age of 61

(5) For the purposes of this regulation, a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits before or on reaching the age of 60 where such entitlement arises by virtue of any scheme rule making special provision as to early retirement—

- (a) on grounds of ill health, redundancy or otherwise, or
- (b) with reduced benefits.

### **Meaning of disqualifying break and post-break employment start date**

7.—(1) A “disqualifying break” means a period of more than 5 years ending after 31<sup>st</sup> December 2007 during which a person is not in pensionable employment or comparable United Kingdom service.

(2) For the purpose of paragraph (1), a person’s pensionable employment or comparable United Kingdom service in any period of 12 months must be ignored unless the employment in that period—

- (a) amounts to at least 60 days (which may be continuous or discontinuous), or
- (b) counts as reckonable service of at least 30 days or, where the employment is comparable United Kingdom service, would count as reckonable service of at least 30 days if the employment were pensionable employment,

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- (a)
  - (b)

(3) For the purpose of paragraph (1), a person is to be treated as being in pensionable employment or in comparable United Kingdom service during any period for which the person has paid contributions under regulation C9 of TPR 1997 or regulation x(C10) of these Regulations or under equivalent arrangements under a comparable United Kingdom scheme.

(4) The "post-break employment start date" means the date on which a person re-enters pensionable employment or comparable United Kingdom service following a disqualifying break or, where there is more than one such period, the first of them.